

## **TERMS OF BUSINESS AND CONDITIONS OF SALE (“Terms and Conditions”)**

### **1. DEFINITION**

The following words shall have the following meanings:

“Buyer” the person firm or Company with whom or with which the Company contracts subject to these Terms and Conditions and in the case of a firm or partnership shall include individually and on their own account each member and/or partner therein:

“Contract” the Contract made or to be made between the Company and Buyer subject to these Terms and Conditions:

“Goods” any article to be supplied by the Company to the Buyer under the Contract.

### **2. CONTRACT**

2.1. Any quotation or tender, written or oral, submitted by the Company shall be deemed to be an invitation to treat and not an offer. The placing of any order, written or oral, whether or not any quotation or tender may have been submitted to the Buyer by the Company, shall constitute an offer by the Buyer. No acceptance shall be binding upon the Company and no contract shall come into existence unless and until the Company shall have formally accepted the Buyer’s offer in writing. Orders are accepted only upon and subject to these Terms and Conditions. No term (unless expressly agreed in writing by the Company) of any Buyer’s order inconsistent with these Terms and Conditions is to form part of any contract between the Company and the Buyer. Any order placed by the Buyer with any of the Company’s sales persons or other employees or representatives shall be subject to acceptance as aforesaid.

2.2 No variation of or addition to these Terms and Conditions, whether written or oral, shall have effect unless and until agreed in writing by the Company and signed by a representative of the Company duly authorised in writing.

### **3. QUOTATION OR TENDER PRICE**

3.1. Unless previously withdrawn, any quotation or tender shall remain open for the period stated therein, or, where no period is so stated for 30 days from the date appearing thereon.

3.2. Any order must be accompanied by sufficient information to enable the Company to proceed forthwith, otherwise the Company shall be at liberty to amend the quotation or tender price to cover any increase in cost, which has taken place since the order was placed. In the event of variation or suspension of work on the Buyer’s instructions or as a result of a lack of instructions, the quotation or tender price shall be adjusted accordingly.

3.3. All prices given in price lists, quotations, tenders or acknowledgments of orders are subject to alteration to the Company’s prices ruling at the date of dispatch and are exclusive of any Government taxes.

3.4. In the event that delivery of the Goods is not accepted by the Buyer within the time stipulated in clause 8.2. the Company shall be entitled to treat the Contract as concluded and to recover from the Buyer the additional price (if any) which may be payable for Goods reduced in quantity by the amount of Goods which the Buyer has failed to take delivery of.

### **4. SAMPLES**

Any samples submitted to the Buyer on a sale or return basis that have not been returned to the Company’s premises within one month of the date of receipt by the Buyer shall be paid for by the Buyer.

### **5. DRAWINGS, ILLUSTRATIONS DESCRIPTIONS AND CATALOGUES**

Drawings, illustrations, descriptions and catalogues issued by the Company and any details contained therein are approximate only and shall not form part of any contract between the Company and the Buyer unless expressly incorporated. The Company therefore reserves the right without notification to the Buyer to alter any such drawings, illustrations, descriptions or catalogues and any details contained therein and to supply the goods so altered in performance of the Contract.

### **6. PERFORMANCE, QUALITY AND INSPECTION**

6.1. All information (including without limitation figures) given by the Company relating to the performance of the Goods is based upon the Company’s experience but the Company shall accept no liability should it prove to be in any way inaccurate and it shall be the responsibility of the Buyer to ensure that the capacity and the performance of the Goods are sufficient and suitable for the purpose or purposes intended.

6.2. The Buyer will ensure that the Goods are carefully inspected upon delivery by the Company. Defects in the Goods which may reasonably be expected to be apparent upon such an inspection and/or variants in the Goods from specifications (if any) contained within the Buyer’s Order which likewise may reasonably be expected to be apparent upon such an inspection, shall be notified to the Company forthwith, but in any event within sixty days from the date when the Goods were dispatched by the Company to the Buyer provided that :-

6.2. (i) where delivery is to take place by installments at intervals of less than sixty days such defects and/or variants shall be notified by the Buyer to the Company forthwith, but in any event before the date of the next following scheduled dispatch;

(ii) where delivery is to take place by installments at intervals of thirty days or less such defects and/or variants shall be notified by the Buyer to the Company forthwith, but in any event within seven days following delivery of the defective Goods.

