

TERMS & CONDITIONS OF SALE

1. INTERPRETATION

1.1 In these Conditions:

'Ancillary Costs' means the Seller's charges for transport, packaging, insurance, VAT and any other ancillary costs including those detailed in clause 4.4 below;

'Buyer' means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller;

'Conditions' means the standard terms and conditions set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller;

'Contract' means the contract for the purchase and sale of the Goods;

'Delay' means any delay or interruption not solely attributable to the Seller which results in the Seller not being able to deliver the Goods;

'Delivery Date' means the date on which the Goods are delivered pursuant to condition 6;

'Goods' means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions;

'Intellectual Property' means any copyrights, letters, patents, know how, inventions, utility models, registered and unregistered designs, trade and service marks, trade names, logos, patent applications, rights in the nature of copyrights and all other similar rights in the Goods;

'Price' means the price for the Goods excluding the Ancillary Costs; and

'Seller' means the seller of the Goods pursuant to these Conditions.

1.2. Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re enacted or extended at the relevant time.

1.3. The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.4. For the avoidance of doubt, nothing in these Conditions shall confer on any third party any benefit or the right to enforce any term of these Conditions or the Contract.

2. BASIS OF THE SALE

2.1. These Conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order confirmation of order or similar document. Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

2.2. All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.

2.3. Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.

2.4. Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.5. Any typographical, clerical or other error or omission in any sales literature, quotation, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

2.6. All data containing specifications of weights, dimensions, tolerances, properties and the like which are contained in the Seller's catalogues, drawings or other literature are approximate only (or where tolerances are prescribed, to be within those tolerances) as are weights and dimensions of packing or shipments.

3. ORDERS AND SPECIFICATIONS

3.1. No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until specific performance or confirmed in writing by the Seller's authorized representative.

3.2. The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.3. The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).

3.4. If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller; or if the Goods are to be provided in accordance with a specification or any other document, data information or materials submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's information.

3.5. The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

3.6. No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including without prejudice to the generality of the foregoing loss of profit), costs (including without prejudice to the generality of the foregoing the cost of all labour and materials ordered, whether used or unused), damages, charges and expenses incurred by the Seller as a result of cancellation.

4. PRICE

4.1. The Price and the Ancillary Costs shall be that contained in the Seller's quote or in any current sales literature at the date of acceptance of the order. All Prices and Ancillary Costs quoted are valid for 90 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

4.2. The Seller reserves the right, by giving notice to the Buyer at any time before the Delivery Date to increase the Price and/or the Ancillary Costs to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller.

4.3. Except as otherwise stated under the terms of any quotation provided by the Seller, and unless otherwise agreed in writing between the Buyer and the Seller, all Prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's Ancillary Costs.

4.4. For the avoidance of doubt the Price and the Ancillary costs are exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

5. TERMS OF PAYMENT

5.1.1 The Seller may from time to time open an account for the Buyer to use the Seller's account facilities. Further details in respect of the Seller's account facilities are available on request.

5.1.2 The Seller shall be entitled to require payment of part or all of the Price and Ancillary Costs prior to the Delivery Date.

5.2.2. Subject to clause 5.1.2 and any special terms agreed in writing between the Buyer and the Seller the Seller shall be entitled to invoice the Buyer for the Price and the Ancillary Costs on or at any time after the Delivery Date unless in the case of Goods which are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the Price and the Ancillary Costs at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.

5.3. The Buyer shall pay the Price and the Ancillary Costs within 30 days of the date of the Seller's invoice, and the Seller shall be entitled to recover the Price and the Ancillary Costs, notwithstanding that delivery may not have taken place and the

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property in the Goods has not passed to the Buyer. The time of payment of the Price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

- 5.4. If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- 5.4.1. cancel the Contract and/or suspend any further deliveries;
- 5.4.2. appropriate any payment made by the Buyer to such of the Goods (or goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer);
- 5.4.3. recover all sums owing from the Buyer to the Seller whether due for payment in accordance with these Conditions or not; and
- 5.4.4. charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 8 per cent per annum above the base rate from time to time of The Bank of England, from the due date until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 5.5. The Seller reserves the right to require payment for Goods to be supplied outside mainland Britain to be in the form of an agreed form of Documentary Credit

6. DELIVERY

- 6.1. Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, by the Seller delivering the Goods at the Buyer's premises or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.
- 6.2. Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.3. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.4. If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault)

then, without limiting any other right or remedy available to the Seller, the Seller may:

- 6.4.1. store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 6.4.2. sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
- 6.5. The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing the same, if the delay or failure was due to any cause beyond the Seller's reasonable control.

