

TERMS & CONDITIONS OF SALE (V1)

FORMATION OF CONTRACT

- 1.1 All quotations, offers and tenders are made and all orders are accepted subject to the following conditions. Except as otherwise provided in these conditions, all other terms, conditions or warranties are excluded from any contract between the Seller and its customer (the "Buyer") unless expressly accepted in writing by the Seller.
- 1.2 If there is a conflict between these conditions and any other terms of the Seller's quotation, offer, tender or acknowledgement of order, such other terms shall prevail.
- 1.3 Quotations shall be available for acceptance for a maximum period of 30 days from date of issue and may be withdrawn by the Seller by written or oral notice to the Buyer at any time prior to the Seller's acceptance
- 1.4 If any statement or representation has been made to the Buyer by the Seller or its officers, employees or agents (other than in the document(s) enclosed with the Seller's quotation or acknowledgement of order), upon which the Buyer wishes to rely it shall only be entitled to do so if the statement or representation is attached to or endorsed on the Buyer's order and then only if the Seller subsequently confirms in writing to the Buyer that the Buyer is entitled to rely on the statement or representation.
- 1.5 Prices are quoted by the Seller on the basis of the limitations of liability set out in these conditions. The Buyer shall be entitled to request the Seller to agree a higher limit of liability and the Seller may then quote a revised price taking account of any increased insurance premium to be borne by the Seller.
- 1.6 Unless specifically agreed to the contrary, all commercial terms shall be interpreted in accordance with INCOTERMS current at the time the order is accepted.

PRICES

- 1.7 Unless otherwise agreed in writing, all prices are quoted net ex-works exclusive of VAT. If the Seller agrees to deliver the goods otherwise than at its premises the Buyer shall pay all packaging, transportation and insurance costs and other charges incurred by the Seller in making or arranging such delivery.
- 1.8 Unless otherwise agreed in writing, carriage will be paid on all orders for despatch to points within the United Kingdom by the Seller's usual means of carriage except that on orders for despatch to Northern Ireland, the Channel Islands and the Scottish islands carriage will be paid only to the nearest United Kingdom mainland port.
- 1.9 Where, at the Buyer's request, goods are forwarded by any means involving a higher carriage charge than would be incurred by use of the Seller's usual means of carriage the additional charge will be payable by the Buyer.
- 1.10 Where the Seller delivers or arranges delivery of the goods, the Buyer shall be liable to the Seller for carriage costs and any demurrage costs incurred by the Seller if vehicles are unduly delayed at the place of delivery.
- 1.11 Quoted prices are subject to fluctuation in the event of any increase in the cost of labour or in the cost of materials or overheads affecting the cost of supplying the goods. Any increase in such costs will be added to the quoted price. The Seller also reserves the right to make an additional charge to cover any increase in transport costs occurring before the date of delivery.

PAYMENT

- 1.12 In respect of goods sold for export, unless otherwise agreed in writing, payment shall be made by irrevocable letter of credit confirmed with a UK Clearing Bank approved by the Seller prior to the date of delivery.
- 1.13 Unless otherwise agreed by the Seller in writing payment shall be due and payable not later than the end of the month after the date of invoice. The time for payment shall be of the essence of the contract.
- 1.14 The Seller shall be entitled to submit its invoice with its delivery advice note or at any time afterwards except that where delivery has been postponed at the request of, or by the default of, the Buyer, the Seller may submit its invoice at any time after the goods are ready for delivery or would have been ready in the ordinary course but for the Buyer's request or default.
- 1.15 Where goods are delivered by instalments the Seller may invoice each instalment separately and the Buyer shall pay such invoices in accordance with these conditions.
- 1.16 No disputes arising under the contract or delays, otherwise than due to default by the Seller, shall interfere with prompt payment in full by the Buyer.
- 1.17 If the Buyer shall default in payment, the Seller shall be entitled, without prejudice to any other right or remedy, to do all or any of the following:-
- 1.17.1 to suspend any or all further deliveries under the contract and under any other contract or contracts between the Seller and the Buyer then current, without notice;
 - 1.17.2 to charge interest on any amount outstanding at the rate of 4% per annum above the base rate of Lloyds Bank plc, such interest being charged as a separate, continuing obligation not merging with any judgment;
 - 1.17.3 to serve notice on the Buyer requiring immediate payment for all goods supplied by the Seller under this and all other contracts with the Buyer whether or not payment is otherwise due;
 - 1.17.4 to sue for the price of the goods even though (in the case of the goods) title may not have passed to the Buyer.

