

Terms and Conditions of Sale

1. INTERPRETATION

1.1. The following definitions apply to these Conditions:

“Business Day” shall mean a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

“Buyer” shall mean the legal entity described as such in the Order Confirmation or failing that, in correspondence;

“Buyer Supplied Materials” shall mean any materials which are supplied by the Buyer to the Seller for the performance of the Contract;

“Conditions” shall mean these terms and conditions of sale;

“Contract” means the contract for the purchase and sale of the Goods and/or Services subject to these Conditions;

“Goods” shall mean the goods (including any instalment of the goods) described in the Order Confirmation and which the Seller is to supply in accordance with these Conditions;

“Order Confirmation” shall mean the document provided by the Seller to the Buyer accepting the Buyer’s offer to purchase the Goods and/or Services in accordance with these Conditions;

“Payment Terms” shall mean the payment terms detailed in the Order Confirmation or failing that, in correspondence;

“Price” shall mean the cost of the Goods and/ or Services set out in the Order Confirmation to be paid by the Buyer to the Seller;

“Seller” shall mean the legal entity described as such in the Order Confirmation or failing that, in correspondence; and

“Services” shall mean the services described in the Order Confirmation and which the Seller is to provide in accordance with 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. A reference to “writing” or “written” includes fax and email.

1.5. We may amend these Conditions from time to time and we will inform you by email of any significant changes made.

2. BASIS OF SALE

2.1. The Seller shall sell and the Buyer shall purchase the Goods and/or Services in accordance with any written or verbal quotation given by the Seller, which is accepted by the Buyer, or any order submitted by email, fax, post, or telephone by the Buyer which is accepted by the Seller, subject in either case to these Conditions.

2.2. Any order submitted to the Seller by the Buyer shall be accepted entirely at the discretion of the Seller and subject to the completion by the Seller of relevant credit checks against the Buyer if the Seller considers the same to be necessary.

- 2.3. These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.4. No variation to these Conditions shall be binding unless agreed in writing between the authorised representations of the Buyer and the Seller.
- 2.5. 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, and waives any claim for breach of, any such representations, which are not so confirmed.
- 2.6. 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.
- 2.7. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance 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.

3. ORDER CONFIRMATION

- 3.1. The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods and/or Services within a sufficient time to enable the Seller to perform the Contract in accordance with such terms.
- 3.2. The quantity, quality and description and any specification for the Goods and/or Services shall be those set out in the Order Confirmation.
- 3.3. The Seller reserves the right to make any changes to the specification of the Goods and/or Services which are required to conform with any applicable safety or other statutory requirements or, where the Goods and/or Services are to be supplied to either the Seller's or Buyer's specification, which do not materially affect their quality or performance.

4. PRICE

- 4.1. The Price of the Goods and/or Services shall supersede any previous estimates or quotations provided by the Seller to the Buyer.
- 4.2. The Price is exclusive of amounts in respect of VAT, any similar sales tax or any tax that replaces such sales taxes and import duty, all of which the Buyer shall be liable to pay. The Buyer shall, on receipt of a valid invoice from the Seller, pay to the Seller any additional amounts in respect of such taxes or any other sums as are chargeable on a supply of the Goods and/or Services.
- 4.3. Unless otherwise agreed, the Price is exclusive of insurance and carriage of the Goods which shall be paid by the Buyer.
- 4.4. The Buyer is responsible for obtaining, at its own cost, such import licences and other consents in relation to the Goods as are required from time to time and, if required by the Seller, the Buyer shall make those licences and consents available to the Seller prior to the relevant shipment.
- 4.5. The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the Price where such increase is due to any factor beyond the Seller's control (including without limitation increases in material or production costs, any foreign exchange fluctuation, currency regulation, or other costs of manufacture).

- 4.6. If the Price increases after the date of the Order Confirmation, the Seller shall provide notice to the Buyer of such increase. The Buyer shall have a period of 5 Business Days from the date of the Seller's notice to respond to the Seller's notice. If the Buyer does not accept the revised price, the Buyer may cancel the Contract. If the Buyer fails to respond to the Seller's notice within 5 Business Days, the Buyer shall be deemed to have accepted the revised price and the Buyer shall be liable to pay for the Goods and/or Services at the revised price.
- 4.7. Any prices quoted by the Seller are based in their entirety upon the quantities and specifications stated in the quotation and the Seller reserves the right to revise such prices quoted should the Buyer change such quantities and specifications and/or requirements.
- 4.8. All Services performed by the Seller whether experimentally or otherwise, shall be charged to the Buyer unless otherwise agreed in writing. Additional charges may be payable in respect of the following:
 - 4.8.1. to cover additional Services where the Buyer Supplied Materials are supplied late or are not clear and legible;
 - 4.8.2. if expedited delivery requires the Seller to incur overtime or other additional costs;
 - 4.8.3. where the Buyer requests for excessive alterations or additional proofs; and
 - 4.8.4. where the Buyer changes the style, type or layout of the Goods and/ or Services after the date of the Order Confirmation.
- 4.9. The Seller reserves the right to not begin work until the Buyer has paid the deposit, if any.

