

TROX UK'S TERMS AND CONDITIONS OF SALE

Quotations and Order Acknowledgements are given on the condition that the following Conditions be accepted by the Buyer to the exclusion of the Buyer's conditions.

1. General

1.1. In these Conditions the following terms shall have the following meanings:

“Authorised Signatory” means a director or the company secretary of the Seller, as applicable, or any other person designated as such in writing by the Seller (as applicable);

“Buyer” the person who, pursuant to condition 2.4, places an Order for the supply of the Goods and/or Services which is accepted by the Seller;

“Conditions” the standard terms and conditions of sale set out in this document, including as may be amended or supplemented by any Special Conditions;

“Contract” means the Conditions, the Quotation (if any), the Order, Order Acknowledgement and any Special Conditions;

“Credit Services” has the meaning given to it in condition 6.1;

“DoP” means the relevant Declaration of Performance relating to the Goods;

“Goods” the Goods agreed to be supplied by the Seller in accordance with the Contract (as may be amended from time to time in writing by the Seller in accordance with these Conditions);

“Goods Specification” means a specification for the Goods prepared or provided by the Buyer and expressly accepted as such by the Seller in writing (subject always to condition 2.14);

“Incoterms” means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made;

“Insolvent” means the Buyer makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or becomes bankrupt or becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; the Buyer ceases, or threatens to cease, to carry on business; or any similar or analogous event occurs in any jurisdiction, or the Seller reasonably apprehends that any of the foregoing events is about to occur in relation to the Buyer and notifies the Buyer in writing;

“Intellectual Property Rights” all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

“IOM” means Installation & Operating Manual;

“Order” the Buyer's order for the supply of Goods and/or Services, as set out in writing;

“Order Acknowledgement” the written order confirmation provided by the Seller to the Buyer confirming the Seller's acceptance of the Buyer's Order;

“Parties” shall mean the Buyer and the Seller, and “Party” shall mean either one of them (as applicable);

“Quotation” means the Seller's written invitation to treat (whether or not provided following receipt of a Request for Quotation from the Buyer), inviting the Buyer to place an Order in respect of the Goods and/or Services listed in the quotation;

“Request for Quotation” means a request by the Buyer (including any request made verbally, in writing, or otherwise through the Website by the Buyer using the ‘Calculate the price’ mechanism on the Website) for the provision of a Quotation by the Seller in respect of the Goods and/or Services identified in that request;

“Seller” means TROX UK Limited (Company number 713650);

“Services” means the services agreed to be supplied by the Seller and confirmed as such in any Order Acknowledgement, as may be amended from time to time in writing by the Seller;

“Special Conditions” means any amendments and/or additions to the Conditions and/or the Order as notified by the Seller to the Buyer and/or any other special terms and conditions expressly agreed in writing between the Parties;

“Total Order Value” has the meaning given to it in condition 6.3;

“Warranty Period” means the period of 12 months from the date the Seller was ready to deliver the Goods or (if applicable) 12 months from the date of inspection by the Buyer pursuant to condition 6.10; and

“Website” means the Seller's website at <https://www.troxuk.co.uk/> or such other domain as the Seller may operate from time to time.

1.2. The following rules of interpretation shall apply to these Conditions:

1.2.1. Condition and paragraph headings shall not affect the interpretation of these Conditions;

1.2.2. Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular;

1.2.3. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;

1.2.4. Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, replaced, re-enacted or extended at the relevant time;

1.2.5. Any reference to a Party's consent or approval being required is to a consent or approval in writing, which must be obtained before the relevant action is taken or event occurs;

1.2.6. Any obligation on a Party not to do something includes an obligation not to allow that thing to be done;

1.2.7. Any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms;

1.2.8. For the avoidance of doubt, where the Buyer is obliged to indemnify the Seller pursuant to the Contract the indemnity shall include (without limitation) legal costs, disbursements and any other professional charges, interest and penalties which the Seller may incur.

2. Quotations and Orders

2.1. In the event of any discrepancy or conflict between these Conditions, the Quotation (if any), the Order Acknowledgement and any Special Conditions the order of priority shall be as follows:

2.1.1. Special Conditions;

2.1.2. Conditions;

2.1.3. Order Acknowledgement;

2.1.4. Quotation (if any);

2.1.5. Order,

save where the context would otherwise clearly require.

2.2. In entering into the Contract the Buyer acknowledges that it does not rely on, and hereby waives any claim against the Seller for breach in relation to, any representations made by the Seller. The Contract constitutes the entire agreement between the Parties to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which would otherwise be implied by law, trade customer, practice or course of dealing. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract. For the avoidance of doubt, this condition 2.2 does not exclude the Seller's liability for fraudulent misrepresentation.