DELIVERY

- 1.18 Delivery of the goods shall be given and taken at the Seller's premises unless the Seller has specifically agreed in writing to arrange transport for the goods in which case delivery shall occur when the goods arrive at the designated place of delivery.
- 1.19 Time for delivery is given as accurately as possible but is not guaranteed. The Buyer shall have no right to damages or to cancel the contract for failure for any cause to meet any delivery time stated nor shall the Buyer be entitled to make, or to purport to make, time for delivery of the essence of the contract. The date for delivery shall in every case be dependent upon prompt receipt of all necessary information, final instructions or approvals from the Buyer.
- 1.20 Failure by the Buyer to take delivery of any one or more instalments of goods delivered in accordance with the contract shall entitle the Seller to treat the contract as repudiated by the Buyer either in whole or in part.
- 1.21 The Seller will endeavour to comply with reasonable requests by the Buyer for postponement of delivery of the goods but shall be under no obligation to do so. Where delivery is postponed, otherwise than due to default by the Seller then, without prejudice to all other rights and remedies available to the Seller, the Buyer shall pay all costs and expenses, including a reasonable charge for storage and transportation so occasioned.
- 1.22 Section 32(2) of the Sale of Goods Act 1979 shall not apply. The Seller shall not be required to give the Buyer the notice specified in section 32(3) of that Act.

PACKING

- 1.23 Unless otherwise agreed in writing, the price of cases and other packing materials, when charged for, will be credited if the items are returned to the Seller's works within 7 days of the date of invoice, carriage paid and in good condition.
- 1.24 Packaging supplied by the Seller, unless otherwise expressly agreed in writing, is intended to provide adequate protection in normal conditions of transit of expected duration.

RISK AND TITLE

- 1.25 Risk shall pass to the Buyer (so that the Buyer is then responsible for all loss or deterioration of the goods or for any damage occurring):-
- 1.25.1 if the Seller is responsible for delivering or arranging for delivery of the goods, at the time when the goods arrive at the place for delivery; or
- 1.25.2 in all other circumstances, at the time when the goods leave the premises of the Seller.
- 1.26 Title to the goods shall only pass to the Buyer upon the happening of any one of the following events:-
- 1.26.1 the Buyer having paid to the Seller all sums (including any default interest) due from it to the Seller under this contract and under all other contracts between the Seller and the Buyer including any sums due under contracts made after this contract whether or not the same are immediately payable; or
- 1.26.2 the Seller serving on the Buyer notice in writing specifying that title in the goods has passed
- 1.26.3 the Seller may recover goods in respect of which title has not passed to the Buyer at any time and the Buyer irrevocably licences the Seller, its officers, employees and agents to enter upon any premises of the Buyer, with or without vehicles, for the purpose either of satisfying itself that condition 3 below is being complied with by the Buyer or of recovering any goods in respect of which title has not passed to the Buyer
- 1.26.4 until title to the goods has passed to the Buyer under these conditions it shall possess the goods as fiduciary agent and bailee of the Seller. If the Seller so requires, the Buyer shall store the goods separately from other goods and shall ensure that they are clearly identifiable as belonging to the Seller. During such time as the Buyer possess the goods with the Seller's consent, the Buyer may in the normal course of its business sell or hire the goods as principal and without committing the Seller to any liability to the person dealing with the Buyer

CANCELLATION

- 1.27 Cancellation will only be agreed to by the Seller on condition that all costs and expenses incurred by the Seller up to the time of cancellation and all loss of profits and other loss or damage resulting to the Seller by reason of such cancellation will be paid immediately by the Buyer to the Seller.
- 1.28 Goods returned to the Seller without the Seller's written consent will under no circumstances be accepted for credit.

