

## **Terms and Conditions of Sale**

### **1. Definitions**

In these terms, "Seller" means the seller of the Goods as defined herein; "Buyer" means the entity purchasing the Goods, including any successors thereof; "Goods" means the goods, products, services and/or materials manufactured, imported, supplied and/or delivered for or by Seller to Buyer; "Contract" means the contract concluded by Seller and Buyer for the supply of Goods either as specified in the Seller's pertinent invoice or as otherwise contemplated therein, whether expressly or impliedly, including by actual acceptance of the Goods by Buyer and/or by any payment therefor, whereby it is expressly agreed that the conclusion of which shall be deemed to constitute full consent to performing all transactions contemplated thereby on the sole and exclusive basis of these General Terms and Conditions, unless otherwise confirmed in writing by Seller.

### **2. Payment**

Unless otherwise specifically agreed in writing, payment for Goods shall be due on or prior to the delivery date of Goods and no discount may be taken. Payments received after the due date specified in the invoice shall bear a service charge which will accrue from the due date whether inscribed on the relevant invoice or otherwise agreed, at the maximum lawful interest rate applicable, and if none – at the annual rate of 5% above the base rate (as of the due date of the relevant payment) of the central bank of the place of Buyer's incorporation. All payments shall be made to Seller's designated bank account in the same currency and for the same amounts as specified in the Seller's pertinent Invoice.

### **3. Prices, Duties and Taxes**

Unless otherwise specifically agreed in writing, prices set in Seller's pertinent invoice are net, excluding packaging, and shall be deemed Ex-works (Incoterms 2010 as amended). Prices are based, inter alia, on production costs for supplies, labor, deliveries, duties and services current on the order date. In the event of material increase in any such costs, Seller reserves the right to either adjust the prices for Goods accordingly, or to cancel any certain part of the sales relating to undelivered Goods. Duties, taxes, fees, levies and other compulsory payments applicable to the sale of Goods at any time, as well as freight, express, insurance and delivery charges, shall all be borne and paid in full by Buyer, unless otherwise expressly confirmed in writing by Seller.

### **4. Delivery**

Any delivery dates noted on the Seller's pertinent Invoice are subject to reasonable adjustment. The acceptance of shipment by a common carrier or by any licensed public truckman shall constitute proper delivery. Risk associated with the Goods shall pass to Buyer on delivery, upon any collection of the Goods by the Buyer or with the passing of title in the Goods, whichever occurs first; provided however, that where delivery is delayed due to circumstances caused by or within the responsibility of Buyer, risk of loss shall pass to Buyer upon Seller's notification that Goods are ready for dispatch. Unless otherwise specified in writing in the Seller's pertinent invoice or Contract, all charges, expenses or taxes associated with the delivery shall be paid by the Buyer.

### **5. Retention of Title**

Title shall pass to Buyer only upon full payment by Buyer of the price of the Goods and following all other outstanding debt payable by Buyer to Seller (if any). Buyer shall, at Seller's request, take any measures necessary under applicable law to protect Seller's title in the Goods, and lawfully notify Buyer's present or potential creditors of Seller's title on and interest in the Goods. Buyer acknowledges that so long as title has not been transferred in the Goods, it holds the Goods as bailee and fiduciary agent for the Seller and shall safely and securely

store and keep the Goods separate and in good condition, clearly showing the Seller's ownership of the Goods and shall respectively record the Seller's ownership of the Goods in its books. Notwithstanding the above, Buyer may use Goods for its own use, or sell Goods, as fiduciary agent for the Seller, to a third party in the normal course of business by bona fide sale at market value, whereby proceeds of such storage, usage or sale of Goods, as the case may be, shall, to the extent of the amount being owed by Buyer to Seller at the time of receipt of such proceeds, be held by Buyer on trust for Seller and specifically ascertained, until payment in full for all payable debts by Buyer to Seller.

## 6. Warranty

a) Seller warrants that Goods sold hereunder meet their descriptions or specifications, subject to use, storage and application thereof in accordance with and based on Seller's standard tolerances, instructions of use and recommendations.

b) Unless otherwise restricted by mandatory applicable law, THE WARRANTY SET FORTH HEREIN IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF MERCHANTABILITY, QUALITY AND FITNESS FOR USE AND FOR PURPOSE, ANY ADVICE AND RECOMMENDATION AND ANY OBLIGATIONS OR LIABILITIES WHICH MAY BE IMPUTED TO SELLER, ANY AND ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED, DENIED AND EXCLUDED. BUYER EXPRESSLY AGREES THAT NO WARRANTY THAT IS NOT SPECIFICALLY STATED IN THIS AGREEMENT WILL BE CLAIMED OR OTHERWISE ADHERED TO BY BUYER AND/OR BY ANYONE ACTING ON BUYER'S BEHALF AND/OR BY ANYONE DERIVING THE LEGALITY OF ITS CLAIM FROM BUYER, NOR THAT WILL ANY SUCH WARRANTY BE VALID. SELLER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT, ANY OTHER LIABILITY IN CONNECTION WITH THE SALE, USE OR HANDLING OF ANY AND ALL GOODS SPECIFIED OR CONTEMPLATED BY THIS CONTRACT. NO WARRANTY IS MADE WITH RESPECT TO ANY OF THESE GOODS WHICH HAVE BEEN SUBJECT TO ACCIDENT, NEGLIGENCE, ALTERATION, IMPROPER CARE, IMPROPER STORAGE, IMPROPER MAINTENANCE, ABUSE OR MISUSE.

