

# TERMS & CONDITIONS OF SALE

## 1. APPLICABLE TERMS

**1.1.** For the purposes of these terms and conditions ("Conditions");

**1.1.1.** "Goods" means the goods which the Seller is to supply to the Buyer in accordance with these Conditions;

**1.1.2.** "Buyer" means the individual or organisation who enters into a contract with the Seller; and

**1.1.3.** "Seller" means the Company which supplies Goods to the Buyer.

**1.2.** Any quotation given by the Seller is an invitation to the Buyer to make an offer only and no order placed by the Buyer with the Seller in pursuance of a quotation or otherwise shall be binding on the Seller unless and until it is accepted in writing by the Seller's acceptance of order form or despatch note or delivery note, or the Goods are despatched.

**1.3.** Any contract made with the Seller for the sale of Goods shall incorporate and be subject to these Conditions only and any representation or warranty, written or orally made or given prior to the contract is hereby expressly excluded and all brochures, specifications, drawings, catalogues, particulars, shapes, descriptions and illustrations, price lists and other advertising matter are intended only to present a general idea of the Goods described therein.

**1.4.** In the event that no quotation is given by the Seller and the Seller has received an order from the Buyer then provided that the Buyer shall have notice of these Conditions, in such circumstances all Goods are sold subject to these Conditions.

**1.5.** Unless otherwise agreed in writing, the Seller reserves the right to despatch or deliver Goods of a modified design provided that any difference does not make the Goods unsuitable for any purpose the Buyer has made known to the Seller.

## 2. PRICE

Unless otherwise agreed, the price is exclusive of VAT and other taxes and the cost of carriage and is based on costs current at the date of order acknowledgment or the date of the Seller's quotation if earlier. The Seller reserves the right at any time prior to delivery of the Goods to adjust the price to take account of any increase in the costs to it of materials, taxes, labour or services or of any currency fluctuations which increase the costs to it of Goods imported into the United Kingdom.

## 3. PAYMENT

**3.1.** Unless agreed otherwise in writing by the Seller the price shall be payable:

**3.1.1.** in the case of a Buyer who is a credit account holder, on or before the 28th day (or first working day thereafter) of the calendar month following the month in which the Seller invoices the Buyer; and

**3.1.2.** in all other cases, on demand.

**3.2.** If at the date on which the Seller is ready to deliver the Goods the Buyer delays delivery for any reason, the Seller may present invoices for full settlement within 7 days of that date.

**3.3.** In the case of a Buyer who is a credit account holder an additional transactional charge equal to 3 per cent of the relevant transaction value shall be payable in cash if the Buyer pays for any Goods by credit card. For the avoidance of doubt, no such transactional charge shall be payable if the Buyer pays for the Goods wholly in cash.

**3.4.** Time for payment shall be of the essence.

**3.5.** The Seller will pay to the Buyer all general rebates and any VIP incentive rebates for Goods purchased by the Buyer and paid for in full in accordance with Condition 3.1.

**3.5.1.** Rebates are not payable in the event that the Buyer does not pay each invoice in full in accordance with Condition 3.1.

**3.5.2.** In the case of a Buyer who is a credit account holder, the Seller shall be entitled in its sole discretion to suspend or withdraw any rebate, discount or any other preferential terms allowed to the Buyer if the Buyer fails to make a payment when it becomes due or if the Seller otherwise reasonably believes that the Buyer has failed or will fail to comply with the terms of the credit account.

**3.6.** In default of payment and without prejudice to any other rights or remedies the Seller reserves the right to demand payment of all outstanding balances whether or not due.

**3.7.** Interest shall be charged on outstanding balances at the rate of 2.0% per month as well after as before judgment.

**3.8.** The Buyer shall not be entitled to withhold or set-off payment for Goods delivered for any reason whatsoever. The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.

**3.9.** In the case of a Buyer who is a credit account holder, the Seller shall be entitled in its sole discretion to suspend or terminate the Buyer's account if the Buyer fails to make a payment when it becomes due or if the Seller otherwise reasonably believes that the Buyer has failed or will fail to comply with the terms of the credit account.