VARIATIONS

- 1.29 No variations to the goods required by the Buyer shall be binding on the Seller unless agreed by the Seller and the Buyer in writing, including, as part of such agreement, any change to the contract price arising in consequence of the variation to the goods. If the Seller shall vary the goods in accordance with the Buyer's requirements without agreement having been reached as to a consequential change in the contract price, the price shall be varied. If the Seller agrees to any such variation, any dates quoted for delivery shall be extended accordingly.
- 1.30 The Seller reserves the right to deliver under or over the quality of goods ordered by up to 5% and the Buyer shall pay for the quantity actually delivered.

SPECIFICATION

- 1.31 The Seller reserves the right to alter the composition of the goods supplied to conform to applicable standards or laws or otherwise within reasonable limits having regard to the nature of the goods.
- 1.32 The information contained in the advertising, sales and technical literature issued by the Seller may be relied upon to be accurate in the exact circumstances in which it is expressed. Otherwise any illustrations, performance details, examples of installations and methods of assembly and all other technical data in such literature are based on experience and upon trials under test conditions and are provided for general guidance only. No such information or data shall form part of the contract unless the Buyer shall have complied with condition 1.4 relating to statements and representations and the Seller shall have given the confirmation referred to in that condition.

SHORTAGES AND DEFECTS APPARENT ON INSPECTION

- 1.33 The Buyer shall only be entitled to claim (and then subject to conditions 12 and 13) for shortages or defects in the goods as supplied which are apparent on visual inspection if:-
- 1.33.1 the Buyer inspects the goods within three working days following the date of their arrival at its premises or other agreed destination; and
- 1.33.2 a written complaint specifying the shortage or defect is made to the Seller (and, where the Seller has arranged transport for the goods in accordance with a specific contractual obligation to do so, to the carrier) within seven working days of delivery in the event of shortage, defect, or non-delivery of any separate part of a consignment, or within fourteen working days of the notified date of despatch in the event of non-delivery of a whole consignment or (if applicable), within such shorter period as the carrier's conditions require; and
- 1.33.3 the Seller is given an opportunity to inspect the goods and investigate any complaint before any use of or alteration to or interference with the goods.
- 1.34 If a complaint is not made to the Seller as provided in this condition 10, the goods shall be deemed to be in all respects in accordance with the contract (subject only to condition 11) and the Buyer shall be bound to pay for the same accordingly.
- 1.35 Defects in the quality or size of any instalment delivery shall not be a ground for cancellation of the remainder of the contract.

DEFECTS NOT APPARENT ON INSPECTION

- 1.36 The Buyer shall only be entitled to claim (and then subject to conditions 12 and 13) in respect of defects in the goods supplied which are not apparent on visual inspection at the time of delivery, if:-
- 1.36.1 a written complaint is sent to the Seller as soon as reasonably practicable after the defect is discovered and subsequently no use is made of the goods or alteration or interference made to or with the goods before the Seller is given an opportunity to inspect the goods in accordance with condition 11.4; and
- 1.36.2 the complaint is sent within 2 months of the date of delivery of the goods or, in the case of an item not manufactured by the Seller, within the guarantee period specified by the manufacturer of such item.
- 1.37 The Buyer shall not be entitled to claim in respect of any repairs or alterations undertaken by the Buyer without the prior specific written consent of the Seller nor in respect of any defect arising by reason of fair wear and tear or damage due to accident, neglect or misuse nor in respect of any goods to which alterations have been made without such consent or to which replacement parts not supplied by the Seller have been fitted.
- 1.38 The Seller shall not be liable for (and the Buyer shall indemnify the Seller against claims arising from) loss or damage suffered by reason of use of the goods after the Buyer becomes aware of a defect or after circumstances have occurred which should reasonably have indicated to the Buyer the existence of a defect.
- 1.39 The Seller may within 15 days of receiving a written complaint (or 28 days where the goods are situated outside the United Kingdom) inspect the goods and the Buyer, if so required by the Seller, shall take all steps necessary to enable it to do so.

