

Terms & Conditions of Sale

1. Interpretation

In these conditions:

1.1 the following expressions shall have the meanings set opposite them unless the context otherwise requires: "Acknowledgement of Order" the written acknowledgement given by the Seller to the Buyer in response to an Order; "the Buyer" the person, firm or company with whom the Contract is made; "the Contract" the contract between the Seller and the Buyer for the sale of the Goods into which these conditions are incorporated; "Goods" the goods (including any instalment of the goods or any parts of them) which the Seller is to supply in accordance with these conditions; "Order" the written or oral order placed by the Buyer; "Quotation" the written or oral quotation given by the Seller to the Buyer or to others on the Buyer's behalf; "the Seller" the company referred to overleaf as the Seller; "writing" and "written" shall include telex and facsimile transmission;

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 any reference to the singular includes the plural and reference to a gender includes every gender;

1.4 the headings are inserted for convenience only and shall not affect the interpretation of these conditions.

2. Formation of Contract

2.1 All Quotations and Acknowledgements of Order given by the Seller shall be deemed to include these conditions except (subject to the provisions of clause 2.6) insofar as they are inconsistent with any special terms or conditions contained in the Quotation or the Acknowledgement of Order (as the case may be).

2.2 The Quotation does not form an offer capable of acceptance by the Buyer but merely an invitation to the Buyer to make an offer in accordance with its terms.

2.3 No Order shall be deemed to be accepted by the Seller unless and until acknowledged and confirmed in writing by the Seller's authorised representative.

2.4 Any terms or conditions contained in the Order or any other document delivered or sent by the Buyer which are inconsistent with these conditions shall not form part of the Contract unless (subject to the provisions of clause 2.6) accepted by the Seller in writing in the Acknowledgement of Order

2.5 If subsequent to any contract between the Seller and the Buyer into which these conditions are incorporated any contract for the supply of goods similar to the Goods is made between the Seller and the Buyer whether the same is in writing, orally or otherwise, without express reference to any conditions, such contract shall be deemed to be subject to these conditions.

2.6 No variation to these conditions shall be effective unless agreed in writing between the authorised representatives of the Buyer and the Seller.

3. Basis of the Sale

3.1 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed and that it shall not have any right of action against the Seller arising out of or in connection with any such representation except in the case of fraud.

3.2 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.

3.3 In entering into this Contract the Buyer assumes responsibility for the Goods being sufficient for its purpose. As the Seller is not responsible for system design and as the Buyer has greater knowledge of his own requirements the Seller shall not accept any responsibility for the performance or suitability of the Goods in their final operating environment whether or not details of the final operating environment have been made available to the Seller.

3.4 Any typographical, clerical or other error or omission in any sales literature, Quotation, price list, Acknowledgement of Order, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of

the Seller.

3.5 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any Order (including any applicable specification) 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.

3.6 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification 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 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 specification.

3.7 The Seller reserves the right at any time to change the design, construction and/or specification of the Goods if such change is required to conform with any applicable statutory or EC requirements or if such change will not in the opinion of the Seller at the time that such change is made adversely affect the quality or performance of such Goods.

3.8 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 loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

4. Delivery

4.1 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, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.

4.2 Any dates quoted for the delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in writing.

4.3 The Seller may make delivery by instalments. Where 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.

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

4.4.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

4.4.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Buyer for any shortfall below the price under the Contract.

4.5 No claim for damage to any Goods or for any shortages in the Goods delivered will be considered by the Seller unless it is advised of such claim in writing within 7 days of the date of delivery of the Goods or such part thereof as are actually delivered. In the absence of such advice, the Buyer will be deemed to have accepted the Goods. No claim for non delivery will be considered by the Seller unless it is advised in writing within 14 days of the date of the Seller's invoice. Any claim for damage, shortages or non delivery shall also be notified by the Buyer to the carrier (if any) in the manner and within the appropriate time limit prescribed by the carrier's terms and conditions, as advised by the Seller to the Buyer. In the event of a failure by the Buyer to give the appropriate notices then any claim which the Buyer may otherwise have pursuant to this condition will be deemed to have been waived and will be absolutely barred.

5. Guarantee

5.1 The Seller will endeavour to transfer to the Buyer the benefit of any warranty or guarantee given by the manufacturer of the Goods to the Seller.

5.2 The Seller will free of charge within a period of 3 months from the date of delivery or such longer period as may be referred to in the Seller's sales literature repair or at its option replace any

Goods which are proved to the reasonable satisfaction of the Seller to be defective in design, materials or workmanship unless, in the Seller's reasonable opinion:

5.2.1 the Goods have been altered in any way whatsoever or repaired without the Seller's approval or have been subjected to wilful damage negligence abnormal working conditions or misuse; or

5.2.2 the Goods have been improperly installed or connected; or

5.2.3 the Buyer has failed to observe any operational or maintenance requirements relating to the Goods; or

5.2.4 the Buyer has failed to notify the Seller in writing of any defect or suspected defect within 14 days of the same coming to the knowledge of the Buyer; or

5.2.5 the Buyer is in breach of this or any other contract made with the Seller; or

5.2.6 the defect in the Goods arises from any drawing, design or specification supplied or approved by or on behalf of the Buyer.

