

TERMS AND CONDITIONS OF BUSINESS

1 DEFINITIONS AND INTERPRETATION

1.1 In these Conditions:

“the Buyer” means the purchaser of the Goods;

“Contract” means any contract between the Seller and the Buyer for the sale and purchase of the Goods or supply of the Services formed in accordance with Condition 2 and which incorporates these Conditions;

“Goods” means any goods which the Seller supplies to the Buyer (including any of them or any part of them) under a Contract and any spare parts supplied to the Buyer either with the Goods or at any time subsequently;

“Services” means any services which the Seller provides to the Buyer (including any of them or any part of them) under a Contract.

2 FORMATION

2.1 Subject to any variation under Condition 2.5, the Contract will be on these Conditions to the exclusion of all other terms and conditions and all previous oral or written representations including any terms and conditions which the Buyer purports to apply under any purchase order, confirmation of order or similar document, whether or not such document is referred to in the Contract.

2.2 Each order or acceptance of a quotation for Goods or Services will be deemed to be an offer by the Buyer to purchase Goods or Services on these Conditions. The Contract is formed when the Seller accepts the order by issuing a written acknowledgement of order.

2.3 Any quotation is valid for a period of 90 days from its date unless withdrawn by the Seller.

2.4 The Buyer must ensure that the terms of its order are complete and accurate.

2.5 These Conditions and the terms of a Contract may only be varied or amended in writing and signed by a duly authorised representative of the Seller.

3 GOODS AND SERVICES

3.1 The quantity and description of the Goods or Services will be as set out in the Seller’s acknowledgement of order. All samples, drawings, descriptive matter and advertising issued by the Seller or any manufacturer of the Goods and any descriptions or illustrations contained in the Seller’s or manufacturer’s catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods or Services represented by or described in them.

3.2 The Seller may make any changes to the design, materials or finishes of the Goods or provision of the Services which are required to conform with any applicable safety or other statutory or regulatory requirements or do not materially affect their quality or performance.

4 PRICE

4.1 The price for the Goods and Services will be the price set out in the Seller’s acknowledgement of order.

4.2 Unless otherwise stated the price for the Goods: (i) for Contracts for FCA delivery within the United Kingdom includes the cost of basic packaging; and (ii) for export contracts is ex-works (as defined in INCOTERMS 2010) and includes the cost of basic packaging, but the Seller will on request provide details of the additional charge for delivery FOB.

4.3 All prices are exclusive of any value added tax or other applicable sales tax or duty which will, where applicable, be charged at the relevant rate at the appropriate tax point date.

4.4 The costs of any special packaging shall be determined at the date of invoice and will be paid for by the Buyer in addition to the price for the Goods when it is due to pay for the Goods.

5 PAYMENT

5.1 The Seller may invoice the Buyer for the Goods at any time on or prior to the delivery of the Goods and for the Services at any time on or prior to the performance of the Services.

5.2 Unless otherwise detailed in the acknowledgement of order, for deliveries in the United Kingdom, payment by the Buyer for the price of the Goods or Services will: (i) if the Buyer has an approved account with the Seller, be made within 30 days of the date of invoice of the Goods or performance of the Services; or (ii) if the Buyer does not have an approved account with the Seller, be made by the Buyer in full on notification by the Seller that the Goods are ready for delivery or the Services are ready for performance.

5.3 For all export Contracts payment of the price of the Goods will be made by the Buyer by way of irrevocable confirmed documentary credit, against bills of lading or other appropriate documents of title specified in the credit, opened by the Buyer with a bank to be approved by the Seller. No Goods will be despatched until such letter of credit is opened.

5.4 Time for payment shall be of the essence of the Contract. No payment will be deemed to have been received until the Seller has received cleared funds.

5.5 All payments to be made by the Buyer will be made in full without any set-off, restriction or condition and without any deduction or withholding on any account.

5.6 The Seller will be entitled to charge interest at the rate of 2% per month on all overdue payments and the price of any Goods of which the Buyer shall have failed to take delivery until the date such Goods are actually delivered to the Buyer or otherwise disposed of. Any interest so calculated will be added to any interest charged for a previous month or months in which payment is overdue.

