

**DEFINITIONS**

'Seller' means Tektum Supplies Limited incorporated under the Companies Acts with registered company number SC646466 and having its registered office at Unit 3, 56 Clydesmill Place, Cambuslang, Glasgow, G32 8RF.

'Business Day' means a day other than a Saturday, Sunday or public holiday in Scotland when banks in Glasgow are open for business.

'Buyer' means the person, firm or company who buys or agrees to buy the Goods from the Seller.

'Conditions' means the standard terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller.

'Contract' means the contract for the sale of the Goods by the Seller to the Buyer incorporating these Conditions arising from the Seller's acceptance of the Buyer's order.

'Delivery Date' means the date specified by the Seller when the goods are to be delivered.

'Goods' means the articles which the Buyer agrees to buy from the Seller.

'Price' means the price for the goods (excluding carriage, packing, insurance and VAT).

**1. CONDITIONS APPLICABLE**

1.1 These conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other Terms and Conditions which the Buyer may purport to apply under any Purchase Order, Confirmation of Order or similar document. All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions. Acceptance of delivery of the Goods shall be deemed to be conclusive evidence of the Buyer's acceptance of these Conditions. Any variation of these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

1.2 Any quotation/estimate provided by the Seller to the Buyer shall be an invitation to treat and not an offer to sell. A quotation/estimate shall only be valid for a period of 20 Business Days from its date of issue. Any offer by the Buyer to purchase goods at the quoted/estimated price shall not constitute a binding contract unless and until such offer is accepted by the Seller. Any such acceptance by the Seller shall be subject to the Buyer's credit status being approved by the Seller.

1.3 In the event of any payment not being made when due or if the Seller at its discretion at any time considers the financial circumstances of the Buyer (including reference as to credit worthiness) have ceased to justify the terms allowed or if the Buyer or any associated company thereof is in default of any contract with the Seller, the Seller reserves the right to:

- (a) refuse to execute any order or to suspend any deliveries or to cancel any allowance of further credit: or
- (b) require full or partial payment of the price of the goods prior to delivery or the provision of security for payment by the Buyer in a form acceptable to the Seller.

**2. PRICE**

2.1 Goods are sold and will be invoiced at such prices as are shown on the Sellers' price list current at the time of order provided that the Seller shall have the right to alter such prices without notice (even after acceptance of an order) in order to reflect increases in the cost of materials, labour, transport, energy and other costs incurred in manufacturing and/or supplying the goods and/or to reflect any increase in cost to the Seller due to currency fluctuations, changes in currency regulations, any delay on the part of the Buyer in complying with any of its obligations under the contract or any other circumstances beyond the control of the Seller.

2.2 Prices of goods are stated exclusive of Value Added Tax which shall be payable in addition to and along with the price at the rate in force on the date of the Sellers' invoice.

2.3 For consignments having value above £500.00 the cost of carriage by road transport to destinations in the UK shall be borne by the Seller. In respect of consignments below this value, the Seller shall be entitled to make a reasonable carriage charge for delivery. Should any specific form of transport be stipulated by the Buyer, the cost of carriage will be charged to the Buyer irrespective of order value. Where goods, materials or services are provided or delivered by a third party, the Seller reserves the right to charge any applicable carriage to the Buyer.

2.4 The cost of any variation or modification in design, specification, materials or drawings of goods requested by the Buyer shall be borne by the Buyer.

2.5 The Seller may invoice the Buyer for the Goods either (i) on or after delivery of the Goods; or (ii) 20 Business Days following Confirmation of Order by the Seller, whichever is earlier.

2.6 Payment of the price and VAT shall be due at the end of the month following the month of invoice and interest on overdue invoices shall accrue from the date when payments become due from day to day until the date of payment at a rate of 8% above 'our bankers' base rate from time to time in force and shall accrue at such a rate as well after as before the date of any Court Decree.

2.7 Each party shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction, discount or abatement (except for any deduction or withholding required by law).

**3. DELIVERY & RISK**

3.1 Risk of damage to or destruction of the Goods shall pass to the Buyer upon delivery. Delivery will, with the exception of goods uplifted by the Buyer from the Sellers' premises be made to such address or place as may be intimated by the Buyer to the Seller in writing. Delivery will be deemed to take place.