### **7. FORCE MAJEURE AND SUSPENSION**

If, any factor beyond the Company’s control including but not without limitation shortage of raw materials, components or services, acts of God, war, national emergency, laws or regulations of any territory, industrial dispute, civil commotion, fire, tempest and/or flood or other disaster natural or otherwise affects the Company, or any supplier to the Company, with the result that the Company is unable to perform or is delayed in performing all or any of its obligations under the Contract then performance by the Company of its said obligation may be wholly or partially suspended until the factor causing the failure to perform or the delay in performance shall have ceased. Any such delay shall be added to any time stipulated for delivery.

## 8. DELIVERY

8.1. Delivery is Ex Works for United Kingdom customers and FOB for export customers unless otherwise stated by the Company in writing. Special delivery services will be charged as an additional cost.

8.2. Time of delivery is not to be nor to be capable of becoming of the essence of the Contract but unless otherwise agreed in writing the Buyer is nevertheless bound to take delivery within the time stipulated but in any event within six months from the date his order was placed (whether added to as above or not). The Company shall not be liable for any failure to meet any delivery date given nor for any loss, financial or otherwise, resulting directly or indirectly there from.

8.3. Claims for damage in transit or shortage on delivery will only be entertained by the Company upon receipt by it of a claim in writing completed by the Buyer within 5 days of delivery. In the case of non-delivery the claim will only be entertained upon receipt of a written claim within 7 days of receipt by the Buyer of the Company's invoice. In the event of a satisfactory claim being made the Company shall at its discretion replace or repair Goods lost or damaged in transit but beyond this the Company accepts no liability whatsoever for loss of or for damage to Goods in transit.

8.4. Subject to Paragraph 8.3 above risk of loss of or damage to Goods shall pass to the Buyer upon delivery.

## 9. CANCELLATION/AMENDMENTS

9.1 In the event that the Buyer wishes to change the delivery date provided for in the Contract ('the Original Date') he must give to the Company a minimum of eight weeks written notice of the proposed new delivery date or dates ('the New Date') and the Company shall have absolute discretion in deciding whether or not to accept the New Date provided that it shall not accept the New Date, unless it regards the New Date as being reasonable having regard to all the circumstances of the Contract, including, without limitation, the size of the order, the price and the identity of the Buyer, but in any event the Company shall not accept the New Date if it arises or may arise beyond six months from the Original Date.

9.2 No cancellation may be made by the Buyer of any order or part of the order placed with the Company beyond the period of 7 days from receipt by the Company of the order. In the event that the Buyer should cancel, the Company shall claim and the Buyer shall be liable to make payment forthwith to the Company of a sum in compensation which is equal to the cost of all materials purchased and work in progress incurred by the Company and any loss of the Company's gross profit which is attributable to the cancellation.

## 10 WARRANTY

10.1 The Company warrants that it shall make good by reimbursement of the whole or part of the price paid under the Contract (and where relevant, as a deduction from any part of the price remaining unpaid) or at its option by repair or by replacement, any defect developing under normal use in the Goods and which are shown to the Company's satisfaction to be due solely to faulty design (except where supplied by or on behalf of the Buyer), materials and/or workmanship provided that:

10.1 (i) Subject to the provisions of sub-clause 6.2 above, the defect in question shall have appeared within 6 months after the date of dispatch of the Goods in question and shall have been thereupon promptly notified in writing to the Company and

10.1 (ii) Any Goods alleged to be defective shall if so required by the Company, be promptly returned at the Buyer's risk and expense to the Company's works for inspection, and the Company shall in its reasonable opinion consider them to be defective solely by reason of faulty design, materials and/or workmanship; and