**3.10.** The Buyer shall indemnify the Seller against any legal or other expense reasonably incurred by the Seller in the collection of any sums outstanding from the Buyer to the Seller, including without limitation, legal costs and fees.

## 4. GUARANTEE

**4.1.** If the Buyer is a limited company, limited liability partnership or a trust, any director or directors and any person ("Owner") who holds more than 25 per cent of the issued share capital of the Buyer (if a limited company) any member of the Buyer (if a limited liability partnership) and any trustee of the Buyer (if a trust) and any other guarantor (not being a director, member,

trustee or Owner) who sign the Seller's credit account application form agree (if more than one, jointly and severally) to guarantee the payment of all monies, debts and liabilities of any nature from time to time due or owing from or incurred by the Buyer to the Seller (the "Guaranteed Obligations").

**4.2.** This guarantee is and shall at all times be a continuing security and shall cover the ultimate balance of all monies payable under the contract, irrespective of any intermediate payment or discharge in full or in part of the Guaranteed Obligations.

**4.3.** Regardless of whether a guarantor ceases to be a director, Owner, member, trustee, employee or agent, or otherwise leaves the service of the Buyer (notice of any of which the Buyer shall immediately give to the Seller in accordance with Condition 17.1), no guarantor shall be discharged or released from his or her obligations under this guarantee unless and until a statutory director or the finance director from time to time of the Seller expressly confirms in writing that he or she is so discharged or released. Any request by a current director, Owner, member or trustee of the Buyer or by any other guarantor to be discharged or released from his or her obligations under this guarantee must be in writing, signed by the relevant guarantor, addressed to the finance director of the Seller and given to the Seller in accordance with Condition 17.1.

**4.4.** The Seller may, at its sole discretion, conditionally or fully release or discharge any guarantor from his or her obligations under this guarantee or accept any composition from or make any other arrangements with any guarantor without releasing or discharging the other(s) or without prejudicing or affecting the Seller's rights and remedies against such other(s).

## 5. CREDIT

This contract shall be subject to the provision that if at any time thereafter the Seller is advised of circumstances casting doubt on the Buyer's credit worthiness or satisfactory security for payment is not given on request, the Seller may require payment of the whole or part of the purchase price from the Buyer in advance and pending such payment the contract shall be suspended. In the event of such advance payment not being made within a reasonable period stipulated by the Seller, the Seller may cancel the Buyer's order without liability and the Buyer shall be responsible for any resulting loss to the Seller.

## 6. RISK

The risk in respect of all Goods sold under the contract shall pass to the Buyer upon delivery to the Buyer or to the Buyer's order In any event the property in the Goods shall not pass to the Buyer except as provided in Condition 7 hereof.

## 7. TITLE RETENTION

**7.1.** Until the purchase price of the Goods comprised in this or any other contract between the Buyer and the Seller and all other indebtedness of the Buyer to the Seller shall have been paid or satisfied in full (if by cheque then only upon clearance):

**7.1.1.** the property in the Goods comprised in this contract remains vested in the Seller (notwithstanding the delivery of the same and the passing of the risk therein).

**7.1.2.** The Buyer shall store the Goods in such a way that they can be readily identified as being the Seller's property.

**7.1.3.** The Buyer shall on request inform the Seller of the precise location of each item of the Goods identified where applicable by its serial number, by supplying the Seller at its expense within seven days of its request with a written schedule of the said locations.

**7.1.4.** The Buyer may sell the Goods as the Seller's agent in the normal course of the Buyer's business and may pass good title to the Buyer's customer being a bona fide purchaser for value without notice of the Seller's rights on the following Conditions:

**7.1.4.1.** the Seller may at any time revoke the Buyer's said power of sale in the circumstances set out in Condition 5 or 11 of these Conditions.

**7.1.4.2.** the Buyer's power of sale shall automatically cease in any of the circumstances set out in Condition 11 of these Conditions.

**7.1.4.3.** the Buyer shall notify the Seller without delay of any attachment of the Goods or actions by third parties which might infringe the Seller's title to the Goods.