(a) in the case of collection by the Buyer, on receipt of the goods by the Buyer on the Seller's premises and, for the avoidance of doubt, prior to the loading thereof onto the Buyer's own transport.

(b) in the case of delivery by the Seller's transport, immediately preceding unloading of the Goods from the Seller's transport.

(c) in the case of delivery by carrier, when the Goods are delivered to the carrier.

3.2 In making delivery of the Goods, time shall not be of the essence of the contract, and the Seller shall not be liable for any loss, costs or expense suffered by the Buyer by reason of any delay in delivery. The Seller shall however use its reasonable endeavours to meet any quoted date of delivery.

3.3 The Seller shall be entitled to make delivery of a proportion of the Goods on the same terms and conditions as set out herein provided that where the total value of the goods exceeds £500.00 the cost of carriage by road transport to destinations in the UK shall be borne by the Seller in terms of clause 2.3 hereof. Failure by the Buyer to pay for any one or more of said proportions of goods on the due date or dates shall entitle the Seller (at the sole option of the Seller) without notice to suspend further deliveries of the Goods pending payment by the Buyer and/or to treat the contract as repudiated by the Buyer giving the Seller the right to suspend delivery of other orders or portions of orders.

3.4 The Seller is not under any liability to replace or repair Goods lost or damaged in transit unless written notice shall have been given to the Seller. Such written notice must be given in the case of non-delivery within five Business Days of the date of despatch as indicated on advice note and in the case of damage or shortage within three Business Days of receipt.

3.5 If clause 3.1(a) applies and the Goods are not collected by the Buyer within five Business Days of the delivery date, the Seller may charge the Buyer for storage at the Seller's usual storage rates and the resulting charges shall be payable by the Buyer on demand.

**4. PASSING OF PROPERTY**

4.1 Although the Goods may have been delivered and risk in the Goods may have passed to the Buyer, title in the Goods shall remain with the Seller and shall pass to the Buyer only when the Seller has received in cash or cleared funds the price for the Goods, any applicable VAT, any carriage, packing and insurance charges and payment of any other sums then due by the Buyer to the Seller under the contract or under any other contract between them whereby the Seller will supply Goods to the Buyer.

4.2 Until title in the Goods does pass to the Buyer then (without prejudice to the Buyer's right to resell the Goods or to carry out any industrial process using the goods, in either case in the ordinary course of business), the Buyer shall keep the Goods separate from its own goods and the goods of others and clearly marked or identified as being the property of the Seller and shall ensure that the goods are kept safe, secure and insured.

4.3 For as long as the Goods have not been re-sold by the Buyer in the ordinary course of business and title in the Goods has not passed to the Buyer, the Seller may at any time retake possession of the Goods in such way as it thinks fit, including entering any premises of the Buyer where the goods are to remove them.

4.4 It is expressly agreed that the Seller shall have the right to trace its title to the proceeds of any sub-sales. Moreover, the Seller may require the Buyer to assign to the Seller the right to receive payment arising from such sub-sales made by the Buyer.

4.5 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.

**5. PERFORMANCE**

5.1 The Buyer shall be deemed to have accepted the Goods as being in conformity with the order and shall be bound to pay for them unless written notice of rejection is received by the Seller within three Business Days of delivery. Goods accepted by the Buyer cannot subsequently be returned and any claim which the Buyer might otherwise have shall be deemed to have waived. The Seller reserves the right to charge a handling fee of 20% on Goods returned for credit when incorrectly ordered and on orders cancelled subsequent to Goods being manufactured, assembled or packaged.

5.2 Subject to the preceding paragraph, faulty or rejected material will be credited only after return to, and receipt of such material at, the Seller's premises. Proof of despatch will not be proof of delivery.

**6. DRAWINGS AND SPECIFICATIONS**

6.1 Unless otherwise expressly agreed in writing, all illustrations and dimensions shown in the Seller's catalogue and other sales literature are approximate. The Seller gives no guarantee or representation that the Goods will in all cases be identical to the illustration and dimensions specified in such catalogues and literature due to improvements and modifications to the Goods or their specifications that may be made from time to time.

