

## Terms and Conditions of Sale

### 1. Formation of contract

- 1.1 Any order sent to the Seller by the Purchaser shall be accepted entirely at the discretion of the Seller, and, if so accepted, will only be accepted upon these conditions (hereafter referred to as the "Conditions") and by means of the Seller's standard order acknowledgment form.
- 1.2 Each order which is so accepted shall constitute an individual legally binding contract between the Seller and the Purchaser and such contract is hereafter referred to in these Conditions as an "Order".
- 1.3 These Conditions shall override any contrary different or additional terms or conditions (if any) contained on or referred to in an order form or other documents or correspondence from the Purchaser, and no addition alteration or substitution of these terms will bind the Seller or form part of any Order unless they are expressly accepted in writing by a person authorised to sign on the Seller's behalf.

### 2 Specification

All goods supplied by the Seller shall be in accordance with (i) the current edition of the relevant Product Description Leaflet as published from time to time by the Seller (copies of which are available from the Seller upon request) and (ii) those further specifications or descriptions (if any) expressly listed or set out on the face of the Order. No other specification, descriptive material, written or oral representation, correspondence or statement, promotional or sales literature shall form part of or be incorporated by reference into the Order.

### **3 Acceptance**

The Purchaser shall be deemed to have accepted all goods upon their delivery by the Seller to the address specified in the Order.

### **4 Delivery and risk**

4.1 Unless otherwise stated in the Order, the price quoted includes delivery to the address specified in the Order, provided that the Seller reserves the right to make an additional charge to cover any increase in transport costs occurring before the date of delivery.

4.2 Any time or date for delivery given by the Seller is given in good faith, but is an estimate only

4.3 Risk in the goods shall pass to the Purchaser upon delivery.

### **5 Title and payment**

5.1 The Seller warrants that (except in relation to intellectual property rights of third parties as referred to in Condition 5.3) the Seller has good title to the goods and that (pursuant to s.12(3) of the Sale of Goods Act 1979, or s.2(3) of the Supply of Goods and Services Act 1982, whichever Act applies to the Order) it will transfer such title as it may have in the goods to the Purchaser pursuant to Condition 5.5.

5.2 The Seller warrants that it is not aware of any actual or alleged infringements of any intellectual property rights of third parties which relate to the goods other than those (if any) which the Seller has disclosed to the Purchaser prior to acceptance of the Order.

5.3 The Seller shall have no liability to the Purchaser (other than as provided in Condition 10) in the event that the goods to be supplied under the Order infringe any intellectual property rights of a third

party (including without limitation by reason of their possession, sale or use, whether alone or in association or combination with any other goods); the Seller gives no warranty that the goods to be supplied under the Order will not infringe as aforesaid, and all conditions, warranties, stipulations or other statements whatsoever relating to such infringement or alleged infringement (if any), whether express or implied, by statute, at common law or otherwise howsoever, are hereby excluded.

5.4 Unless otherwise stated in the Order, payment of the price of the goods comprised in each consignment delivered pursuant to an Order shall become due at the end of the month following the month in which that consignment is delivered.

5.5 Title to the goods comprised in each consignment shall not pass to the Purchaser until the Purchaser has paid their price to the Seller, but, even though title has not passed, the Seller shall be entitled to sue for their price once its payment has become due.

## **6 Storage**

If the Seller shall be unable, through circumstances beyond its control (including without limitation lack of shipping instructions from the Purchaser), to deliver the goods within 14 days after notification to the Purchaser or its agent that the goods are ready for delivery, the Seller shall be entitled to arrange storage on behalf of the Purchaser, whereupon delivery shall be deemed to have taken place, all risk in the goods shall pass to the Purchaser, and delivery to the Purchaser of the relevant warehouse receipt shall be deemed to be delivery of the goods for the purposes of Condition 4. All charges incurred by the Seller for storage or insurance shall be paid by the Purchaser within 30 days of submission of an invoice.

## **7 Damage in transit**

The Seller will replace free of charge any goods proved to the Seller's satisfaction to have been damaged in transit provided that within 24 hours after delivery both the Seller and the carriers have received from the Purchaser notification in writing of the occurrence of the damage and also, if and so far as practicable, of its nature and extent.

## **8 Force majeure**

8.1 The Seller shall not be under any liability for any failure to perform any of its obligations under the Order due to *Force Majeure*. Following notification by the Seller to the Purchaser of such cause, the Seller shall be allowed a reasonable extension of time for the performance of its obligations.

8.2 For the purposes of this Condition, "*Force Majeure*" means fire, explosion, flood, lightning, Act of God, act of terrorism, war, rebellion, riot, sabotage, or official strike or similar official labour dispute, or events or circumstances outside the reasonable control of the party affected thereby.

## **9 Guarantee**

9.1 For goods which are manufactured by the Seller or which bear one of the Seller's trade marks, the Seller grants the following guarantee:

9.1.1 The Seller shall free of charge either repair or, at its option, replace defective goods where the defects appear under proper use within 12 months from the date of delivery, PROVIDED THAT:

9.1.1.1 notice in writing of the defects complained of shall be given to the Seller upon their appearance, and

9.1.1.2. such defects shall be found to the Seller's reasonable satisfaction to have arisen solely from the Seller's faulty design, workmanship or materials, and

9.1.1.3 the defective goods shall be returned to the Seller's factory at the Purchaser's expense if so requested by the Seller.

9.1.2 Any repaired or replaced goods shall be redelivered by the Seller free of charge to the original point of delivery but otherwise in accordance with and subject to these Conditions of Sale save that the period of 12 months referred to in Condition 9.1.1 shall be replaced by the unexpired portion of that period only.

