

# Terms & Conditions of Sale

## 1. DEFINITIONS

In these Conditions the following words have the following meanings:

“Buyer” the person(s), firm or company from whom an order to supply Products is received by the Company;

“Company” Fernco Limited whose registered address is Endeavour Works, Newlands Way, Valley Park Wombwell, Barnsley, South Yorkshire, S73 0UW;

“Conditions” the standard terms and conditions of sale as set out in this document;

“Contract” any contract between the Company and the Buyer for the sale and purchase of the Products;

“Delivery Point” the place where delivery of the Products is to take place under Condition 12.1;

“Products” any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part of parts of them).

## 2. APPLICATION OF THE TERMS

2.1 Subject to any variation under Condition 2.3, the Contract will be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document), or which are implied by trade, custom, practice or course of dealing.

2.2 No terms or conditions endorsed upon, delivered with or contained in the Buyer’s purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These Conditions apply to all the Company’s sale of Products and any variation to these Conditions and any representations about the Products shall have no effect unless expressly agreed in writing signed by an authorised representative of each party.

2.4 The Contract constitutes the entire agreement and understanding between the parties.

2.5 The Buyer acknowledges that it has not relied on, and shall have no remedy in respect of, any statement, promise, warranty or representation (whether made innocently or negligently) made or given by or on behalf of the Company which is not expressly set out in the Contract. An action for breach of contract is the only remedy for any statement, promise, warranty or representation set out in the Contract (whether made innocently or negligently). Nothing in this Condition 2.5 shall limit or exclude liability for fraud.

## 3. DESCRIPTION

All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company’s catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Products described in them. They will not form part of the Contract.

## 4. PRICES

In the case of all Products sold unless the Contract expressly provides otherwise the price payable by the Buyer for each delivery shall be the Company’s ruling price at the date of despatch. The price for the Products shall be exclusive of any Value Added Tax or any other Tax or duty relating to the manufacture, transportation, import, sale or delivery of the Products together with any appropriate freight, carriage or related charges specified in the relevant carriage tariff at the date of despatch.

## 5. QUOTATIONS

5.1 Any quotation is given on the basis that no Contract will come into existence until the Company despatches an acknowledgement of order to the Buyer or (if earlier) the Company delivers the Products to the Buyer. Unless it is stated otherwise in writing, a quotation is valid for a period of 28 days only from the date thereof, provided that the Company has not previously withdrawn it.

5.2 Any acceptance of the quotation received late may be accepted by the Company in its discretion in which case it shall be binding upon the Buyer.

5.3 Clerical errors and/or omissions in the Company’s quotation acknowledgement or invoice shall be rectified by the Company as soon as discovered and such errors and omissions shall not be binding upon the Company nor permit the Buyer to vary the Contract or any of its terms.

## 6. ACCEPTANCE OF ORDERS

6.1 Each order for Products by the Buyer to the Company shall be deemed to be an offer by the Buyer to purchase Products subject to these Conditions.

6.2 No order placed by the Buyer shall be deemed to be accepted by the Company until the Company issues a written acknowledgment of order or (if earlier) the Company delivers the Products to the Buyer.

## 7. PAYMENT OF ACCOUNTS

7.1 Unless otherwise agreed in writing, payment of the price of the Products is due:

7.1.1 in the case of deliveries to a Buyer in the United Kingdom at the end of the month following that in which the Products are despatched; or

7.1.2 in the case of deliveries to a Buyer outside the United Kingdom the price is payable in full against receipt of a shipping document by the Buyers agents.

7.2 Any delay or default by the Buyer in making payment in accordance with condition 7.1 shall render all sums owing to the Company on any account whatsoever including the costs of recovery of such sums, due and payable forthwith without requirement for any notice to be given to the Buyer, and interest will be charged in accordance with condition 7.6 with immediate effect until the date of actual payment.

7.3 No payment shall be deemed to have been received until the Company has received cleared funds.

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7.4 All payments payable to the Company under the Contract shall become due immediately upon termination of this Contract despite any other provision.

7.5 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

7.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract the Buyer will be liable to pay interest to the Company on such sum from the due date for payment at the rate of 8% above The Bank of England's base rate then in force, accruing on a daily basis until payment is made, whether before or after any judgment.