## **7. WARRANTIES AND LIMITATION OF LIABILITY**

7.1 Where the Buyer establishes to the reasonable satisfaction of the Seller that;

- (a) the Goods are defective (save where they are defective because of any defect in any part or materials supplied by a third party) or
- (b) the Goods do not conform to specification where the specification is expressly stated in the contract;

then the Seller shall, at its sole discretion, either replace the Goods with goods which are in all respects in accordance with the contract, or refund to the Buyer the price of the goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.

7.2 ANY OTHER CONDITION, WARRANTY, REPRESENTATION OR UNDERTAKING ON THE PART OF THE SELLER AS TO THE QUALITY OF THE GOODS OR THEIR FITNESS OR SUITABILITY FOR ANY PURPOSE HOWEVER AND WHENEVER EXPRESSED WHICH MAY BE IMPLIED BY STATUTE, CUSTOM OF THE TRADE OR OTHERWISE IS HEREBY EXCLUDED, AND THE PROVISIONS OF SECTION 13-15 INCLUSIVE OF THE SALE OF GOODS ACT 1979 (OR ANY AMENDMENT OR RE-ENACTMENT THEREOF) SHALL NOT APPLY TO THE CONTRACT EXCEPT WHERE THE BUYER DEALS AS A CONSUMER WITHIN THE MEANING OF SECTION 12 OF THE UNFAIR CONTRACT TERMS ACT 1977 (OR ANY RE-ENACTMENT OR AMENDMENT THEREOF) AND SHALL ALSO NOT APPLY TO ANY CONTRACT WHICH IS A CONSUMER CONTRACT WITHIN THE MEANING OF SECTION 25(1) OF THAT ACT.

7.3 The Seller's liability to the Buyer in contract, delict/tort or for breach of statutory duty for direct injury, loss or damage shall be limited to the provision of replacement goods or refund of the price (or proportionate part thereof) of Goods in accordance with Clause 7.1 hereof

7.4 The Seller shall not be liable to the Buyer in contract, delict/tort or for breach of statutory duty for any indirect, consequential or economic loss of any kind whatsoever which the Buyer may suffer by reason of any act, omission, neglect or default (including negligence) in the performance of the Contract by the Seller, its employees or agents.

7.5 Nothing in these conditions shall:

- (a) limit or exclude the liability of the Seller in respect of death or personal injury resulting from the negligence of the Company, its employees or agents; or
- (b) limit or exclude the liability of the Seller in respect of fraud or fraudulent misrepresentations; or
- (c) exclude the conditions and warranties implied by Section 12 of the Sale of Goods Act 1979 (as amended); or
- (d) impose on the Seller any liability in respect of any representation, suggestion or comment with regard to the Goods made by the Seller, its employees or agents in the course of any negotiation between the Seller and the Buyer leading to the making of the Contract unless in the course of any such representation the Seller has expressly agreed in writing that it shall be a term of the Contract.

7.6 The Seller shall have no liability to the Buyer for any breach of contract, delay in performing or failure to perform any of its obligations under this Contract if such breach, delay or failure is a result of a force majeure event or any other event, circumstance or cause beyond the reasonable control of the Seller, including but not limited to the following: acts of God, fire, flood strike, sit-in walkout, act of war or terrorism, supervening illegality, political instability, intervention by governmental authority, trade disputes, breakdown of plant, machinery or interruption of power supplies. If the period of delay or non-performance continues for 3 months, the Buyer may terminate the Contract by giving 20 Business Days written notice to the Seller.

## **8. SPECIAL GOODS**

8.1 In respect of goods made or adapted specifically to the Buyer's design and specification ("special goods") the Seller shall be entitled to reject any materials supplied or specified by the Buyer which the Seller in its judgement considers unsuitable. Additional costs incurred by the Seller where such materials are judged to be unsuitable, will be charged to the Buyer. Quantities of materials supplied by the Buyer shall be adequate to cover normal spoilage.