## 7. Liability

a) Unless the Seller shall within 30 days after delivery of the Goods, receive from the Buyer written notice of any matter or thing by reason whereof it is alleged that Goods are not in accordance with the Contract, Goods delivered shall be deemed to have been supplied, delivered and accepted in all respects in full conformity with the Contract and the Buyer shall be entitled neither to reject the same nor to raise any claim for damages or for other remedy in respect of any alleged negligence and/or breach of warranty and/or any condition.

b) In any claim, brought subject to the conditions above, Buyer must prove to the satisfaction of Seller that it followed Seller's instructions for use, care, storage, maintenance, handling and application of the Goods.

c) Unless otherwise specifically restricted by mandatory applicable law, Seller's liability under any claim and in connection with any possible allegation, whether based on negligence, contract, or any other cause of action, shall be limited to either (i) the replacement of the Goods or the supply of equivalent goods; (ii) the repair, or payment of the cost of repair, of the Goods; or (iii) credit in an amount equal to the purchase price specified in Seller's pertinent invoice, or in an amount of equivalent goods, all at Seller's sole option. Buyer acknowledges that the remedy available to him as specified herein, is in lieu of any remedies that may be otherwise available to him, now or in the future, whether in law or in equity, relating to any loss or damage, whether directly or indirectly, arising from the purchase and/or the use of Goods, including without limitation, any actual or contingent damages, loss of production, loss of profit, loss of use, loss of contracts or any other consequential or indirect loss whatsoever, whether pecuniary or non-pecuniary. Should any limitation on Seller's liability hereunder be held ineffective under applicable law, then Seller's liability shall in any event be limited to the

minimum amount of damages to which Seller may limit its liability, where such is greater than the purchase price as specified in Seller's pertinent invoice.

d) Buyer, for himself and for any other party which may claim either under or through Buyer, or independently of Buyer, including Buyer's employees, directors, officers, representatives, affiliates and personnel, shall indemnify and hold Seller harmless, from and against any claim or liability for damages for negligence including but not limited to, any claim in connection with the design, manufacture, use, care, storage, delivery, application or maintenance of any Goods sold hereunder, whether alleged to have been committed by Seller or by any other person whatsoever. Buyer's undertaking as specified in these subsection 7(c) and 7 (d) shall extend and inure to the benefit of Seller and of Seller's successors at any time, as well as to Seller's affiliates, personnel, representatives, managers, directors and officers. Nothing contained herein shall take effect to exclude or limit liability where liability may not be excluded or limited under applicable law, including, without limitation, for death, personal injury and fraudulent misrepresentations.

e) Any and all warranties, undertakings, guarantees or assurances provided herein by Seller, are specifically limited to Buyer herein, and not imputed by Seller, whether directly or indirectly, expressly or impliedly, to any other person or entity, including any subsequent buyer or user, bailee, licensee, assignee, employee and agent of Buyer.

## **8. Default**

Upon failure of Buyer to pay any amounts due to Seller, or in the event of any breach or anticipated breach by Buyer of any Contract with Seller, or if Buyer shall either (i) become insolvent, (ii) call a meeting of its creditors, or (iii) make any assignment for the benefit of creditors, or if (iv) a bankruptcy, insolvency, reorganization, receivership or reorganization proceeding shall be commenced by or against Buyer, then, in each such occasion, Seller may, at its sole discretion, opt to (1) cancel this and any other Contract with Buyer (without waiving any of Seller's rights to pursue any remedy against Buyer); (2) claim return of any Goods in the possession of Buyer, the title of which has not passed to Buyer; (3) defer any shipment hereunder; (4) declare forthwith due and payable all outstanding bills of Buyer under this or any Contract; and/or (5) sell all or part of the undelivered Goods, without notice at public and/or on private sale, while Buyer shall be responsible for all costs and expenses of such sale and be liable to Seller for any shortfall in the discharge of the amounts due to Seller.

## **9. Independent Delivery**

Each delivery of Goods shall (without prejudice to Seller's rights under clause 8 hereinabove) be considered a separate contract and the failure of any delivery shall not vitiate any contract as to deliveries of other Goods and payment therefor.

## **10. Cancellation**

Orders manufactured in whole or in part, pursuant to Buyer's specifications, may not be cancelled except with Seller's prior written consent, on terms which will compensate Seller for any resulting losses.

## **11. No-Assignment**

No rights or obligations of Buyer arising out of this Contract may be assigned without the express prior written consent of Seller.