7. RISK AND PROPERTY IN THE GOODS

- 7.1. Risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery.
- 7.2. Notwithstanding delivery and passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the Price and the Ancillary Costs and payment for all other goods or services previously or subsequently supplied by the Seller to the Buyer whereupon such title shall pass to the Buyer.
- 7.3. Until such time as the property in the Goods passes to the Buyer it shall keep the Goods separate from those of the Buyer and third parties and properly and safely stored, protected and insured and identified as the Seller's property, but shall (subject to clause 7.4 hereof) be entitled to use the Goods in the ordinary course of its business.
- 7.4. The right to use goods referred to in clause 7.3 shall automatically cease in the event of the appointment in respect of the Buyer of a receiver or administrative receiver or the presentation of a petition for the liquidation or administration of the Buyer and such right may also be revoked on five days written notice given to the Buyer if the Buyer shall be in default by more than seven days in the payment of any sum due to the Seller.
- 7.5. Until such time as the property in the Goods passes to the Buyer the Seller its employees or agents shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller, and if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.6. The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

- 7.7. For the avoidance of doubt, the Intellectual Property shall remain at all times the property of the Seller.

- 7.8. Goods shall only be returned to the Seller with the Seller's prior written authorisation.

8. WARRANTIES AND LIABILITY

- 8.1. Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be of satisfactory quality.
- 8.2. The above warranty is given by the Seller subject to the following conditions:
- 8.2.1. the Seller shall be under no liability if it is established by the Seller that some part of the material used in manufacture was defective;
- 8.2.2. the Seller shall be under no liability unless the Goods have been returned carriage paid to the Seller or the Manufacturer if the same has been requested;
- 8.2.3. the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
- 8.2.4. the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;
- 8.2.5. the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the Price and all Ancillary Costs have not been paid by the due date for payment; and
- 8.2.6. the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.
- 8.3.1. Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within seven days from the Delivery Date but in any event the Seller shall have no liability to the Buyer after the expiration of three months of the Delivery Date or collection or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the Price and the Ancillary Costs as if the Goods had been delivered in accordance with the Contract.

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- 8.3.2. Where the Buyer gives appropriate notice to the Seller under clause 8.4.1 above it shall preserve the Goods intact and as delivered for a period of fourteen days after receipt by the Seller of the written notification, during which period the Seller, its agents or servants shall be given access to the Buyer's premises to investigate the complaint.
- 8.3.3. If the Buyer fails to comply with condition 8.3.2 it shall be deemed to have waived all or any claims, actions or rights or remedies it may have in respect of the Goods.
- 8.4. Where any valid claim in respect of the supply of either the Goods which is based on any defect in the quality or condition of the Goods or the failure of the Goods to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, either:
- 8.4.1. if the Price and the Ancillary Costs have been paid, refund to the Buyer the Price and the Ancillary Costs (or a proportionate part of the Price and the Ancillary Costs) or;
- 8.4.2. if the Price and the Ancillary Costs have not been paid, allow the Buyer to reduce the Price and the Ancillary Costs only to the extent that it relates to the item that is the subject of the claim but the Seller shall have no further liability to the Buyer.
- 8.5. Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or the use or resale of the Goods by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the Price and the Ancillary Costs except as expressly provided in these Conditions.
- 8.6. The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:
- 8.6.1. Act of God, explosion, flood, tempest, fire or accident;
- 8.6.2. war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 8.6.3. acts, restrictions, regulations, bye laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 8.6.4. import or export regulations or embargoes;
- 8.6.5. strikes, lock outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
- 8.6.6. difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 8.6.7. power failure or breakdown in machinery.
- 9. INDEMNITY**
- 9.1. If any claim is made against the Buyer that the Goods provided infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of any drawing, design or specification supplied by the Buyer, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:
- 9.1.1. the Buyer shall immediately inform the Seller of all such claims;
- 9.1.2. the Seller is given full control of any proceedings or negotiations in connection with any such claim;
- 9.1.3. the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;
- 9.1.4. except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);
- 9.1.5. the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);
- 9.1.6. the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and
- 9.1.7. without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.
- 10. INSOLVENCY OF BUYER**
- 10.1. This clause applies if:
- 10.1.1. the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 10.1.2. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- 10.1.3. the Buyer ceases, or threatens to cease, to carry on business; or
- 10.1.4. the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 10.2. If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the Price and the Ancillary Costs shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 11. GENERAL**
- 11.1. Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Any such notice shall be deemed to be served:
- 11.1.1. if sent by pre-paid first class post on the third day after posting;
- 11.1.2. if sent by facsimile transmission to the recipients facsimile number, on transmission.
- 11.2. For the avoidance of doubt, notice given under these Conditions shall not be validly served if sent by e-mail.
- 11.3. No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.4. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 11.5. The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the exclusive jurisdiction of the English courts.