GUARANTEE

- 1.40 Except as otherwise provided in these conditions, sections 13 to 15 of the Sale of Goods Act 1979 are to be implied into the contract.

- 1.41 If the condition of the goods is such as might or would (subject to these conditions) entitle the Buyer to claim damages, to repudiate the contract or to reject the goods the Buyer shall not then do so but shall first ask the Seller to repair or supply satisfactory substitute goods and the Seller shall then be entitled at its option to repair or take back the defective goods and to supply satisfactory substitute goods free of cost and within a reasonable time or to repay the price of the goods in respect of which the complaint is made.
- 1.42 If the Seller does so repair the goods or supply satisfactory substitute goods or effect repayment under condition 12.2, the Buyer shall be bound to accept such repaired or substituted goods, repayment and the Seller shall be under no liability in respect of any loss or damage of whatever nature arising from the initial delivery of the defective goods or from the delay before the defective goods are repaired or the substitute goods are delivered or the repayment is effected.
- 1.43 In the case of goods not manufactured by the Seller:-
- 1.43.1 the Seller gives no assurance or guarantee that the sale or use of the goods will not infringe the patent, copyright or other industrial property rights of any other person, firm or company; and
- 1.43.2 the obligations of the Seller relating to defects in such goods are limited to the guarantee (if any) which the Seller receives from the manufacturer or supplier or such goods.

EXCLUSION OF LIABILITY

- 1.44 The Seller shall not be liable in respect of claims arising by reason of death or personal injury except in so far as the death or injury is attributable to a failure by the Seller to exercise reasonable care.
- 1.45 Further, under no circumstances whatever shall the Seller be liable for losses special to the particular circumstances of the Buyer, indirect losses, work required in connection with the removal of defective goods and the installation of repaired or substituted goods, loss of profits, damage to property or wasted expenditure.
- 1.46 Without prejudice to condition 13.2, where goods are supplied for the purpose of a business, the Seller's liability, whether in respect of one claim or the aggregate of various claims (other than claims for death or personal injury to the extent that the same is caused by a failure of the Seller to take reasonable care), shall not exceed the contract price of goods and the Buyer agrees to insure adequately to cover claims in excess of such amount.

CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY RIGHTS

- 1.47 All drawings, documents, confidential records, computer software and other information supplied by the Seller, whether produced by itself or a third party, are supplied on the express understanding that copyright is reserved to the Seller (or the third party) and that the Buyer will not, without the written consent of the Seller, give away, loan, exhibit or sell any drawings, documents, records, software or other information or extracts from them or copies of them or use them in any way except in connection with the goods in respect of which they are issued.
- 1.48 All claims for alleged infringement of patents, trade marks, registered designs, design right or copyright received by the Buyer relating to the goods must be notified immediately to the Seller. If requested by the Seller, the Seller shall be entitled to have conduct of any proceedings relating to any such claim in such manner as the Seller thinks fit and the Buyer will provide to the Seller such reasonable assistance as the Seller may request. The cost of any such proceedings will be borne by the Seller.
- 1.49 If any allegation shall be made against the Buyer to the effect that the supply of such of the goods as are manufactured by the Seller infringes the intellectual property rights of any third party or the Seller has reason to believe that any such allegation is likely to be made, the Seller may at its option and expense modify or replace the goods so as to avoid the infringement (but without adversely affecting the overall performance of the goods), or obtain for the benefit of the Buyer the right to continue to use the goods, or repurchase the goods at the contract price as reduced by a reasonable provision for depreciation. If the Seller pursues any of such options, the Buyer will have no rights or remedies against the Seller arising directly or indirectly out of the alleged infringement.