5. SERVICES

- 5.1. If at any time, in the Seller's opinion, the Services required will exceed the Price, the Seller shall notify the Buyer before the Seller proceeds with, or completes, the Services.
- 5.2. Designs are subject to alteration at the pre-production stage to accommodate mass production. Any additional materials or finishes then required for samples and/or dummies or manufacture will be payable by the Buyer, unless otherwise agreed.

6. PROOFING

- 6.1. Where the Seller is required to submit proofs of the Goods and/or Services (either as hardcopies or digitally) to the Buyer for the Buyer's approval, the Buyer shall be entirely responsible for ensuring that such proofs are correct, accurate and meet the Buyer's requirements before the Buyer approves such proofs.
- 6.2. Following approval of such proofs by the Buyer, the Seller shall have no liability to the Buyer for any errors or inaccuracies in the Goods and/ or Services, or any failure of the Goods and/ or Services to meet the Buyer's requirements.

7. BUYER SUPPLIED MATERIALS

- 7.1. Where the Buyer provides Buyer Supplied Materials to the Seller, the Buyer must do so in accordance with any instructions of the Seller.
- 7.2. The Seller may reject any Buyer Supplied Materials if in the Seller's opinion such Buyer Supplied Materials are unsuitable. If the Seller is required to reject any Buyer Supplied Materials, any additional costs incurred by the Seller in handling such Buyer Supplied Materials shall be payable by the Buyer.
- 7.3. The Seller accepts no liability or risk for any damage, loss or destruction caused to any Buyer Supplied Materials in the Seller's possession.

- 7.4. Notwithstanding the Seller's right not to accept an order, the Buyer hereby agrees that it shall indemnify, keep indemnified and hold harmless the Seller in respect of any claims, costs, damages and expenses (including all legal and other professional costs and expenses) that the Seller may suffer or incur which arises out of or in connection with any proceedings or action against the Seller resulting from any Buyer Supplied Material.

8. SAFETY TESTING

- 8.1. The Buyer shall be responsible for informing the Seller of any specific safety requirement or feature that may be applicable or required in connection with the Goods and/or Services.
- 8.2. Unless otherwise agreed by the Seller in writing, the Buyer shall be responsible, at its own expense, for any safety testing that is required to meet the regulations of the market or country or region where the Goods are to be distributed, including without limitation the provision of age marks and other relevant information.
- 8.3. The Seller shall not be liable to the Buyer for any losses incurred by the Buyer or any third party resulting from the Buyer's performance of, or failure to perform, any such safety testing responsibilities.

9. INTELLECTUAL PROPERTY

- 9.1. Nothing in these Conditions will change the ownership of any of the intellectual property rights of either party.
- 9.2. All intellectual property rights created in connection with the Goods and/or Services remain vested in the Seller or its licensors.
- 9.3. Unless otherwise agreed, the Buyer hereby irrevocably assigns to the Seller any and all right, title and interest it may hold in any intellectual property rights created as part of, or in connection with, the Services with full title guarantee, at no cost to the Seller and without imposing any further conditions.
- 9.4. The Seller reserves the right not to perform the Services or produce any Goods to the extent that the Seller considers such Services or Goods to be unlawful, defamatory, illegal, or an infringement of the intellectual property rights or other rights of any third party.
- 9.5. The Buyer hereby warrants to the Seller that any Buyer Supplied Materials and all information provided by the Buyer to the Seller under the Contract, including without limitation in the Buyer's order, shall not infringe the intellectual property rights or other rights of any third party.
- 9.6. The Buyer shall indemnify and keep indemnified the Seller in full against any losses, claims, costs, damages and expenses (including all legal and other professional costs and expenses) incurred by the Seller resulting from a claim that the Buyer Supplied Materials, or any other information provided by the Buyer to the Seller in connection with the Contract infringe the intellectual property right of any third party.
- 9.7. Unless otherwise agreed, all intellectual property rights created by the Seller in connection with the Goods and/or Services shall be owned by the Seller and the Buyer shall only be entitled to such intellectual property rights if the Seller agrees to assign the same to the Buyer and the Buyer pays the agreed assignment fee to the Seller.