Notwithstanding the provisions of this condition, the Seller shall not be obliged to repair or replace any defective Goods unless and until the Buyer returns such Goods to the Seller (without any charge or cost to the Seller) if reasonably requested by the Seller so to do. In the case of any defective Goods which it would be unreasonable for the Seller to require the Buyer to return to the Seller (e.g. because of their size or because following installation or connection they form an integral part of a larger system or structure which it would be unreasonable to require the Buyer to dismantle) notwithstanding the provisions of this condition, the Seller shall not be obliged to repair or replace such Goods unless the Seller is easily able to obtain access to the same for repair or replacement. Any Goods replaced by the Seller will belong to the Seller. Any repaired or replacement Goods will be guaranteed on these terms for the unexpired portion of the 3 month or longer guarantee period.

6. Seller's Liability

6.1 Save as provided in conditions 5.1 and 5.2 and subject to condition 6.2 the Seller will be under no liability under the Contract, in tort or otherwise for any personal injury, death, loss or damage of any kind whatsoever whether direct or indirect and whether consequential or otherwise (including but not limited to loss of profits, loss of business or contracts, loss of operating time or loss of use whether foreseeable or not) resulting from any defect in the Goods or from any work done in connection therewith or as a result thereof and the Seller hereby excludes all conditions, warranties and stipulations express or implied, statutory, customary or otherwise to the fullest extent permitted by law which but for such exclusion would or might subsist in favour of the Buyer.

6.2 The Seller, does not exclude liability for:

6.2.1 any breach of the implied condition that the Seller has or will have the right to sell the Goods when property therein is to pass;

6.2.2 when the Buyer deals as a consumer (as defined in section 12 of the Unfair Contract Terms Act 1977), any breach of the implied terms relating to the conformity of the goods with their description or sample, as to their quality or fitness for a particular purpose;

6.2.3 death or personal injury resulting from its negligence or that of its employees;

6.2.4 direct physical damage to or physical loss of the property of the Buyer resulting from the Seller's, its employee's or agents' negligent acts or omissions and which arise out of the performance of its obligations under the Contract provided that:

6.2.4.1 the Seller shall only accept liability for any such damage or loss if and to the extent that such liability is covered by the public/product liability policy taken out by the Seller and operative at the time of the damage or loss. Details of such insurance policy will be made available to the Buyer upon request. If the Buyer requests in writing additional insurance the Seller will take all reasonable steps to obtain it on the Buyer's behalf and any premium or additional premium and any other expenses incurred in obtaining such insurance shall be payable by the Buyer to the Seller.

6.2.4.2 the Seller's liability under this condition 6.2.4 shall not exceed £1 million in aggregate in respect of any one event or series of events.

7. Risk

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

7.1.1 in the case of Goods to be delivered at the Sellers premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or

7.1.2 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. Property in the Goods

8.1 Notwithstanding delivery and the passing of risk in the Goods the property in the Goods shall not pass to the Buyer until:

8.1.1 the price of the Goods has been paid in full; and

8.1.2 payment has been made to the Seller of all sums due or owing from the Buyer to the Seller on any account whatsoever.

8.2 Until such time as property in the Goods passes to the Buyer in accordance with condition 8.1:

8.2.1 the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, shall not obliterate any identifying mark on the Goods or their packaging and shall keep the Goods separate from any other goods of the Buyer or third parties properly stored, protected and insured and identified as the Seller's property; and

8.2.2 the Buyer shall be entitled to use or (subject to condition 8.3) sell the Goods in the ordinary course of its business.

8.3 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 monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

8.4 Where the Seller is unable to determine whether any goods are the Goods the Buyer shall be deemed to have sold all goods of the kind sold by the Seller to the Buyer in the order in which they were invoiced to the Buyer.

8.5 The Seller may at any time after payment for the Goods has become due take possession of the Goods (which for the avoidance of doubt shall include the right to stop the Goods in transit) and remove them and the Buyer shall be deemed to have granted irrevocable authority to the Seller to enter upon the Buyer's premises or other premises where the Goods may be and, by the Seller's employees or agents, take possession of the Goods and (if necessary) dismantle the Goods from anything to which they are attached.

8.6 The Seller shall have the right to maintain an action against the Buyer for the price of the Goods notwithstanding that property in the Goods has not passed.

