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## TERMS AND CONDITIONS OF SALE

### 1. Acceptance of Orders

These terms and conditions apply in preference to and supersede any terms and conditions referred to, offered by or relied on by the Buyer whether in negotiation or at any stage in the dealings between the Seller and Buyer with reference to the goods to which this Contract relates. Without prejudice to the generality of the foregoing, the Seller will not be bound by any standard or printed terms furnished by the Buyer in any of its documents, unless the Buyer specifically states, in writing, separately from such terms that it intends such terms to apply and the Seller acknowledges such notifications in writing.

### 2. Acceptance

The Buyer shall inspect the said Goods immediately on the arrival thereof and shall within 3 days from such inspection give notice in writing to the Seller of any matter or thing by reason whereof he alleges that the Goods are materially different from the drawing and the description of the Goods. If the Buyer fails to give such notice, the said Goods shall be deemed to be in all respects in accordance with the drawing and the description and the Buyer shall be bound to accept and pay for the same accordingly.

### 3. Forecasts and Orders

3.1 The Buyer will supply the Seller with 3 month rolling forecasts which the Buyer will update at the beginning of each calendar month and the first month of each such forecast will be binding on the Buyer. The Buyer will be obliged to accept delivery of goods forecasted and, therefore, scheduled for delivery in the next month and will be liable to the Seller for the cost of all materials and the cost of other purchases made by the Seller for the purpose of the Buyer's forecasted requirements in respect of such ensuing month.

3.2 The Seller will not accept the subsequent cancellation of Orders either verbally or in writing and if the Buyer is unable or refuses to accept delivery of the Goods after notification by the Seller that the Goods are ready then the Seller reserves the right, in addition to pursuing any other available remedy, to invoice the Goods to the Buyer whereupon payment therefore shall become immediately due and payable.

### 4. Variations

Orders are only accepted subject to these terms and conditions and neither the Buyer nor the Seller shall be bound by any variation, waiver of, or addition to these terms and conditions except as agreed by both parties in writing and signed on their behalf.

### 5. Prices

5.1 Prices are ex the Seller's premises unless otherwise advised

5.2 The prices and charges listed are exclusive of Value Added Tax or any other Government Tax, levies or charges which are applicable in any way to the Contract and all such taxes, levies and charges will be paid by the Buyer. The Seller may at any time in its discretion amend the price for all or any part of the Goods that are to be supplied to the current price for such Goods at the time when the same are delivered.

### 6. Payment Terms

6.1 Payment of an invoice received by a Buyer is due within 30 days of the end of the month in which the invoice is dated.

6.2 No discount is offered in consideration of settlement on or before the due date.

6.3 The Seller reserves the right if payment has not been made by the due date both to withhold further deliveries and to take such action as it thinks fit to enable payment to be obtained. The Seller further reserves the right to charge interest

on any overdue balance at a rate equal to 6% per annum above the minimum base lending rate for the time being of Barclays Bank Plc for the whole of the time such balance is overdue and unpaid.

## **7. Delivery**

- 7.1 Unless otherwise specified by the Buyer and agreed in writing by the Seller, the Seller will determine the method of carriage. The Seller will not be responsible for any loss or damage to the Goods where the same are despatched by the Buyer's specified method of carriage.
- 7.2 If owing to industrial disputes or any causes outside the Seller's control, the Seller is unable to deliver the Goods within the specified time then provided that the Seller shall have given the Buyer notice in writing without delay of his intention to claim an extension of time the Buyer shall grant the Seller such extension of time as may be reasonable.
- 7.3 Any insurance costs will be charged extra and paid by the Buyer.
- 7.4 The Seller will use reasonable efforts to comply with its quoted delivery dates but it will not be liable in respect of any damage or consequential or other loss arising out of delays in delivery, whether such delays be caused by any act or default of the Seller, its servants or agents, or by any other cause. Furthermore any delay in delivery shall not entitle the Buyer to terminate any Contract between the Seller and the Buyer unless such delay results from the wilful default of the Seller, its servants and agents.