10.1 (iii) No attempt shall have been made by the Buyer or by any third party to remedy any defect before the Goods in question shall, if so required by the Company, have been returned to the Company for inspection; and

10.1 (iv) The Goods in question shall have been serviced and maintained properly and in accordance with the Company's recommendations and shall not have been fitted with any parts, components and/or accessories other than those manufactured or recommended by the Company; and

10.1 (v) Where any such defect is due to a fault in any part, component, accessory and/or other item of the Goods not manufactured by the Company, the Buyer shall be entitled, as against the Company only to such remedy as the Company may be able to obtain against the relevant manufacturer or supplier; and

10.1 (vi) In default of any claim being made under this condition within a period ending one week following the period of 6 months above referred to, the Goods shall be deemed to comply with the Contract and to be in all respects satisfactory; and

10.2 The Company's liability shall be limited to reimbursement of the price or repair or replacement of the Goods as aforesaid and shall be subject to compliance by the Buyer with the terms of the foregoing part of this condition. Apart from such reimbursement, replacement or repair, the Company, its employees and agents shall be under no liability to the Buyer or to any third party for any injury, loss or damage of any kind whatsoever and howsoever arising or arisen, and whether direct or indirect, including without limitation any injury, loss or damage arising out of and/or incidental to:

10.2 (i) Any negligence of the Company and/or of any of its employees and/or agents (except insofar as such negligence may result in death or personal injury); and/or

10.2 (ii) The Company's performance of and/or failure to perform and/or breach of any of its obligations whether express or implied, under the Contract and/or otherwise; and/or

10.2 (iii) The supply, installation, repair and/or maintenance of any of the Goods; and/or

10.2 (iv) Any defect in any Goods; and/or

10.2 (v) Any advice given and/or representation made by the Company or on its behalf in relation to the nature, quality, specification, design, performance, use and/or installation of any of the Goods

10.3 The terms of this condition replace all conditions, warranties, representations, statements, liabilities and other terms whatsoever implied by common law, statute and/or otherwise, all of which shall accordingly be excluded to the extent allowed by law.

10.4 Goods (other than returns in connection with the above warranty) may not be returned once delivered unless prior authorisation has been given in writing by the Company.

## **11 PATENTS**

The Buyer shall indemnify the Company in respect of damages, penalties, costs and other expenses for which it may become liable as the result of work carried out at the Buyer's request which results in an infringement of a registered design or patent or a copyright of any third party

## **12 REPUDIATION OF THE CONTRACT**

If the Buyer shall commit any breach of any of its obligations under the Contract and/or any other contract with the Company or if any distress or execution should be levied upon the Buyer or any of its property or assets or if the Buyer shall commit or be subject to any act of insolvency (which shall be deemed to mean and include the passing of a resolution or the presentation of a petition for the winding-up of the Buyer, other than for the purposes of and followed by amalgamation or reconstruction, the appointment of a receiver and/or manager or an administrator or administrative receiver over the whole or any part of the Buyer's undertaking and assets, the making by the Buyer of any composition with or the calling by the Buyer of any meeting of its creditors generally) or bankruptcy (which shall be deemed to mean and include the presentation of a petition in respect of a bankruptcy order or an application for an interim order in connection with and proposals for a voluntary arrangement of the Buyer's affairs), the Company shall be entitled to treat such event as a repudiation of the order or Contract by the Buyer or at the Company's option, the undelivered part thereof, and the Company shall at any time thereafter be entitled to determine the order or Contract without prejudicing any of its other rights to recover any money due there under or any damages for breach of contract including damages for such repudiation.

## **13 PAYMENT**

13.1 The Company's payment terms to established credit account customers are payment on or before the last day of the month following the month of invoice. Credit accounts may be established at the Company's option upon receipt of satisfactory references from a Clearing Bank and two Trade References.