6 DELIVERY AND INSPECTION

6.1 Delivery will take place at the point specified in the Seller’s acknowledgement of order.

6.2 Any time or date specified by the Seller for delivery of the Goods or performance of the Services is intended as an estimate only. If the Seller is unable for any reason to fulfil delivery or performance on or by the specified time or date, the Seller will not be deemed to be in breach of the Contract, nor will the Seller be liable in damages or otherwise for any loss occasioned by delivery or performance after such estimated time or date, nor will delay in delivery or performance give the Buyer any right to rescind the Contract.

6.3 The Buyer will take all delivery on the delivery date(s) specified in the Seller’s acknowledgement of order or as otherwise notified to the Buyer or on the date when the Goods are delivered at the place specified for delivery.

6.4 The Seller may effect delivery of the Goods by whatever means the Seller thinks most appropriate.

6.5 The Buyer will provide at its expense at the point of delivery adequate and appropriate equipment and manual labour for off-loading the Goods.

6.6 The Buyer will comply with all instructions of the Seller in relation to the fitting and installation of the Goods (where this is not being carried out by the Seller) and the use of the Goods.

6.7 The Buyer will as soon as reasonably practicable following receipt of the Goods thoroughly inspect the Goods. In the event of damage in transit or shortage in delivery the Buyer will notify the Seller and its carrier in writing of any claims within 3 days of delivery. If Goods are lost or destroyed in transit, the Buyer will make a claim in writing within 14 days of the date of despatch.

6.8 If claims are made in accordance with Condition 6.7 and accepted by the Seller, the Seller will replace or repair Goods not delivered or damaged in transit but will be under no further or other liability to the Buyer in respect thereof.

6.9 Subject to Condition 6.7, Goods may only be returned to the Seller if: (i) prior written notice is given by the Buyer to the Seller specifying when the Goods will be returned; and (ii) the Goods are returned to the Seller within 1 month of their original delivery date; and (iii) the Goods are returned to the Seller in their original packaging but if not, then in a condition which allows the Seller to sell such Goods as new.

Where Goods are returned at the request of the Buyer, a restocking fee of 20% of the value of the Goods will be charged at the discretion of the Seller.

7 WARRANTIES AND LIABILITIES

7.1 The Seller will free of charge within a period of 12 months from the date of delivery of Goods or performance of Services which are proved to the reasonable satisfaction of the Seller to be damaged or defective due to defects in material or workmanship, repair or at its option replace such Goods or re-perform such Services.

7.2 The obligations in Condition 7.1 will not apply where: (i) the Goods have been improperly installed or connected (except where installation was carried out by the Seller); or (ii) the Goods have been improperly altered in any way whatsoever or have been subject to misuse, wilful damage, negligence, abnormal working conditions or unauthorised repair; or (iii) any maintenance requirements relating to the Goods have not been complied with; or (iv) any instructions as to storage of the Goods have not been complied with in all respects; or (v) the defect in the Goods arises from any drawing, design or specification supplied by the Buyer; or (vi) the defect arises from fair wear and tear; or (vii) the Buyer has failed to notify the Seller of any defect or suspected defect within 14 days of the delivery of the Goods or performance of the Services where the defect should be apparent on inspection or within 14 days of the defect coming to the knowledge of the Buyer where the defect is not one which should be apparent on reasonable inspection or subsequently emerges and in any event no later than 12 months from the date of delivery or performance; or (viii) parts, materials or equipment are not manufactured by the Seller and in such event the Buyer will only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

7.3 Any repaired or replacement Goods or Services reformed will be subject to the terms specified in Condition 7.1 for the unexpired portion of the 12 month period from the original date of delivery of the Goods or performance of the Services.

7.4 Any repaired or replacement Goods will be supplied free of charge but the Seller’s liability as to delivery, fitting or other expenses will be limited to ex-works in the UK or FOB UK port.

7.5 The Seller does not exclude its liability (if any) to the Buyer: (i) for breach of the Seller’s obligations arising under section 12 Sale of Goods Act 1979 or section 2 Sale and Supply of Goods and Services Act 1982; or (ii) for personal injury or death resulting from the Seller’s negligence; or (iii) under section 2(3) Consumer Protection Act 1987; or (iv) for any matter which it would be illegal for the Seller to exclude or to attempt to exclude its liability; or (v) for fraud.