**7.1.5.** Upon determination of the Buyer's power of sale the Seller shall be entitled by itself its servants or agents to enter upon any of the Buyer's premises or any other premises for the purpose of removing and repossessing such Goods and the Buyer shall indemnify the Seller against any claims arising from such repossession and for the cost of such repossession.

**7.1.6.** until the title in the Goods has passed to the Buyer:

**7.1.6.1.** the Buyer shall not purport to be the owner of the Goods and shall not show such Goods as stock in its accounts.

**7.1.6.2.** the Buyer shall insure the Goods against theft or any damage howsoever caused until their price has been paid or until sale whichever shall first occur and the Seller shall be entitled to call for details of the insurance policy.

**7.1.6.3.** if the Buyer shall not insure the Goods or shall fail to supply details of its insurance policy on demand to the Seller the Buyer shall reimburse the Seller for the cost of any insurance which the Seller may reasonably arrange in respect of any of the Goods during the whole or any part of the period from the date of its delivery of the Goods until the date of payment to it of their full purchase price.

**7.2.** Nothing in these Conditions shall:

**7.2.1.** entitle the Buyer to return the Goods or to delay payment for the Goods; or

**7.2.2.** constitute or be deemed to have constituted the Buyer as the Seller's agent otherwise than for the purpose of this Condition; or

**7.2.3.** render the Seller liable to any third party for any unauthorised representation or warranty made or given by the Buyer to such third party in relation to the Goods; or

**7.2.4.** prevent the Seller from maintaining an action for the price not withstanding that the property in the Goods may not have passed to the Buyer.

**7.3.** In the case of sales of Goods in Scotland, Condition 7.1 shall not apply and in place thereof, there shall be substituted the following Condition: "Until the purchase price of the Goods comprised in this contract between the Buyer and the Seller have been paid in full."

## 8. DELIVERY

**8.1.** Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.

**8.2.** Any delivery date quoted is given in good faith, but the Seller shall not be responsible for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence and the Seller shall not be liable for any delay in delivery howsoever caused.

**8.3.** The Seller shall be entitled to make delivery by instalments (in which case each delivery shall constitute a separate contract), and to invoice the Buyer separately for each instalment. 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.

**8.4.** Except in the case of delivery at the Seller's premises, the Buyer shall at its own expense use all reasonable endeavours to ensure that the Seller is able to freely access and make any deliveries to any other place for delivery at such time(s) as may be specified by the Seller. Any failure by the Buyer to comply with the provisions of this Condition or to otherwise accept delivery (save upon such grounds for rejection as are specified in the law relating to the Sale of Goods) shall be deemed to be a breach of contract. Any additional costs incurred by the Seller in re-delivering the Goods (either to the originally agreed place for delivery or to such other place as may be reasonably requested by the Buyer) will be charged to the Buyer.

**8.5.** The quantity of any consignment of Goods as recorded by the Seller upon despatch from the Seller's premises shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary. Notwithstanding the provisions of Condition 8.5, the Seller shall not be liable for any under-delivery of Goods in whole or in part (even if caused by the Seller's negligence) unless the Buyer gives written notice to the Seller of the under-delivery within 48 hours of the date when the Goods are delivered to the Buyer (as recorded by the Seller or, if there is no such record, when the Goods would in the ordinary course of events have been received). Any liability of the Seller for under-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Goods.

## 9. WARRANTY

**9.1.** The Buyer shall lodge with the Seller in writing within 7 days after delivery of the Goods any claims in respect of defects in such Goods, which are reasonably capable of detection by careful examination. Defects which are not detectable by careful examination within that period shall be notified as soon as practicable and in any event no later than:

**9.1.1.** 30 days after discovery of the defect; or

**9.1.2.** 12 months after the date of installation of the Goods, whichever occurs first.

**9.2.** The Seller shall at its option repair or replace or refund or credit the purchase price of any Goods or part thereof in which under proper storage and use defects appear within the time limits set out in Condition 9.1 above which are caused by faulty material or workmanship and if any Goods, during the recommended service life, and if fitted to an application stated in the current catalogue or bulletin of the Seller are found to be defective, the Seller will accept responsibility for damage to other working parts of the Buyer's equipment solely and directly attributed to a manufacturing defect in the Goods, and will restore such working parts to a condition equivalent to the existing condition prior to failure. PROVIDED that:

**9.2.1.** the defective Goods are returned to the Seller, transportation charges being prepaid by the Buyer;

**9.2.2.** examination by the Seller of such Goods shall disclose to its satisfaction that such defects exist and have not been caused by misuse, neglect, accident, improper storage, installation or handling or by repair or alteration not effected by the Seller; and

**9.2.3.** the Buyer shall afford to the Seller all reasonable facilities to inspect any working parts of the Buyer's equipment which are alleged to have been damaged as a result of defects in the Goods;

**9.2.4.** the Buyer shall pay to the Seller the cost (as certified by the Seller) of any examination of the Goods and any relevant working parts where the outcome of the examination is that the Seller is not deemed to be liable for any defect in the Goods or any damage alleged to have been caused by defects in the Goods;

**9.2.5.** this warranty does not cover faulty installation, misuse, alteration, normal wear and tear or accident, nor will the Seller be liable for any other losses or consequential expenses incurred;

**9.2.6.** the Buyer shall provide such information regarding the circumstances of the claim as would be reasonably required to assess the validity of the claim. If insufficient information is provided, the Seller shall be entitled, within 7 working days of requesting in detail the additional information needed, and such

information not having been received, to reject the claim and return the Goods to the Buyer;

**9.3.** The foregoing provisions shall be in lieu of any warranties and conditions whether express or implied by statute common law or otherwise howsoever, which warranties and conditions are hereby expressly excluded, or breach of a fundamental term thereof) or the Seller its servants or agents in the performance of the contract.

**9.4.** Save as aforesaid and save in respect of death or personal injury resulting from the negligence of the Seller its servants or agents, the Seller shall not be liable for any claim or claims for direct or indirect consequential or incidental injury loss or damage made by the Buyer against the Seller whether in contract or tort (including negligence on the part of the Seller its servants or agents) arising out of or in connection with any defect in the Goods or work or any act, omission, neglect or default (whether or not the same constitutes a fundamental breach of the contract

**9.5. WITHOUT PREJUDICE TO THE GENERALITY OF THE FOREGOING, NOTHING HEREIN CONTAINED SHALL OPERATE TO EXCLUDE ANY WARRANTY OR CONDITION IMPLIED BY STATUTE WHERE THE BUYER IS A "CONSUMER" AS DEFINED BY SECTION 2 OF THE CONSUMER RIGHTS ACT 2015. IN SUCH A CASE THE BUYER'S STATUTORY RIGHTS ARE UNAFFECTED BY THESE TERMS AND CONDITIONS.**

**9.6.** The Buyer accepts as reasonable that the Seller's total liability for defective Goods and delivery of the Goods shall be as set out in these Conditions; in fixing that limit the Seller has had regard to the contract price of the Goods, the nature of the Goods, the use they will receive, and the resources available to each party including insurance cover, to meet any liability.

#### **10. HEALTH AND SAFETY**

The Buyer's attention is drawn to the provision of Section 6 of the Health and Safety at Work etc Act 1974. The Seller will make available on written request such information on the design and construction of the Goods as is in its possession to ensure that as far as is reasonably practicable it is reasonably safe and without risk to health when properly used.

#### **11. INSOLVENCY AND BREACH OF CONTRACT**

Without limiting its other rights or remedies, the Seller may terminate the contract with immediate effect by giving written notice to the Buyer if:

**11.1.** the Buyer commits a material breach of any term of the contract and (if such a breach is remediable) fails to remedy that breach within 30 days of being notified in writing to do so;

**11.2.** the Buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation or the solvent reconstruction of the Buyer;

**11.3.** a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Buyer (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation or the solvent reconstruction of the Buyer;

**11.4.** an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the Buyer (being a company);

**11.5.** the holder of a qualifying floating charge over the assets of the Buyer (being a company) has become entitled to appoint or has appointed an administrative receiver;