9.1.3 Alternatively to Condition 9.1.1, the Seller shall be entitled at its absolute discretion to refund the price of the defective goods in the event that such price shall already have been paid by the Purchaser to the Seller, or, if such price has not been so paid, to relieve the Purchaser of all obligation to pay the same by the issue of a credit note in favour of the Purchaser in the amount of such price.

9.2 In respect of all goods manufactured and supplied to the Seller by third parties the Seller will pass on to the Purchaser (in so far as possible) the benefit of any warranty given to the Seller by such third parties and will (on request) supply to the Purchaser details of the terms and conditions of such warranty and copies of any relevant product information sheets, technical data sheets or product leaflets issued by such third parties and the Purchaser shall be solely

responsible to the entire exclusion of the Seller for complying with all of these.

9.3 The Seller's obligations and liability under these Terms and Conditions shall (subject to Condition 14) exclude all other liability to the Purchaser whether contractual, tortious or otherwise for defects in the goods or for any loss or damage to or caused by the goods, and (subject to Condition 14) all other conditions, warranties, stipulations or other statements whatsoever concerning the goods, whether express or implied, by statute, at common law or otherwise howsoever, are hereby excluded; in particular (but without limitation of the foregoing) the Seller grants no warranties regarding the fitness for purpose, performance, use, nature or quality of the goods, whether express or implied, by statute, at common law or otherwise howsoever.

## **10 Intellectual property rights**

10.1 In the event that any claim is made against the Purchaser for infringement of Intellectual Property Rights arising directly from the use or sale by the Purchaser of the goods, the Seller at its own expense shall conduct any ensuing litigation and all negotiations for a settlement of the claim. The Seller will bear the costs of any payment (either by way of a lump sum or a continuing royalty payment) made in settlement, or as a result of an award in a judgment against the Seller in the event of litigation.

10.2 The benefit of Condition 10.1 is granted to the Purchaser by the Seller only in the event that the Purchaser shall give the Seller reasonable notice in writing of any such claim being made or action threatened or brought against it, shall make no admission of liability or take any other action in connection therewith, shall permit the Seller to have

the conduct of the claim pursuant to Condition 10.1, and shall (at the Seller's expense) give all reasonable information, co-operation and assistance to the Seller (including without limitation lending its name to proceedings) in relation to the conduct of the claim. In addition, if it is made a condition of any settlement made by the Seller, or judgment awarded against the Purchaser, pursuant to Condition 10.1, the Purchaser shall return or destroy, as applicable, all infringing goods still under its control subject to a refund by the Seller of any payment for such goods already made [less a reasonable allowance for depreciation of the goods by reason of their use (if any) by the Purchaser prior to their return or destruction as aforesaid].

- 10.3 The provisions of Condition 10.1 shall not apply to any infringement caused by the Seller having followed a design or instruction furnished or given by the Purchaser nor to any use of the goods in a manner or for a purpose which shall have been specifically prohibited in writing by the Seller, nor to any infringement which is due to the use of such goods in association or combination with any other product.
- 10.4 Any design or instruction furnished or given by the Purchaser shall not be such as will cause the Seller to infringe any intellectual property rights.
- 10.5 For the purposes of this Condition, the capitalised term "Intellectual Property Rights" means Patents, Registered Designs, Unregistered Designs, Registered Trademarks and Copyright only, having effect in the United Kingdom.
- 10.6 The foregoing states the Seller's entire liability to the Purchaser and the Purchaser's sole and exclusive remedies against the Supplier in

connection with claims based on or resulting from the infringement of intellectual property rights, of any kind whatsoever, of third parties.

**11 Confidentiality**

Both the Seller and the Purchaser shall each keep confidential and shall not without the prior consent in writing of the other disclose to any third party any technical or commercial information which it has acquired from the other as a result of discussions, negotiations and other communications between them relating to the goods and the Order.

**12 Economic loss**

Subject to Condition 14, and notwithstanding anything contained in these Conditions (other than Condition 14) or the Order, in no circumstances shall the Seller be liable, in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof (i) for any loss of profit, business, contracts, revenues, or anticipated savings, or depletion of goodwill, or (ii) for any special, indirect or consequential damage of any nature whatsoever.

**13 Limitation of liability**

Subject to Condition 14, and notwithstanding anything contained in these Conditions (other than Condition 14) or the Order, the Seller's liability to the Purchaser in respect of the Order, in contract, tort (including negligence or breach of statutory duty) or howsoever otherwise arising, shall be limited to the price of the goods specified in the Order.



## **14 Unfair Contract Terms Act 1977**

14.1 If and to the extent that s.6 and/or s.7(3A) of the Unfair Contract Terms Act 1977 applies to the Order, no provision of these terms and conditions shall operate or be construed to operate so as to exclude or restrict the liability of the Seller for breach of the express warranties contained in Condition 5, or for breach of the applicable warranties as to title and quiet possession implied into the terms and conditions of the Order by s.12(3) of the Sale of Goods Act 1979, or s.2(3) of the Supply of Goods and Services Act 1982, whichever Act applies to the Order.

14.2 Where the Purchaser is a natural person and if and to the extent that s.2(1) of the Unfair Contract Terms Act 1977 applies to the Order, nothing in these terms and conditions shall operate or be construed to operate so as to exclude or restrict the liability of the Seller for death or personal injury caused to the Purchaser by reason of the negligence of the Seller or of its servants, employees or agents.

14.3 No provision of these terms and conditions shall have effect or operate so as to exclude any liability of one of the parties in respect of fraud or a fraudulent misrepresentation made by that party to the other, or to restrict or exclude any remedy which the other party may have in respect of such fraud or fraudulent misrepresentation.

## **15 Applicable law**

The Order and any dispute arising out of or in connection with it (including non-contractual disputes) shall be governed by the law of England and the parties agree to submit to the exclusive jurisdiction of the English courts.