7.7 The Company may at any time or times without notice to the Buyer, set off any liability of the Company to the Buyer against any liability of the Buyer to the Company.

7.8 Credit facilities may be withdrawn or reduced at any time at the Company's sole discretion.

## 8. TITLE AND RISK

8.1 The risk in the Product shall pass to the Buyer when the Product is loaded on to the Buyer's or the Buyer's carrier's vehicle or when delivered to the Buyer's order whichever is the sooner.

8.2 The ownership of the Product shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due in respect of:

8.2.1 the Products; and

8.2.2 all other sums which are or which become due to the Company from the Buyer on any account.

8.3 Until ownership of the Products has passed to the Buyer, the Buyer must:

8.3.1 hold the Products on a fiduciary basis as the Company's bailee;

8.3.2 store the Products (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;

8.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Products;

8.3.4 maintain the Products in satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company; and

8.3.5 hold the proceeds of the insurance referred to in Condition 8.3.4 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

8.4 The Buyer may resell the Products before ownership has passed to it solely on the following conditions:

8.4.1 any sale shall be affected in the ordinary course of the Buyer's business at full market value; and

8.4.2 any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

8.5 The Buyer's right to possession of the Products shall terminate immediately if:

8.5.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

8.5.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or

8.5.3 The Buyer encumbers or in any way charges any of the Products.

8.6 The Company shall be entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from the Company.

8.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

## 9. DELIVERY BY INSTALMENTS

In all cases where the Contract provides for delivery by instalments or part deliveries each instalment or part delivery shall be deemed to be a separate contract and cancellation of any one instalment or part delivery shall not avoid or affect contracts as to the other instalments or part deliveries.

## 10. BUYER'S DEFAULT

The Company, may at its option, cancel or withhold all further deliveries under the Contract in the event that any debt is due and payable to the Company by the Buyer and is unpaid upon the commencement of any act or proceeding in which the Buyer's solvency is involved.

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## 11. DELIVERY

11.1 Unless otherwise agreed in writing by the Company delivery of the Products shall take place at the Buyer's place of business or at a specified delivery address stated on the Buyer's purchase order.

11.2 Dates for delivery are approximate and unless the parties agree in writing otherwise time shall not be of the essence. If no dates are so specified, delivery will be within a reasonable time.

11.3 Subject to any other provisions of these Conditions, the Company shall not be liable for any loss (including loss of profits), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Products (even if caused by the Company's negligence).

11.4 In the event of a delivery of any Products as a result of any cause beyond the Company's reasonable control, the Buyer shall have no right to terminate or rescind the Contract unless such delay exceeds 30 days.

11.5 Where a delay in delivery is due to a cause within the Company's reasonable control the Company's liability and the Buyer's exclusive remedy shall be limited to the right to cancel the Contract in respect of the Products so affected.

11.6 If for any reason the Buyer will not accept delivery of any of the Products when they are ready for delivery, or the Company is unable to deliver the Products on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

11.6.1 risk in the Products will pass to the Buyer (including for loss or damage caused by the Company's negligence);

11.6.2 the Products will be deemed to have been delivered; and

11.6.3 the Company may store the Products until delivery whereupon the Buyer will be liable for all related costs and expenses (including without limitation storage and insurance).

11.7 The Buyer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for loading the Products.

11.8 Any Goods that the Buyer wishes to return howsoever arising, must be notified to the Company in writing within 14 days of receipt and will only be accepted in strict accordance with the Company's returns policy.

## 12. NON-DELIVERY

12.1 The quantity of any consignment of Products as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

12.2 The Company shall not be liable for any non-delivery of Products (even if caused by the Company's negligence) unless written notice is given to the Company within 14 days of the date when the Products would in the ordinary course of events have been received.

12.3 Any liability of the Company for non-delivery of the Products shall be limited to replacing the Products within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Products.

## 13. LOSS OR DAMAGE IN TRANSIT

13.1 Save in cases where the Company is not responsible for the delivery of the Product it shall not be liable for any damage, shortage or loss in transit or in respect of any claim consequential thereto.

13.2 In cases where the Company is responsible for the delivery of the Product the Buyer shall notify the Company in writing of any shortage, damage or loss in transit within 3 days of the date of receipt.