10. TERMS OF PAYMENT

- 10.1. Unless otherwise agreed by the Seller in writing, the Buyer shall pay the Price in accordance with the Payment Terms.
- 10.2. The Buyer shall pay each invoice in full within 30 days after receipt.

- 10.3. If the Buyer cancels any order after the date of the Order Confirmation, the Buyer shall pay to the Seller the cost of the materials and work done by the Seller up to the point that the order was cancelled.
- 10.4. If the Buyer fails to make payment on the due date then, without limiting any other right or remedy available to it, the Seller shall be entitled to:
- 10.5. cancel the Contract or suspend any further deliveries of the Goods or provision of any Services to the Buyer; and
- 10.6. charge interest, from the date on which payment was due until the actual date of payment (whether before or after judgment), at a rate of 4 per cent. per annum above the official base rate of the Bank of England, accruing daily. The Buyer will pay the accrued interest together with the overdue amount.
- 10.7. The Buyer shall make all payments due to the Seller under the Contract in full and without any set-off, counterclaim, deduction or withholding.

11. DELIVERY

- 11.1. Delivery of the Goods shall be made by the Seller to the address shown on the Order Confirmation or failing that, to the address agreed in correspondence.
- 11.2. 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 howsoever caused. Time for delivery shall not be of the essence 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.
- 11.3. Any time or date specified by the Seller for delivery of the Goods or completion of the Services is conditional upon the Buyer's compliance with the Seller's instructions and meeting the Seller's specified deadlines for the submission of materials, including without limitation any Buyer Supplied Materials, approvals or any other deadlines scheduled by the Seller. Any delays in meeting the Seller's specified deadlines may result in a delay in completion. The Seller shall not be liable for any loss incurred by the Buyer arising from the Buyer's failure to meet the deadlines (or any revised deadlines) specified by the Seller.
- 11.4. Unless otherwise agreed, the Seller reserves the right to deliver up to 5% more or 5% less than the quantity ordered and the quantity so delivered and the Price shall be amended accordingly and payable by the Buyer.
- 11.5. 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.
- 11.6. If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 11.7. If the Buyer fails to accept delivery of the Goods or any instalment of the Goods, the Seller has the right to charge the Buyer for the incidental costs incurred by the Seller as a result of the Buyer's failure to accept delivery including without limitation costs incurred in connection with storing the Goods until the Buyer accepts delivery, the costs of transporting the Goods to the Buyer's alternative delivery address.

12. TITLE AND RISK

- 12.1. The risk in the Goods shall pass to the Buyer on completion of delivery.
- 12.2. Title to the Goods shall not pass to the Buyer until the Seller receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Seller has supplied to the Buyer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 12.3. Until title to the Goods has passed to the Buyer, the Buyer shall:
 - 12.3.1. store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;
 - 12.3.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 12.3.3. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; and
 - 12.3.4. give the Seller such information relating to the Goods as the Seller may require from time to time.

13. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by circumstances beyond the reasonable control of the party affected, including but not limited to, act of God, fire, flood, war, riot, civil disturbance, government action, accident, labour disputes, shortages or inability to obtain material, weather conditions, environmental disasters, theft of equipment, transportation delays or default of suppliers of subcontractor.

14. SUSPENSION AND TERMINATION

- 14.1. This clause applies if the Buyer:
 - 14.1.1. fails to pay any undisputed amount due under these Conditions on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
 - 14.1.2. commits a material breach of any other term of these Conditions which breach is irremediable or and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - 14.1.3. repeatedly breaches any of the terms of these Conditions in such a manner as reasonably to justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
 - 14.1.4. threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 14.1.5. 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 its creditors;
 - 14.1.6. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of the Buyer;
 - 14.1.7. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Buyer;

- 14.1.8. the holder of a qualifying floating charge over the assets of the Buyer has become entitled to appoint or has appointed an administrative receiver;
 - 14.1.9. a person becomes entitled to appoint a receiver over the assets of the Buyer or a receiver is appointed over the assets of the Buyer;
 - 14.1.10. 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 its assets and such attachment or process is not discharged within 14 days;
 - 14.1.11. 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 clause 14.1.4 to clause 14.1.10 (inclusive);
 - 14.1.12. the other party ceases, or threatens to cease, to carry on all or substantially the whole of its business; or
 - 14.1.13. there is a change of control of the Buyer (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 14.2. 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 shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary and the Seller may enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.
- 14.3. Notwithstanding any action taken by the Seller under this clause, the Buyer shall remain liable to pay for all Goods ordered.