7.6 Except as provided in Conditions 7.1 to 7.5 the Seller will be under no liability to the Buyer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise), for any injury, death, damage, loss of profit, loss of opportunity, loss of contracts, loss of margin, loss of revenue, loss of use, loss of goodwill or any indirect loss howsoever caused arising out of or in connection with: (i) the supply or failure or delay in supply of the Goods or performance of the Services; or (ii) any breach by the Seller of any of the express or implied terms of the Contract; or (iii) any use made or resale by the Buyer of any of the Goods or of any product incorporating any of the Goods.

7.7 Except as set out in Conditions 7.1 to 7.5 the Seller excludes to the fullest extent permissible in law all conditions, warranties and stipulations, express (other than those set out in the Contract) or implied, statutory, customary or otherwise which but for such exclusion, would or might subsist in favour of the Buyer.

7.8 The Buyer will keep the Seller indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature including claims for injury, death, damage, loss of profit, loss of opportunity, loss of contracts, loss of margin, loss of revenue, loss of use, loss of goodwill or any indirect loss howsoever caused arising out of or in connection with negligent performance or failure in performance by the Buyer of the terms of the Contract.

8 RISK AND OWNERSHIP

8.1 Risk of damage to or loss of the Goods will pass to the Buyer: (i) in the case of Goods to be delivered at the Seller’s premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or (ii) in the case of Goods to be delivered otherwise than at the Seller’s premises, at the time of delivery or if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

8.2 Ownership of the Goods will not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other sums which are or which become due to the Seller from the Buyer on any account.

8.3 Until ownership of the Goods has passed to the Buyer, the Buyer: (i) will ensure that the Goods remain readily identifiable as the Seller’s property; and (ii) will not pledge or in any way charge by way of security for any indebtedness any of the Goods; and (iii) will maintain the Goods in satisfactory condition insured on the Seller’s behalf for their full price against all risks to the reasonable satisfaction of the Seller and whenever requested by the Seller produce a copy of the policy of insurance.

8.4 The Buyer grants to the Seller and its agents an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them or to recover them.

8.5 The Seller will be entitled to recover payment for the Goods notwithstanding that ownership in any of the Goods has not passed from the Seller.

9 FORCE MAJEURE

The Seller will not be deemed to be in breach of Contract or otherwise liable to the Buyer in any manner whatsoever for any failure or delay in performing its obligations under the Contract for any reason beyond the Seller’s reasonable control including, without limit, act of God, explosion, flood, tempest, fire or accident; war or threat of war, act of terrorism, sabotage, insurrection, civil disturbance or requisition; compliance with any law, order, restriction or regulation of any government or other authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery; default of sub-contractors; power failure or breakdown in machinery.

10 CANCELLATION AND TERMINATION

10.1 The Buyer may not cancel a Contract without the prior written consent of the Seller. As a condition for giving consent the Seller will require the Buyer to indemnify the Seller against all losses (including loss of profit) suffered by the Seller arising out of such cancellation.

10.2 If the Buyer defaults in or commits any breach of its obligations under the Contract or if the Buyer suffers any distress on its assets or if the Buyer enters into any negotiations for arrangements or composition with its creditors, or (being an individual) commits any act of bankruptcy or if a bankruptcy petition is presented against it, or (being a corporate body) becomes subject to an administration order or goes into liquidation, or any resolution or petition for such proceedings are passed or issued, or a receiver, manager or administrative receiver is appointed over any of the Buyer’s assets or property, the Seller may by notice in writing to the Buyer, terminate the Contract immediately.

11 EXPORT TERMS

The payment of all import duties, charges and assessments and the obtaining of any necessary export and import licences in respect of the Goods is the sole responsibility of the Buyer. The Seller will be under no liability whatsoever in respect of Goods exported without the necessary export and import licences.

12 GENERAL

12.1 The Contract is personal to the Buyer who may not assign, delegate, transfer or sub-contract any of its rights or obligations under the Contract without the Seller’s prior written consent.

12.2 The Seller and the Buyer do not intend that any of the terms of the Contract will be enforceable by any person who is not a party to the Contract.

12.3 Any notice to be given by either the Seller or the Buyer under these Conditions shall be sent by post to the other or by facsimile transmission and shall be deemed to have been received by the recipient within 3 days of posting or after 24 hours if sent by facsimile transmission to the correct facsimile number of the recipient.

12.4 The Contract and these Conditions will be governed by English Law and the English Courts will have exclusive jurisdiction to settle any disputes which arise out of or in connection with these Conditions.