2.3. Any typographical, clerical or other error or omission in any sales literature, Quotation, price list, Order Acknowledgement, invoice or other document or information issued by the Seller (including any information listed on the Website) may be corrected by the Seller without any liability on the part of the Seller and without any requirement for the Buyer's consent to such correction. Any such correction shall form part of and shall be treated as an amendment to the Contract.

2.4. The Order constitutes an offer placed by the Buyer to purchase Goods and/or Services in accordance with these Conditions. The Buyer may place an Order through:

2.4.1. accepting in writing any Quotation of the Seller (including any Quotation provided by the Seller in response to a Request for Quotation received from the Buyer); or

2.4.2. otherwise making an offer to the Seller (including by placing an order on the Website) to purchase Goods and/or Services from the Seller at the price specified in the offer.

For the avoidance doubt, any Order placed on the Website pursuant to condition 2.4.2 which is not accepting a Quotation provided pursuant to condition 2.4.1 shall be an Order for the supply of the Goods and/or Services specified in the Order for the price listed for those Goods and/or Services on the Website at the time that the Order is placed.

2.5. Where the Order is placed by the Buyer through the Website, the Seller may send an email to the Buyer confirming the Seller's receipt of that Order. For the avoidance of doubt, the provision and receipt of an email confirming the Seller's receipt of an Order shall not constitute an Order Acknowledgement.

2.6. The Order shall only be deemed to be accepted when the Seller issues an Order Acknowledgement, at which point and on which date the Contract shall be formed.

2.7. Acceptance of any Order placed by the Buyer shall be at the Seller's discretion and the Seller shall be entitled to reject or refuse any Order for any reason (including where the Goods and/or Services are no longer in stock or because the credit worthiness of the Buyer has not been established to the satisfaction of the Seller).

2.8. Any samples, drawings, descriptive matter or advertising issued by the Seller and any descriptions of the Goods or illustrations or descriptions of the Services issued or published to set out those Services and/or Goods so described (whether in this Contract, on the Website or elsewhere) are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in or on them. They shall not form part of the Contract or have any contractual force unless otherwise agreed in writing by the Seller.

2.9. Once the Contract has been formed, no Contract may be cancelled by the Buyer except with the agreement in writing of the Seller (which shall be entirely at the Seller's discretion without any obligation to so agree). Notwithstanding any agreement by the Seller to a cancellation, the Buyer shall fully indemnify the Seller in the event of cancellation, in full against any or all losses (including but not limited to consequential loss and loss of profit), costs (including but not limited to the cost of all labour and materials used and including but not limited to the cost of cancellation of any third party orders placed by the Seller in order to fulfil the contract, transportation and warehousing costs), damages, charges and expenses incurred by the Seller as a result of such cancellation.

2.10. The Seller reserves the right to subcontract any Contract or part of any Contract without giving notice to the Buyer.

2.11. The Buyer may only request a change to a Contract in writing, and for the avoidance of doubt the Seller is under no obligation to accept such change request. In the event that changes to a Contract are agreed to by the Seller, such changes will be subject to charges for all costs occasioned by such change(s), and the Seller will be under no obligation to implement said changes unless and until the Buyer agrees to pay such additional costs in writing.

2.12. The Buyer shall be entitled at any time, whether verbally, in writing or otherwise through use of the 'Calculate the price' mechanism on the Website, to make a Request for Quotation in respect of specific Goods and/or Services. Following receipt of a Request for Quotation, the Seller shall exercise reasonable endeavours to promptly provide the Buyer with a Quotation in respect of the Goods and/or Services identified in the Buyer's Request for Quotation. The Quotation may be provided to the Buyer through the Website, by email or otherwise in writing.

2.13. Any Quotation given by the Seller shall not constitute an offer (including, for the avoidance of doubt, where such Quotation is provided in response to a Request for Quotation from the Buyer) and is only valid for a period of 7 calendar days from the date of issue of the Quotation (save where the Seller has expressly agreed in writing to a different period).

2.14. The Seller shall only be obliged to comply with any Goods Specification where it has expressly agreed to do so in writing. To the extent that the Seller has agreed to manufacture the Goods in accordance with a Goods Specification (whether in whole or in part), the following provisions shall apply:

2.14.1. the Seller warrants that it shall exercise reasonable skill and care to comply with the Goods Specification (and in no event shall the Seller's liability for the Services exceed this standard of care);

2.14.2. the Seller shall have no liability to the Buyer in respect of any fault, defect, failure, loss or damage caused by or in connection with the Goods where such fault, defect, failure, loss or damage was due (in whole or in part) to the Goods Specification (including but not limited to in respect of the Goods themselves); and

2.14.3. the Buyer shall indemnify the Seller against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Seller in connection with any claim made against the Seller as a consequence of the Seller's use of or compliance with the Goods Specification (including but not limited to any actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Seller's use of the Goods Specification).