## **8. Title and Risk**

- 8.1 Title of the Goods supplied shall not pass to the Buyer and the Goods shall remain the absolute property of the Seller until any payment due to be paid by the Buyer to the Seller under the Contract or under any other contract between the Buyer and the Seller has been made of the full contract price. Until title passes the goods shall be clearly marked as the property of the Seller and stored separately.
- 8.2 In case of non-payment under the Contract or any other contract between the Seller and the Buyer by the due date or if the Buyer breaches the terms of the Contract (and if remediable the breach has not been remedied within 14 days of the Seller receiving notice requiring it to be remedied), ceases or threatens to cease to carry on business, is sold and/or is declared or becomes insolvent, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, takes or suffers any similar action in any jurisdiction or any step is taken (including, without limitation, the making of any application or the giving of any notice) by it or by any other person in respect of any of the circumstances set out in this clause 8.2, the Seller shall be entitled immediately after notice of its intentions to do so enter upon the premises of the Buyer with such transport as may be necessary and repossess any of the Seller's Goods.
- 8.3 The Goods shall be at the Buyer's risk from the time of delivery or when they are placed at the Buyer's disposal for collection if earlier.

## **9. Removal of Tools**

- 9.1 Before any tool can be removed from the Seller; the Buyer must purchase from the Seller any residual materials and part stocks singularly related to the tool.
- 9.2 Any tool sold on a part-cost basis by the Seller may not be removed unless and until the Buyer pays to the Seller an amount equal to 30% of the tool cost and in any event not within 60 days of formal notification.

## **10. Specification and Drawings**

- 10.1 When the Seller manufactures the Goods in accordance with the Buyer's drawings, whilst every effort is made to ensure that the Goods materially match the drawings, the Seller gives no warranty as to an exact match. Goods designed in accordance with the Buyer's drawings are deemed to be suitable for the Buyer's purposes, whether they are known to the Seller or not.

10.2 When Goods are designed by the Seller, the descriptions, drawings and other information given in correspondence, catalogues etc are intended as a guide only and only give a general approximation of the Goods. The Seller reserves the right to modify the design and specification of its Goods at any time without notice. If the Goods are materially different from the description, drawings and other information given by the Seller to the Buyer, which has been relied on by the Buyer, the Seller's liability is restricted to the replacement of those particular Goods, providing the Buyer notifies the Seller of any difference within 3 days of receipt of the Goods, as set out in clause 2.

**11. Intellectual Property**

11.1 Nothing in the Contract, nor modifications to the Goods made by the Buyer shall affect, or grant any right to, any intellectual property rights of the Seller in relation to the Goods.

**12. Returned Goods**

No returns will be accepted by the Seller other than by express prior written agreement and any unauthorised returns received by the Seller will be sent back to the Buyer carriage forward, at the Buyer's expense.

**13. Sub-Contracting and Assigning**

The Seller reserves the right to sub-contract or assign any part or whole of the Contract to a third party or parties without the consent of the Buyer. The Buyer may assign any part or whole of the Contract to a third party or parties only with the prior consent of the Seller.

**14. Force Majeure**

The Seller shall be excused from any liability if performance of the Contract is prevented or hindered by any cause whatsoever beyond the Seller's control and in particular, but without prejudice to the generality of the foregoing, by Act of God, War, Government Control restrictions or prohibitions or any other Government act or omission whether local or national, fire, flood, subsidence, sabotage, accident, strike or lock-out and shall not be liable for any loss or damage resulting from any such circumstances.

**15. Limitation of Liability**

15.1 All conditions and warranties whether statutory, common law, or customary and whether express or implied are hereby expressly excluded.

15.2 The Seller shall have no liability to the Buyer for defective Goods:

15.2.1 where the Buyer has caused the defect and/or contributed to the defect; and/or

15.2.2 lost or damaged in transit.

15.3 The Buyer shall produce to the Seller written evidence of any claims for which it is alleged that the Seller is liable together with written details of how the loss was caused and the steps that the Buyer has taken to mitigate the loss before the Seller shall have any liability for the claim to the Buyer.

15.4 The Buyer shall give the Seller a reasonable opportunity to remedy any matter for which the Seller is liable. If the Buyer does not do so the Seller shall have no liability to the Buyer for that matter.

