

1. These Terms and Conditions (**Conditions**) apply to the Contract to the exclusion of any and all other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing, and shall apply to all subsequent sales by Seller to Buyer whether expressly stated or not. In the event of any discrepancy between these Conditions and the terms of the Sales Confirmation, the terms of the Sales Confirmation shall prevail.

## 2. INTERPRETATION

2.1. The following definitions apply in these Conditions.

- (a) **Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- (b) **Conditions:** these terms and conditions as amended from time to time
- (c) **Contract:** the contract between the Seller and the Buyer for the supply of Goods contained in the Sales Confirmation together with these Conditions.
- (d) **Buyer:** the person or firm who purchases the Goods and/or Services from the Seller.
- (e) **Goods:** the products set out in the Offer/Order/Sales Confirmation supplied by the Seller to be delivered to the Buyer.
- (f) **Delivery Location:** is the place of delivery specified in the Sales Confirmation.
- (g) **Goods:** the goods (or any part of them) set out in the Sales Confirmation.
- (h) **Sales Confirmation** is the document recording the agreement between the Buyer and Seller to sell and purchase the Goods which may be in the form of a formal document, or an email from a Party accepting an Order from the Buyer, or Offer from the Seller.
- (i) **Specification:** any specification for the Goods stated in the Sales Confirmation.
- (j) **Order:** the Buyer's order for the purchase of Goods
- (k) **Offer:** the Seller's offer for the supply of Goods

## 3. BASIS OF CONTRACT

- 3.1. The Order constitutes an offer by the Buyer to purchase Goods in accordance with these Conditions. The Offer constitutes an offer by the Seller to supply Goods in accordance with these Conditions. The Sales Confirmation is the acceptance of any Offer or Order whether in writing or orally and shall be deemed to incorporate these Conditions, at which point and on which date the Contract shall come into existence.
- 3.2. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. The Buyer acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- 3.3. Any quotation given by the Seller shall not constitute an offer unless specified as such, and is only valid for a period of 1 Business Day from its date of issue unless otherwise specified.

## 4. SPECIFICATION

- 4.1. The Seller reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, and the Seller shall notify the Buyer in any such event.
- 4.2. The Seller warrants that on Delivery the Goods shall conform in all material respects with their description and any applicable Specification. The Seller does not warrant their fitness for any
- 4.3. The Buyer shall notify the Seller of any defect in the Goods within 14 days of delivery or within 10 days of any latent defect becoming apparent, and any such notification shall be accompanied by an independent assessor's report detailing the defect in the Goods.
- 4.4. In the event that the Buyer makes a notification under Clause 4.3 above, the Seller shall be given the right to inspect the Goods and if the Goods do not conform in all material respects with their description and or the Specification, the Seller shall, at its option, repair or replace the defective Goods, or refund the price of the

defective Goods in full.

- 4.5. The Seller shall not be liable for the Goods' failure to comply with the warranty if:
- (a) the Buyer makes any further use of such Goods after giving such a notice; or
  - (b) the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
  - (c) the defect arises as a result of the Seller complying with any Specification supplied by the Buyer; or
  - (d) the Buyer alters or repairs such Goods without the written consent of the Seller; or
  - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
  - (f) the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 4.6. Except as provided in this Clause 4, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in Clause 4.1.
- 4.7. The terms of these Conditions shall apply to any replacement Goods supplied by the Seller.

## 5. DELIVERY AND ACCEPTANCE OF THE GOODS

- 5.1. Unless otherwise specified in the Sales Confirmation Delivery shall occur in accordance with the relevant Incoterm specified.
- 5.2. In respect of DAP Sales Contracts the Seller shall deliver the Goods to the Delivery Location specified in the Sales Confirmation and The Buyer shall ensure all Goods contained in a DAP Delivery are unloaded within 2 hours of arrival of the delivery at the Delivery Location. Buyer shall be liable for all costs incurred as a result of any delay in unloading.
- 5.3. If the Seller fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Seller shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 5.4. In respect of FCA or EXW Deliveries, Delivery shall occur at the Delivery Location when the Goods are made available for collection by the Buyer or their appointed carrier.
- 5.5. If the Buyer fails to take delivery of the Goods within the time specified in the Sales Confirmation then, except where such failure or delay is caused by a Force Majeure Event or by the Seller's failure to comply with its obligations under the Contract in respect of the Goods the Seller may store the Goods until delivery takes place, and charge the Buyer for all related costs and expenses (including insurance); and/or resell or otherwise dispose of part or all of the Goods and charge the Buyer for any losses incurred as a result.
- 5.6. Any dates quoted for Delivery of the Goods are approximate only, and the time of Delivery is not of the essence. The Seller shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.7. The Seller may deliver the Goods by instalments, which may be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

## 6. TITLE AND RISK

- 6.1. The risk in the Goods shall pass to the Buyer on completion of delivery.
- 6.2. Title to the Goods shall pass to the Buyer upon receipt of payment in full for the Goods
- 6.3. Until title to the Goods has passed to the Buyer, the Buyer shall store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property and maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Seller's behalf from the date of delivery.