13.2 In the event that the Buyer should fail to pay the price due under the Contract on the due date then the Company shall be entitled to charge interest on the sum outstanding at the rate of 4% above the UK Clearing Bank Base Lending Rate from time to time prevailing from the date payment was due until the time of payment in full. In addition the Buyer shall pay all the Company's costs, expenses and outgoings incurred in obtaining payment of such monies from the Buyer.

## **14 TITLE**

14.1 Notwithstanding the fact that risk of loss or of damage to the Goods or any of them shall pass to the Buyer upon delivery as described in paragraph 8.4 above, property in the title to the Goods shall remain with the Company unless and until payment shall have been made to the Company of all sums due to it under the Contract and/or under any other contract between the Buyer and the Company. Until such payment has been made the Buyer is required to store the Goods in a manner, which makes it clear that they are the property of the Company. If the Buyer should convert the Goods or incorporate them into any new product or products the Company is entitled to the ownership of such new product or products notwithstanding the fact that any conversion or incorporation may involve the admixture of any other goods or things and any such conversion or incorporation shall be effected by the Buyer solely as agent for the Company and the Company shall have the full legal and beneficial ownership of any such new product or products.

14.2 Subject to the foregoing the Buyer shall be free to sell the Goods and any such new product or products in the ordinary course of its business on the basis that the proceeds of sale shall be the property of the Company, and the Buyer shall account therefore to the Company on demand, provided that the Buyer shall have no authority to enter into any contract for sale on behalf of the Company, and any contract for sale shall accordingly be concluded in the name of the Buyer. The Company may at any time revoke the Buyer's said power of sale by written notice to the Buyer if the Buyer shall for seven days or more be in default in the payment of any sum whatsoever due to the Company (whether in respect of the goods or any other goods supplied by the Company whether or not under the Contract, or for any other reason whatsoever), or if any bill of exchange, cheque or other negotiable instrument drawn or accepted by the Buyer in favour of the Company shall on presentation for payment be dishonored, or if the Company in good faith shall have doubts as to the solvency of the Buyer. The Buyer's said power of sale shall automatically cease if any of the events referred to in paragraph 12 above shall occur.

14.3 Upon determination of the Buyer's power of sale as above the Buyer shall place the Goods and any such new product or products at the disposal of the Company, and the Company shall be entitled, using only such force as may be necessary, to enter upon any premises of the Buyer for the purpose of removing the Goods and any such new product or products from the premises (including severance from the realty where necessary).

14.4 Where payment may be made by means of any bill of exchange, cheque or other negotiable instrument, the Company shall be deemed not to have received payment for the purposes of this condition unless and until the bill of exchange, cheque or other negotiable instrument shall have been honoured on presentation for payment, notwithstanding that the Company may have negotiated it and received value therefore

## **15 PACKING MATERIALS**

All returnable cases, containers and other packing materials will be charged for, but credit will be allowed against any future order of the Buyer accepted by the Company if these are returned in condition satisfactory to the Company to the Company's works carriage paid within thirty days following delivery of the relevant Goods; in no circumstances will any cash payment be made in respect thereof.

## **16 AVAILABILITY**

All Goods quoted from stock are quoted subject to being unsold when the Buyer's order is accepted.

## **17 STORAGE**

In the event that the Buyer shall be unable to accept delivery of/collect the Goods within seven days following notification that they are ready for dispatch/collection, the Buyer shall forthwith upon such notification arrange for the goods to be at once removed and stored at its own risk and expenses. If at the expiry of seven days following such notification the Goods shall not have been removed as aforesaid, the Company shall be entitled without further reference to the Buyer to store the Goods upon any of its own

premises or arrange for their storage with a third party, in which event any costs (including VAT thereon) so incurred by the Company (including but not limited to storage, carriage and insurance) shall be borne by the Buyer.

#### **18 CREDITWORTHINESS**

The Company reserves the right, on giving to the Buyer written discretion if it considers the Buyer's credit status to be unsatisfactory.

#### **19 DELIVERY BY INSTALMENTS**

Where delivery is agreed to be made by instalments, each instalment shall be deemed to be a separate, and distinct contract, and 19.1 no default by the Company in respect of any one or more instalment shall entitle the Buyer to reject or withhold payment in respect of any other instalment or instalments:

19.2 the Company shall be entitled to suspend or cancel delivery or require payment in advance on any instalment while payment is overdue on any previous one.