15. EXCLUSION AND LIMITATION OF LIABILITY

- 15.1. Nothing in these Conditions limits or excludes the Seller's liability for:
- 15.1.1. death or personal injury caused by the Seller's negligence;
 - 15.1.2. fraud or fraudulent misrepresentation; or
 - 15.1.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession).
- 15.2. Subject to clause 15.1, the Seller will under no circumstances be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract for:
- 15.2.1. any loss of profits, sales, business, or revenue;
 - 15.2.2. loss or corruption of data, information or software;
 - 15.2.3. loss of business opportunity;
 - 15.2.4. loss of anticipated savings;
 - 15.2.5. loss of goodwill; or
 - 15.2.6. any indirect or consequential loss.

- 15.3. The Buyer's exclusive remedy for any defective Goods is expressly limited to the replacement of the defective Goods or, if replacement is not practicable, damages not exceeding the Price of such defective Goods.
- 15.4. Subject to clause 15.1, 15.2 and 15.3, the Seller's total liability to the Buyer in respect of all losses arising under or in connection with the Contract, will be limited, in respect of all claims (connected or unconnected) in any consecutive 12 month period, to 100% of the Price.
- 15.5. The Buyer shall examine the Goods promptly upon receipt. The Seller shall not be liable for any defects in quantity or quality of the Goods unless the Buyer gives written notice of the defect to the Seller in sufficient detail to enable the Seller to identify the defect within 30 days of Buyer's receipt of the Goods.

16. WARRANTIES

- 16.1. Except as expressly stated in these Conditions, the Seller does not give any representation, warranties or undertakings in relation to the Goods. Any representation, condition or warranty which might be implied or incorporated into these Conditions by statute, common law or otherwise is excluded to the fullest extent permitted by law. In particular, the Seller will not be responsible for ensuring that the Goods are suitable for the Buyer's purposes.
- 16.2. 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 free from defects in material and workmanship for a period of 6 months from the date of delivery.
- 16.3. The above warranty is given by the Seller subject to the following conditions:
 - 16.3.1. the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design, Buyer Supplied Materials, or specification supplied by the Buyer;
 - 16.3.2. 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;
 - 16.3.3. the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment; and
 - 16.3.4. 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 manufacture or the Seller.
- 16.4. Except as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 16.5. The Seller will:
 - 16.5.1. perform the Services with reasonable skill and care and in accordance with applicable laws; and
 - 16.5.2. use reasonable efforts to complete the Services within the Buyer's requested timeframes, but time will not be of the essence.

20. STORAGE

If for any reason the Buyer is unable to accept delivery or collect the product at the time when the product is ready the Seller shall be under no obligation to store the same. The Seller may however, at

its discretion and if its storage facilities permit, store the Goods but at the Buyer's risk and the Buyer shall be liable to the Seller for the reasonable cost (including insurance) of it so doing.

21. SEVERANCE

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

22. ASSIGNMENT

- 22.1. The Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 22.2. The Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Seller.

23. VARIATION

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Seller.

24. GENERAL

- 24.1. The Contract constitutes the entire agreement, and supersedes any previous agreement, between the parties relating to the subject matter of the Contract.
- 24.2. Each party acknowledges that it has not relied on or been induced to enter the Contract by a representation, warranty or undertaking (whether contractual or otherwise) other than those expressly set out in the Contract.
- 24.3. Except as expressly provided in the Contract, any failure to exercise or delay in exercising (whether fully or at all) a right or remedy provided by the Contract or by law does not constitute a waiver of the right or remedy or a waiver of any other rights or remedies.
- 24.4. A notice under or in connection with the Contract:
 - 24.4.1. must be in writing;
 - 24.4.2. must be in the English language; and
 - 24.4.3. must be delivered personally or first class post to the party due to receive the notice to the address specified in the Order Confirmation.
- 24.5. A person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.
- 24.6. This Contract and all non-contractual obligations arising out of or in connection with it are governed by English law and subject to the exclusive jurisdiction of the English courts.