## 7. CHARGES AND PAYMENT

### 7.1. The price for Goods:

- (a) shall be the price set out in the Sales Confirmation; and
- (b) is exclusive of VAT and any other sales taxes which shall be for the account of the Buyer
- (c) shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Buyer.

### 7.2. The Seller reserves the right to increase the price of the Goods, by giving notice to the Buyer at any time before delivery, to reflect any increase in the cost of the Goods to the Seller that is due to:

- (a) any factor beyond the control of the Seller (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
- (c) any delay caused by any instructions of the Buyer in respect of the Goods or failure of the Buyer to give the Seller adequate or accurate information or instructions in respect of the Goods.

### 7.3. The Seller may invoice the Buyer at any time prior to or after completion of delivery.

### 7.4. Unless otherwise specified in the Sales Confirmation, Buyer shall pay each invoice submitted by the Seller within 30 days of the date of the invoice in full and in cleared funds to a bank account nominated in writing by the Seller, and time for payment shall be of the essence of the Contract.

### 7.5. If the Buyer fails to make a payment due to the Seller under the Contract by the due date, then, without limitation to Seller's other remedies, the Buyer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

### 7.6. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 8. CONFIDENTIALITY

### 8.1. Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, Buyers, clients or Sellers of the other party, except each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Clause; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

### 8.2. Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

## 9. LIMITATION OF LIABILITY:

### 9.1. Seller's liability for claims shall be strictly limited to the remedies set out in Clause 4. All warranties, conditions and terms implied by statute or common law are, to the full extent permitted by law, excluded from the contract. The Seller gives no warranty that the Goods shall be merchantable or fit for any specific purpose.

### 9.2. The restrictions on liability in this Clause apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

### 9.3. Nothing in the Contract limits any liability which cannot legally be limited, including liability for death or personal injury caused by negligence and fraud or fraudulent misrepresentation.

- 9.4. Under no circumstances shall the Seller be liable for loss of profits; loss of sales or business; loss of agreements or contracts; loss of anticipated savings; loss of or damage to goodwill; and indirect or consequential loss.
- 9.5. Seller's liability for all claims shall not in any event exceed [the purchase price of the Goods].

## 10. TERMINATION

- 10.1. Without affecting any other right or remedy available to it, the Seller may suspend or terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the Buyer commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 5 days after receipt of notice in writing to do so;
  - (b) the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - (c) the Buyer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - (d) the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 10.2. Without affecting any other right or remedy available to it, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.
- 10.3. Without affecting any other right or remedy available to it, the Seller may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer fails to pay any amount due under the Contract or any other contract between Buyer and Seller on the due date for payment, or the Buyer becomes subject to any of the events listed in Clause 11.1(b) to (d) or the Seller reasonably believes that the Buyer is about to become subject to any of them.
- 10.4. On termination of the Contract:
- (a) the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest; or
  - (b) in the event the Buyer fails to pay for the goods in accordance with Clause 10.4(a) above, the Buyer shall return all Goods which have not been fully paid for. If the Buyer fails to do so, then the Seller may enter the Buyer's premises and take possession of them. Until they have been returned, the Buyer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 10.5. Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 10.6. Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

## 11. FORCE MAJEURE

11.1. Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). The Party directly affected by the Force Majeure Event (Directly Affected Party) shall inform the other Party (the Non-Affected Party) immediately of the occurrence of the Force Majeure Event. The Directly Affected Party shall be entitled to suspend obligations affected by the Force Majeure Event, and the Non-Directly Affected Party may suspend any

corresponding obligations, pending the cessation of the Force Majeure Event, except any obligations to make any payments due hereunder. Under no circumstances shall any payment due hereunder be suspended due to Force Majeure.

**12. GENERAL**

- 12.1. The Seller may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract. The Buyer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.
- 12.2. Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified in the Sales Confirmation. Any notice shall be deemed to have been received at 9.00 am on the Business Day after posting or transmission.
- 12.3. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision shall not affect the validity and enforceability of the rest of the Contract.
- 12.4. A waiver of any right or remedy under the Contract or by law or variation of the Contract is only effective if given in writing and shall not be deemed a waiver or variation of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 12.5. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 12.6. Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

**13. GOVERNING LAW AND JURISDICTION.**

- 13.1. Any dispute arising out of or in connection with this Contract including any questions regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration before a sole arbitrator under the LCIA Rules, which Rules are deemed to be incorporated by reference into this Clause. The seat, or legal place of arbitration shall be London. The language to be used shall be English.
- 13.2. The Contract shall be governed by the substantive law of England and Wales.