#### **20 DISPUTES AND SET-OFF**

Any liability of the Company under the Contract shall be subject to and conditional upon the due performance and observance by the Buyer of all its obligations under these conditions, and, subject to these conditions, the Buyer shall not be entitled to withhold or delay payment or exercise any right of set-off whatsoever and howsoever arising or arisen which might otherwise be available to it.

#### **21 EMPLOYEES**

These conditions are stipulated by the Company on behalf of the Company and on behalf of all its employees and agents and apply for their benefit as for that of the Company, and the Buyer shall not sue or make any claim against any employee or agent of the Company in respect of any alleged negligence and/or other default on the part of the Company and/or any such person in relation to the Contract.

#### **22 COMPLIANCE WITH REGULATIONS**

It shall be the responsibility of the Buyer to ensure that all requirements applicable to the Contract whether statutory, regulatory, municipal and/or otherwise howsoever, are duly complied with. It shall be a condition precedent to the performance by the Company of its obligations under the Contract that all necessary licenses, permits and consents shall have been obtained by the Buyer.

#### **23 WAIVER**

No failure or delay on the part of the Company to exercise any of its rights under the Contract shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof. Any waiver by the Company of any breach by the Buyer of any of its obligations under the Contract shall not affect the rights of the Company in the event of any further or additional breach or breaches.

#### **24 ASSIGNMENT**

The Contract is personal to the Buyer, who shall not assign or in any way part with the benefit thereof without the Company's prior written consent.

#### **25 SEVERABILITY**

Each and every obligation contained in these conditions shall be treated as a separate obligation and shall be severally enforceable as such notwithstanding the non-enforceability of any other such obligation.

#### **26 CLAUSE HEADINGS**

The clause headings in these conditions are for convenience only and shall not in any way affect the interpretation of the Contract.

#### **27 FURTHER CONTRACTS**

If after the Contract a further contract is howsoever entered into between the Company and the Buyer for the supply of goods, such contract shall be deemed to be entered into subject to these conditions. Any such contract shall be deemed to be separate and distinct from any other such contract and from the Contract and no default by the Company in respect of any one or more such contracts shall entitle the Buyer to withhold payment under any other such contract or under the Contract.

#### **28 NOTICES**

Any notice required to be given in writing under the Contract shall be given, where possible, by facsimile transmission or otherwise by first class post addressed to the registered office of the party for which it is intended or to such other address as may be notified in writing in accordance herewith for the purpose, and shall be deemed to have been received in the case of a facsimile transmission, upon transmission and, in the case of a letter, forty-eight hours after posting. In proving service by letter, it shall be sufficient to show that the envelope containing the notice was properly addressed and stamped and duly posted.

#### **29 THIRD PARTY CLAIMS**

The Buyer shall indemnify the Company in full against any liability whatsoever including any liability based on the negligence of the Company and/or any liability imposed on the company by virtue of Part 1 Consumer Protection Act 1987 which it may incur resulting from any claim made against the Company by any third party including without limitation any employee or agent of the Buyer or any subsequent buyer or hirer or other bailee of the Goods or any of them arising or arisen directly or indirectly out of the performance and/or any non-performance and/or breach of the Contract and or otherwise out of or connected with the manufacture and/or supply of the Goods or any of them.

#### **30 ARBITRATION**

Any dispute or otherwise in relation to or in connection with the contract shall be referred to arbitration under the provisions of the Arbitration Act 1950 to 1979 provided that an Arbitrator may be appointed (at the request of either party) by the President for the time being of the Institution of Chartered Accountants in England and Wales whose decision shall be final and binding upon both parties. Such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1950 to 1979 and any statutory modification or re-enactment thereof.

#### **31 GOVERNING LAW**

The construction, validity and performance of the contract shall be governed in all respects by English Law.