8.2 The Seller accepts no responsibility for the accuracy or suitability of patterns, designs, tools, drawings, particulars or specifications relating to special goods which are supplied or specified by the Buyer, and the Seller shall be entitled to accept the same as being without defect. The Seller shall have no responsibility for the quality or fitness of special goods for any particular purpose which is made known to the Seller, and all implied conditions and warranties as to suitability and/or fitness for purpose are excluded. The Buyer shall be liable for, and shall defend, indemnify and hold harmless the Seller from and against each and every claim which arises out of or in any way relates to any defect in special goods, whether or not such defect is due to quality, design, fitness for purpose or in any way whatsoever, unless the same is due directly to the negligence of the Seller, its employees or agents.

8.3 The Buyer represents and warrants to the Seller that neither the special goods nor the manufacture thereof by the Seller will infringe any patents, copyright, registered design, trademark or any other proprietary right of any third party. The Buyer shall be liable for and shall defend, indemnify and hold harmless the Seller against each and every claim by any other person that the special goods or the manufacture thereof by the Seller infringed any patent, copyright, registered design, trademark or any other proprietary right of any third party.

8.4 For the purposes of this clause and any indemnity given by the Buyer to the Seller, the word "claim" or "claims" shall mean any and all claims, liens, judgements, awards, remedies, debts, liabilities, damages, injuries, costs, losses, expenses or causes of action of whatever nature whether arising in contract, in delict or in tort for breach of statutory duty and including without limitation punitive damages or exemplary damages and those made or enjoyed by dependents, heirs, claimants, executors, administrators, successors, survivors or assigns.

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

9.1 If any of the following events occurs or, in the opinion of the Seller is reasonably likely to occur:-

- (a) the Buyer commits any breach of contract or
- (b) any distress or execution is levied upon any of the goods or property of the Buyer and is not paid out within seven days or any lien or hypothec is exercised against any of the goods or property of the Buyer and the same are not released there from within seven days; or
- (c) the Buyer (or where the Buyer is a partnership and Partner thereof) offers to make arrangements with or for the benefit of its or his creditors generally or a petition is presented for the bankruptcy of any such Buyer or any such Partner; or
- (d) the Buyer being a Limited Company has an administrative Receiver or a Receiver and Manager appointed of the whole or any part of its undertaking, property or assets or a Petition is presented or an order is made or a resolution is passed for the winding-up of the Buyer or the appointment of an Administrator thereof.

9.2 The Seller shall be entitled (without prejudice to its other rights hereunder) forthwith to suspend further performance of the contract (and any other contract between the Seller and Buyer) until default has been made good or, at the Seller's option, to terminate the contract between the Seller and the Buyer or any unfulfilled part thereof or to make partial supplies of goods not withstanding any such termination. In such circumstances the Buyer shall make the payment to the Seller for all work done, materials used and goods delivered up to and including the date of termination and shall in addition indemnify the Seller against any resulting loss, damage or expense incurred by the Seller in connection with the non-performance of the contract including the cost of any material, plant or tools used or intended therefore and the cost of labour and other overheads including a percentage in respect of profits.

9.3 The rights and remedies provided under this Contract are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

## **10. NOTICE**

10.1 Any notice to be given by either party to the other under the Contract shall be in writing and may be delivered by hand or sent by first class recorded delivery post to the address of the other party as given in the Contract or to such other address as may have been intimated to the other party in terms of this clause. The notice shall be deemed to have been served on the day of delivery or, in the case of posting, on the second day following the date of posting.

## **11. ASSIGNATION**

11.1 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.

11.2 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 except with the prior written consent of the Seller.

## **12. SEVERANCE**

12.1 Any provision of this Contract which is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision of this Contract.

## **13. VARIATION**

13.1 No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **14. WAIVER**

14.1 No waiver or forbearance by the Seller (whether express or implied) in enforcing any of its rights under this Contract shall prejudice its right to enforce such rights under this or any other Contract at any time in the future.

## **15. THIRD PARTY RIGHTS**

15.1 No one other than a party to this Contract shall have any right to enforce its terms.

## **16. APPLICABLE LAW**

16.1 These terms and conditions and each and every Contract made pursuant thereto shall be governed by and construed in all aspects in accordance with the Law of Scotland and the Seller and the Buyer irrevocably submit to and prorogate the exclusive jurisdiction of the courts in Scotland.