8.7 Nothing in the Contract shall constitute the Buyer the agent of the Seller in respect of any re-sale of the Goods by the Buyer so as to confer upon a third party any rights against the Seller

9. Price

9.1 Except as otherwise stated in any Quotation and unless otherwise agreed in writing between the Buyer and the Seller all prices quoted are the price of the Goods (excluding VAT) ex-works and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.

9.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

9.3 The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.

10. Payment

10.1 Where no account has been opened in advance by the Seller in respect of the Buyer, the Seller will not be obliged to deliver the Goods until the Buyer has paid the amount shown on the

pro-forma invoice relating to the Goods.

10.2 Where an account has been opened for the Buyer, the Seller may in its absolute discretion set and on 3 days prior written notice to the Buyer alter the Buyer's credit limit and the Seller reserves the right not to deliver the Goods if the price thereof increases the amount owed by the Buyer to the Seller beyond the Buyer's credit limit from time to time.

10.3 Where an account has been opened for the Buyer and the price of the Goods together with all other indebtedness of the Buyer to the Seller does not exceed the Buyer's credit limit from time to time, the price of the Goods will be paid by the Buyer within 30 days from the end of the month in which the Seller's invoice is issued or within such other period as the Buyer and the Seller may agree in writing. The time of payment shall be of the essence of the Contract.

10.4 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 may without liability;

10.4.1 suspend any further deliveries to the Buyer or cancel the Contract or any other contract between the Seller and the Buyer;

10.4.2 charge the Buyer interest (both before and after any judgement) on the amount unpaid at the rate of 5% per annum above the base rate from time to time of Barclays Bank Plc until payment in full is made; and

10.4.3 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer, and the Seller) as the Seller may in its absolute discretion think fit (notwithstanding any purported appropriation by the Buyer).

10.5 The Seller shall be entitled to payment for all instalments of Goods delivered to the Buyer notwithstanding that the remainder of the Goods shall not have been delivered.

10.6 The Buyer shall not be entitled to withhold payment of any amount payable under the Contract because of any disputed claim of the Buyer, in respect of faulty goods or any other alleged breach of contract whether in respect of the Contract or any other contract between the Buyer and the Seller not shall the Buyer be entitled to set off against any amount payable under the Contract to the Seller any monies owed by the Seller to the Buyer on any account whatsoever, whether such a right is conferred on the Buyer by statute or otherwise.

11. Force Majeure

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 is 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: act of God, explosion, lighting, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations, by-laws, prohibitions, or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lockouts or other industrial actions or trade disputes (whether involving employees of the Seller or any third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery; power failure or breakdown in machinery.

12. Cancellation and Suspension of the Contract

12.1 This condition applies if:

12.1.1 the Buyer is in breach of any of its obligations under the Contract or any other contract between the Buyer and the Seller; or

12.1.2 unforeseen events including (without prejudice to the generality of the foregoing) those referred to in condition 11 materially affect the commercial effect of the Contract; or

12.1.3 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

12.1.4 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

12.1.5 the Buyer ceases or threatens to cease to carry on business; or

12.1.6 the Seller reasonably apprehends that any of the events mentioned in conditions 12.1.3, 12.1.4 or 12.1.5 is about to occur in relation to the Buyer and notifies the Buyer accordingly; or

12.1.7 the Seller receives notice of any claim alleging that the Goods or any part thereof or any process applied to the Goods infringe any patent, copyright, design right, trademark or other industrial or intellectual property rights of any other person.

12.2 If this condition 12 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 by notice to the Buyer without any liability to the Buyer and if the Goods have been delivered but not paid for then the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

13. Export Terms

13.1 In these conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these conditions, but if there is any conflict between the provisions of Incoterms and these conditions, the latter shall prevail.

13.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this condition 13 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these conditions

13.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.

13.4 Unless otherwise agreed in writing between the Buyer and the Seller, the Goods shall be delivered fob the air or sea port of shipment and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

13.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

13.6 Unless otherwise agreed in writing by the Seller payment of all amounts due to the Seller shall be made in sterling by irrevocable letter of credit opened by the Buyer in favour of the Seller and confirmed by a leading London bank acceptable to the Seller within 10 days of the Seller's acceptance of the Order and upon presentation of the required documents to a London bank.

14. General

14.1 The Seller shall be entitled to sub-contract the fulfilment of the Contract or any part thereof in which event the Seller contracts on behalf of itself and its sub-contractors.

14.2 The termination of the Contract howsoever arising shall be without prejudice to any rights and duties of either party which may have accrued prior to termination.

14.3 The Seller's rights contained in condition 8 (but not the Buyer's rights) shall continue beyond the discharge of the parties' primary obligations under the Contract following its termination by the seller or breach by the Buyer.

14.4 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.

14.5 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.

14.6 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.

15. Proper Law and Jurisdiction

The Contract shall be governed by the laws of England and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.