CUSTOMER'S DRAWINGS

- 1.50 The Buyer shall be solely responsible for ensuring that all drawings, information, advice and recommendations given to the Seller, either directly or indirectly by the Buyer or by the Buyer's consultants or advisers, are accurate, correct and suitable unless, and then only to the extent that, the Seller agrees in writing signed by a director or other authorised representative to accept responsibility. Examination or consideration by the Seller of such drawings, information, advice or recommendations shall not of itself limit the Buyer's responsibility.
- 1.51 The Buyer shall indemnify the Seller from and against all actions, claims, costs and proceedings which arise due to the manufacture of goods by the Seller being in accordance with drawings or specifications provided by the Buyer if such drawings or specifications are inaccurate or contain design defects or if they infringe or are alleged to infringe a patent, copyright, registered design, design right or design copyright or other right of any third party.

INSOLVENCY

If the Buyer shall become bankrupt or shall be deemed to be unable to pay its debts for the purposes of section 123 of the Insolvency Act 1986 or shall compound with its creditors or if a resolution shall be passed or proceedings shall be commenced for the administration or liquidation of the Buyer (other than for a voluntary solvent winding up for the purposes of reconstruction or amalgamation), or if a receiver or manager shall be appointed of all or any part of its assets or undertaking, the Seller shall be entitled to cancel the contract in whole or in part by giving written notice to the Buyer, without prejudice to any other right or remedy available to the Seller.

FORCE MAJEURE

The Seller shall be under no liability for any failure to perform any of its obligations under the contract if and to the extent that the failure is caused by act of God, governmental restriction, condition or control or by reason of any act done or not done pursuant to a trade dispute, shortages of labour or materials or breakdown of machinery, Economic and Monetary Union or any other matter (whether or not similar to the foregoing) outside the control of the Seller.

SPECIALS AND FREE ISSUE MATERIALS

- 1.52 The Seller does not guarantee the suitability of materials or the design of goods made especially to the Buyer's requirements and differing from the Seller's standard specifications even if the purpose for which the goods are required is known to the Seller.
- 1.53 The Seller does not accept responsibility for the safe-keeping and condition of the Buyer's samples, drawings, tools and the like whilst they are in the Seller's possession whatever the circumstances may be in which they are lost, broken or damaged and the Buyer should make its own arrangements to insure these items.
- 1.54 Where materials are supplied by the Buyer to the Seller, such materials shall remain at the risk of the Buyer at all times and the Seller shall not be liable for the loss of, or damage to, any material during fabrication by the Seller or whilst stored on the premises of the Seller or whilst in transit to or from the premises by the Seller. For the purposes of this condition the "Seller" includes any sub-contractor employed by the Seller.
- 1.55 Where materials are supplied by, or on behalf of, the Buyer to the Seller, the Buyer shall be responsible for ensuring that the material is of satisfactory quality and shall indemnify the Seller against any loss, damage, injury or expense arising directly or indirectly from any actual or alleged fault in or incorrect specification of such materials.

ATTENDANCE ON SITE

If the Seller attends, or arranges for an attendance to be made, at the Buyer's premises or the premises of any third party for any reason connected with the contract, the Buyer shall indemnify the Seller in respect of all claims made or proceedings taken against the Seller (and associated legal costs incurred by the Seller) by any person, firm or company, including employees of the Seller, or of the Buyer or of any contractor employed by the Buyer (or their personal representatives), whether in respect of death, personal injury or damage to property arising directly or indirectly from the attendance at such premises except only in so far as such claims are caused by a negligent act or omission on the part of the Seller.