13.3 In cases where notice is given under Condition 15.2 hereof the Company's liability shall be limited to the cost of the Product so damaged lost or in short supply. The Company shall not be liable for any consequential loss save in cases where the Buyer has given notice in writing to the Company at the time of placing the order of the nature and extent of any claim liable to arise from loss or damage in transit.

13.4 In cases where the Company is responsible for delivery of the Product the Buyer shall be responsible for providing labour for the purpose of unloading and such unloading shall be at the Buyer's risk. In the event of unloading being undertaken by the Company's employees either (a) pursuant to the Buyer's instructions or (b) in the absence of instructions from the Buyer, such unloading shall be at the Buyer's risk.

## 14. FORCE MAJEURE

14.1 The Company shall be excused performance of its obligations whilst and if affected by act of God governmental restriction condition or control, any act done or not done pursuant to a trade dispute whether such dispute involves its employees or not, default by suppliers of the Company, shortage of materials or by any other act matter or thing beyond its reasonable control including failure by the other party to carry out anything required for performance of the contract.

14.2 In the event that the Company does not perform its obligations by reason of any of the causes referred to in Clause 14.1 within six months after the time for performance then the Company or the Buyer may, by written notice, terminate the contract without liability save that the Customer shall pay for any Products delivered or completed at the time of termination.

## 15. DEFECTS

15.1 Any defects in the Product howsoever arising must be notified in writing to the Company by the Buyer within 14 days of receipt.

15.2 In the event of such notice being received in accordance with Condition 15.1 the Buyer must make available the defective Product for the Company's examination. Should the Company find the Product is defective, the Company shall at its option either rectify the defects free of charge, or replace the defective Product free of charge or allow to the Buyer a credit in the amount of the defective Product.

15.3 If the Company complies with Condition 15.2 it shall have no further liability for defects in the Products.

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## 16. CONFORMITY & WARRANTY

Goods supplied by the Company will be of satisfactory quality and free from any material defects. The Company also confirms that all Goods supplied conform in all respects with all relevant specifications.

Goods are manufactured and supplied free from defects by material, workmanship or design and the Company will remedy any such defects by warranty for a period of 12 months once goods have been received by the Buyer.

This obligation will not stand where:

16.1 the Goods have been improperly altered in any way whatsoever, or have been subject to misuse or unauthorised repair;

16.2 the Goods have been improperly installed or connected;

16.3 any maintenance requirements relating to the Goods have not been complied with;

16.4 any instructions as to storage of the Goods have not been complied with in all respects; or

16.5. the Buyer has failed to notify the Company of any defect or suspected defect within 14 days of the delivery where the defect should be apparent on reasonable inspection, or within 14 days of the same coming to the knowledge of the Buyer where the defect is not one which should be apparent on reasonable inspection, and in any event no later than 12 months from the date of delivery.

## 17. LIMITATION OF LIABILITY

17.1 The following provisions of this Condition 18 set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

17.1.1 any breach of these Conditions; and

17.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

17.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

17.3 Nothing in these Conditions excludes or limits the liability of the Company for:

17.3.1 death or personal injury caused by the Company's negligence, or the negligence of its employees, agents or sub-contractors;

17.3.2 fraud or fraudulent misrepresentation; or

17.3.3 any other liability which cannot be legally excluded or limited. (The Buyer's attention is drawn to the provisions of Condition 19.4 below)

17.4 Subject to Conditions 19.2 and 19.3:

17.4.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this

Contract shall be limited to the cost of the Product to which any complaint relates save where written notice is given by the Buyer to the Company prior to delivery of the Products indicating the nature of any potential claim arising out of the said delivery; and

17.4.2 the Company shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## 18. ASSIGNMENT

18.1 The Buyer shall not be entitled to assign the Contract or any part of it without prior written consent of the Company.

18.2 The Company may assign the Contract or any part of it to any person, firm or company.

## 19. GENERAL

19.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

19.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

19.3 Failure or delay by the Company in enforcing or partially enforcing any provisions of the Contract and the remainder of such provision shall continue in full force and effect.

19.4 Any waiver by the Company or any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

19.5 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

19.6 The formation, existence, construction, performance, validity and all aspects of the Contract, including the legal relationships established by the Contract shall be governed by the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English courts.