**11.6.** a person becomes entitled to appoint a receiver or a receiver is appointed over all or any of the assets of the Buyer;

**11.7.** the Buyer (being an individual) is the subject of a bankruptcy petition, application or order;

**11.8.** a creditor or encumbrancer of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Buyer's assets and such attachment or process is not discharged within 14 days;

**11.9.** any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Condition 11.2 to Condition 11.7 (inclusive);

**11.10.** the Buyer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

**11.11.** the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the contract has been placed in jeopardy.

#### **12. INTELLECTUAL PROPERTY**

Notwithstanding any implied warranty or condition as to title or otherwise in relation to the Goods supplied hereunder, the Seller shall not be liable to indemnify the Buyer in respect of any claim made or threatened against the Buyer by a third party whether by legal proceedings or otherwise based on any intellectual property right claimed (whether registered or not) or breach of confidence unless:

**12.1.** the Seller shall have been promptly notified of the claim or threat and no admissions shall have been made by the Buyer such as would prejudice the defence of any such claim or threat.

**12.2.** the Goods shall have been designed by the Seller or made to its design. In any event the Seller's liability shall be limited to damages and costs awarded by a court of competent jurisdiction in proceedings conducted in accordance with the wishes of the Seller or such sum as may be paid in compromise of such proceedings with the assent of the Seller

#### **13. MODIFICATIONS**

The Buyer shall accept Goods whose specification has been modified since the date of order provided that such Goods substantially conform with the order and the modification does not materially affect the performance of the Goods.

#### **14. BUSINESS TO BUSINESS SALES: END OF LIFE OBLIGATIONS**

**14.1.** To the extent that the law permits, the responsibility for and (where not specifically provided for in purchase price) the costs of compliance with the Waste Electrical and Electronic Equipment Regulations 2006 (as amended from time to time) shall rest with the Buyer.

**14.2.** The Buyer shall indemnify the Seller and keep the Seller indemnified against all costs, expenses, damage or other losses incurred or suffered, demands or proceedings made against the Seller arising from a breach by the Buyer of this Condition 14.

#### **15. ASSIGNMENT**

The Buyer shall not assign or transfer or purport to assign or transfer the contract or the benefit hereof to any other person.

#### **16. SUB CONTRACTS**

The Seller reserves the right to sub contract the performance of the contract or any part thereof.

#### **17. GENERAL**

**17.1.** Notices - Any notice given under the provisions of the contract, including (but not limited to) under the provisions of the guarantee at Condition 4, shall be in writing and shall be deemed to have been sufficiently served if delivered personally or sent (within the U.K.) by recorded first class post or (outside the U.K.) by recorded airmail (in either case providing proof of postage and delivery) and the address of service shall be that shown on the contract or such other address as the relevant party shall notify from time to time. Any notice served by first class post shall be deemed to have been served 48 hours after the date of despatch or, if earlier, on signature of the delivery receipt, any notice served by airmail shall be deemed to have been served 10 days after the date of despatch or, if earlier, on signature of the delivery receipt.

**17.2.** Waiver - The waiver by the Seller of any breach of any term of the contract shall not prevent the subsequent enforcement of that term and shall not be deemed a waiver of any subsequent breach.

**17.3.** Severance - Each of the Buyer's obligations hereunder shall be a separate and independent obligation.

**17.4.** Titles - The titles of the Conditions hereof shall not be taken into account in the construction hereof.

**17.5.** Third Party Rights - No person other than a party to the contract shall have any rights to enforce any term of the contract.

#### **17.6. Variation**

**17.6.1.** Any variation, including the introduction of any additional terms and conditions to the contract, shall only be binding when agreed in writing and signed by an authorised representative of the Seller.

**17.6.2.** The Seller may vary these Conditions from time to time. Any such variations will be posted to the Seller's website and notified to the Buyer and the Buyer will be deemed to have accepted such variations if it continues to order Goods from the Seller after the date of such notice.

**17.7.** Governing Law - Any contract to which these Conditions relate shall be governed by English Law and the parties shall submit to the non-exclusive jurisdiction of the English Courts.