CONSUMER PROTECTION ACT 1987 (THE "ACT")

1.56 In circumstances in which the Seller supplies goods to the Buyer for incorporation with, or use ancillary to, any composite or other products to be produced, manufactured, processed or supplied by the Buyer or a third party then:-

1.56.1 the Buyer shall immediately on demand produce for inspection by the Seller copies of all written instructions, information and warnings to be supplied by the Buyer in relation to the composite or other products, provided that such inspection or right to inspect shall not of itself constitute acceptance or approval on the part of the Seller of such instructions, information or warnings; and

1.56.2 the Buyer shall indemnify, reimburse and compensate the Seller for all losses and damages (including costs, expenses and charges for legal actions in which the Seller may be involved) which the Seller may incur, or have to bear, if any claim or claims shall be made against the Seller, pursuant to the Act or otherwise, relating to the composite or other products in circumstances in which the goods supplied by the Seller are either (i) not the defective part of the composite or other product, or (ii) are only rendered the defective part or became a defective product by reason of acts or omissions of the Buyer or a third party (including without limitation the supply of defective free issue materials), or (iii) are only rendered the defective part or became a defective product by reason of instructions or warnings given by the Buyer or other supplier of the composite or other products or (iv) are supplied in accordance with a specification or drawings furnished by, or on behalf of, the Buyer.

1.57 For the purposes of condition 20.1 only, the word "**defective**" shall be interpreted in accordance with the definition of "**defect**" contained in Part 1 of the Act.

1.58 The Buyer acknowledges that it is under a duty to pass on to its customers all instructions, information and warnings supplied to it by the Seller with the goods.

GENERAL

1.59 The contract is entered into between the Seller and the Buyer as principals and the Buyer shall not be entitled to assign the benefit or burden of it or of any interest in it without the prior written consent of the Seller. The Seller shall be entitled to sub-contract the whole or part of its obligations under the contract and to assign its interest in the contract.

1.60 If these conditions shall be or become void in whole or in part, the other provisions shall remain valid and enforceable.

1.61 No relaxation or delay by the Seller in enforcing any of its rights shall restrict its rights nor shall any waiver by the Seller of any breach operate as a waiver of any subsequent or continuing breach.

1.62 Unless otherwise agreed in writing, the occurrence or non-occurrence of an event associated with European Monetary Union will not of itself discharge the contract, or entitle one party unilaterally to vary or terminate it.

1.63 If any dispute arises out of this contract (other than in relation to a dispute concerning payments by the Buyer) the parties shall use all of their respective reasonable endeavours to resolve it by negotiation. If negotiations fail to resolve such dispute the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. To initiate a mediation a party shall give notice in writing (a "Mediation Notice") to the other party requesting mediation of the dispute and shall send a copy thereof to CEDR asking CEDR to nominate a mediator in the event that the parties shall not be able to agree such appointment by negotiation. The mediation shall commence within 28 days of the Mediation Notice being served. Neither party will terminate such mediation until each party has made its opening presentation and the mediator has met each party separately for at least one hour. Thereafter paragraph 14 of the CEDR Model Mediation Procedure will apply. Neither party will commence legal proceedings against the other until thirty days after such mediation of the dispute in question has failed to resolve the dispute.

1.64 Any notice required or permitted to be given by either party to the other under these Conditions of Sale shall be in writing addressed to that other party at its registered office or principal place of business or such other address which may have been notified to the party giving the notice. A notice shall be deemed to have been received, in the case of a facsimile or electronic mail, upon transmission and in the case of a letter forty eight hours after posting. In proving service by facsimile transmission or electronic mail, it shall be necessary only to produce a report confirming uninterrupted transmission to the recipient.

1.65 The contract shall be governed and interpreted according to the laws of England and in the case of proceedings issued against the Seller shall be subject to the jurisdiction of the English courts only other than injunctive relief which may be sought outside such jurisdiction.



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