## **12. Force Majeure**

Should Seller be prevented from effecting deliveries of the Goods or any of them by reason of either an act of god, insurrection, riot, war hostilities, terror attacks, warlike operations, piracy,

arrests, restraints or detentions by any competent authority, strikes or combinations or lock-out of workmen, fire, floods, droughts, earthquakes, permanent or temporary delay or inability to obtain labor, material or services through Seller's usual and regular sources, or any other circumstances (whether of a nature similar to those specified, or not) beyond the absolute control of the Seller, then, in each such cases, the obligation of the Seller to effect deliveries hereunder shall be suspended until after such prevention shall cease to continue. Should any deliveries under this Contract be suspended under this clause for more than 90 days – either party may withdraw from this Contract and be relieved from any liability; provided however, that Buyer shall nevertheless accept delivery and pay for such Goods once the Seller is able to deliver in accordance with the period(s) of shipment named in this Contract. Seller shall not be liable for, and be relieved from, any loss or damages of any kind resulting from the causes mentioned hereinabove.

### **13. Advice**

Any provisions specified or implied by herein or elsewhere notwithstanding, any advice, recommendation, information, assistance or service provided by Seller in relation to the Goods or in respect of their use or application is given in good faith, shall be deemed accepted by Buyer without imputation of any liability to Seller, and it shall be the responsibility of Buyer to confirm the accuracy and reliability of the same in light of the use of which Buyer makes or intends to make of the Goods.

### **14. Entire Agreement**

This Contract merges and incorporates the entire and exclusive terms and conditions for sale of the Goods. Nothing specified in, or referred to by, any other document, record or instrument whatsoever, which relates to and/or which otherwise subsists in connection with the sale of Goods herein, whether expressly or impliedly, including any written order, request or other standard or specific terms of any entity, shall or may be interpreted to attribute to Seller and/or to Seller's affiliates or representatives (i) any liability, obligation, commitment and/or undertaking, and/or (ii) any waiver in connection with or of any right, whether contractual, proprietary, in-personam and/or equitable, including but not limited to, any and all intellectual property rights in connection with the Goods, which are and shall always remain in the Seller's exclusive and complete ownership under all circumstances whatsoever, notwithstanding any sale of Goods hereunder and whether the Goods shall be standard Goods or manufactured to a specific order. The Buyer shall refrain at all times and for whatever purpose from infringing, contesting, disputing or questioning such rights, patents, trademarks, titles or interests, nor shall it aid or allow others to do so, regardless of whether directly or indirectly. Buyer shall not advertise, present or publish the fact that Seller has contracted with Buyer, nor shall use Seller's name, Seller's Goods and/or any other information or materials relating to the Seller in any advertisement, publication, brochure or website, without the prior approval of Seller. No modification or waiver of any provision hereof shall become valid and effective except upon a written instrument duly signed beforehand by Seller. No waiver by either party of any default of the other party shall be deemed a waiver of any subsequent or other default.

### **15. Law and Arbitration**

This Contract shall be governed by and construed in accordance with the laws of the jurisdiction of Seller's incorporation and excluding the UN Convention on Contracts for the International Sale of Goods (CISG). Any dispute arising out of or in connection with this Contract shall be finally settled by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce ("ICC"), as shall be in effect from time to time. The arbitration shall be held at such location in the state of Seller's incorporation as shall be determined by Seller, in its sole discretion. The arbitrator shall be mutually appointed by Seller and Buyer within 21 (twenty one) days following a written demand for arbitration by either of the parties. Failing to reach an agreement regarding the nomination of an arbitrator, the head of the relevant ICC national committee (located in the Seller's country of incorporation; and absent such local committee in that specific country – the ICC UK

Committee ([www.iccuk.net](http://www.iccuk.net))), shall appoint an arbitrator at the request of any of the parties, a copy of which request for the appointment of an arbitrator shall be provided by the requesting party to the other party. Awards may be enforced in accordance with the 1958 New York Convention and judgment may be entered upon any award in any court having jurisdiction over the parties and/or their assets. The arbitrator's fees shall be paid by both parties in equal parts, unless otherwise determined by the arbitrator. This provision shall survive any termination of any of the terms and conditions herein, and shall be deemed to constitute an independent arbitration agreement between Buyer and Seller for all purposes and intents. Each party undertakes to ensure that any and all transactions and/or actions performed pursuant to this Contract and/or otherwise in connection with the Seller's products, shall be conducted in a fully transparent and lawful manner and properly reported to all relevant authorities.

## **16. Governance and Compliance**

Each party represents on its own behalf and on behalf of any representative, that (i) it will act at all times in strict compliance with all applicable rules and regulations, including but not limited to anti-money laundering measures, tax rules, customs regulations and any other legal financial directions and obligations, as well as any trade restrictions, international sanctions and other legal obligations as imposed by the relevant authorities from time to time; and (ii) it has not and will not offer, promise, give, authorize, solicit or accept any action which may be directly or indirectly bring to the payment, extortion or solicitation of bribes, kickbacks or any other improper payments, the obtaining of any undue advantage of any kind, the facilitation of undue influence on decision making by any third party, the laundering and/or concealing and/or disguising the true origin of funds and products, any other corrupt acts or other acts designed to evade, bypass or circumvent the application of laws, sanctions or other authority decisions, which are in any way connected and relevant to this Contract or to the cooperation between the parties.