15.5 The Seller shall have no liability to the Buyer to the extent that the Buyer is covered by any policy of insurance.

15.6 The liability of the Seller to the Buyer under the Contract shall not exceed the total amount payable by the Buyer under that contract for the Goods.

15.7 The Seller shall have no liability to the Buyer for any:

15.7.1 expenses, loss of profits and/or damage to goodwill;

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- 15.7.2 economic and/or other similar losses;
- 15.7.3 special damages;
- 15.7.4 aggravated, punitive and exemplary damages;
- 15.7.5 consequential losses and/or indirect losses such as but not limited to business interruption, loss of business, loss of contracts, loss of opportunity and/or production.
- 15.8 Each of the limitations and/or exclusions above shall be deemed to be repeated and apply as a separate provision for each of:
- 15.8.1 Liability in contract (including fundamental breach);
- 15.8.2 Liability in tort (including negligence);
- 15.8.3 Liability for breach of statutory duty; and
- 15.8.4 Liability for breach of Common Law.
- 15.9 Any Service or advice which may be offered by the Seller, its servants or agents, by buyers and users of its Goods is rendered in all good faith, but the Seller shall not be liable for any consequential loss or damage arising either directly or indirectly therefrom.
- 15.10 Nothing in these terms and conditions shall exclude or limit the liability of the Seller for death or personal injury due to the Seller's negligence or any liability due to the Seller's fraud or any other liability which the Seller is not permitted to exclude or limit as a matter of law.
- 16. Indemnity**
- The Buyer shall indemnify the Seller and keep it fully and effectively indemnified against all and any costs claims demands, losses or liabilities of whatsoever nature brought or made against the Seller or otherwise suffered or incurred by the Seller relating to or connected with the Goods after the risk in the Goods has passed to the Buyer, including (without prejudice to the generality of the foregoing) any costs claims demands, losses or liabilities of whatsoever nature which are brought or made against the Seller, or suffered or incurred by the Seller, under or pursuant to any product liability consumer
- 17. Guarantee**
- Any Goods supplied by the Seller which are found within one year of delivery to be defective in workmanship or material will be repaired or replaced free of charge provided firstly that the alleged defects have been notified to the Seller in writing by the Buyer within 3 days of such discovery, secondly that the Goods alleged to be defective are returned to the Seller by the Buyer carriage paid and at the Buyer's risk and expense, thirdly that no alternation has been made to the Goods after leaving the Seller's works and fourthly that the Seller is satisfied (as to which the Seller shall be the sole judge) that the alleged defects are defects in workmanship or materials and are not due either wholly or in part to lack of care, overload, unsuitable lubricant, natural wear, incorrect choice of Goods, incorrect use or any circumstances whatsoever beyond the Seller's control. The Seller does not accept liability for any direct or consequential damage whether foreseeable or not for any expenses consequent upon or incurred in the event of a failure of any Goods supplied. This guarantee shall exclude any other guarantee, warrant or condition whether express or implied and whether statutory or otherwise as far as the law permits and shall limit any express item hereof so as to free the Seller from any other liability for loss or damage howsoever caused or arising.
- 18. Loss or Damage in Transit**
- All Goods are carefully inspected and packed before delivery. Any claim alleging defective packing or shortage must be notified to the Seller in writing within 3 days of receipt of the Goods and such claim must be accompanied by the relevant packing note. The Seller will not be liable for damage, loss or delay to the Goods during transit however

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caused and all claims by the Buyer regarding such damage, loss or delay should be made immediately to the carriers concerned.

**19. Legal Construction**

This Contract between the Seller and the Buyer shall in all respects be construed in accordance with English law. The parties to the Contract submit to the non-exclusive jurisdiction of the English courts.

**20. Definitions**

- 20.1 "Buyer" means the person, firm or company contracting with the Seller relative to the Goods.
- 20.2 "Contract" means the agreement between the Seller and the Buyer formed by the Order, these terms and conditions of sale and any other subsequent terms agreed by both parties in writing and signed on their behalf.
- 20.3 "Goods" means the articles or things or any of them described in the Order.
- 20.4 "Order" means the order placed by the Buyer for the supply of the Goods.
- 20.5 "Seller" means the person, firm or company to whom the Order is addressed.