Condition 2.14.3 shall survive any termination of the Contract.

2.15. The Buyer confirms and acknowledges that it is not a consumer and that it enters into each Contract as a business.

3. The Goods

3.1. The Seller shall sell and the Buyer shall purchase the Goods in accordance with the terms of the Contract.

3.2. The Seller shall not be liable if such Goods being a component part or parts of a solution are not suitable for use with other parts purchased by the Buyer in relation to such solution from persons other than the Seller or if such parts do not together perform in the manner required by the Buyer, or if the Goods are not used and/or applied by the Buyer as directed by the Seller.

3.3. The Seller does not warrant that the Goods will be fit for any particular purpose and the Buyer agrees that the Goods are not required for any particular purpose.

3.4. The Seller provides the Goods on the basis that the Goods are designed only to be installed / used in accordance with both the relevant DoP and IOM and the Seller shall have no liability whatsoever to the Buyer or any third party where the Goods are not installed / used in accordance with the relevant DoP and / or IOM.

3.5. The Buyer shall give 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 its terms.

3.6. The quantity, quality and description of and any specification for the Goods shall be those set out in the Order Acknowledgement.

3.7. The Seller reserves the right to make any changes to the Order for the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification which do not materially affect their quality or performance.

3.8. All Intellectual Property Rights in or arising out of or in connection with the Goods and/or Services including, without limitation, any drawings, designs, specifications and other information provided by the Seller under the Contract shall be owned by the Seller and shall not pass to the Buyer. The use by the Buyer of such Intellectual Property Rights shall only be permitted where given expressly in writing by the

4. Services

- 4.1. This condition 4 shall only apply where the Seller has expressly agreed in writing to provide Services to the Buyer. Save where this condition 4 applies and subject always to condition 9, the Seller shall have no liability whatsoever for any advice (whether verbal or in writing) provided to the Buyer at any time.
- 4.2. The Seller warrants that the Services (if any) will be supplied with reasonable skill and care. In no event shall the Seller's liability for the Services exceed this standard of care.
- 4.3. Time shall not be of the essence in respect of the provision of the Services.
- 4.4. All drawings, designs, specifications and other information provided by the Seller pursuant to the Services are confidential.

5. Prices and Terms of Payment

- 5.1. The price of the Goods and/or Services shall be the price(s) as set out in the Order Acknowledgement.
- 5.2. The Seller reserves the right to: a) increase its fee rates for the charges for the Services; and b) increase the price of the Goods, by giving 7 calendar days' notice to the Buyer at any time before delivery, to reflect any increase in the cost of the Goods to the Seller that is due to: any factor beyond the control of the Seller (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Order; or any delay caused by any instructions of the Buyer in respect of the Goods or failure of the Buyer to give the Seller adequate or accurate information or instructions in respect of the Goods.
- 5.3. Except as otherwise stated in the Order Acknowledgement:
- 5.3.1. in respect of Goods, the Seller shall invoice the Buyer on acceptance of delivery or at any time after completion of delivery.
- 5.3.2. in respect of Services, the Seller shall invoice the Buyer on completion of the Services or part thereof or (following commencement of the performance of the Services) in monthly instalments in arrears, whichever is the soonest.
- 5.4. The price of the Goods is exclusive of the current rate of value added tax, import duties, delivery, insurance and the costs associated with fitting or erecting the Goods, and any other charges which are stated in the Order Acknowledgement as being excluded.
- 5.5. Payment of each invoice must be made by the Buyer within 30 calendar days of the end of the month in which the invoice is issued (unless otherwise agreed). Time for payment shall be of the essence of each Contract.
- 5.6. The Seller shall be entitled to withhold supply of any further Services or delivery of any Goods (or any further delivery in the case of a delivery effected in instalments) in the event of the Buyer's non-payment in full in respect of the same. The Seller may, without limiting its other rights or remedies, set-off any amount owing to it by the Buyer (in respect of any outstanding account) against any amount payable by the Seller to the Buyer.
- 5.7. In the event Goods are made available to the Buyer in time for the agreed supply date, but the Buyer instructs the Seller in writing to delay actual supply, then the Seller may accept such instruction on the strict condition that the invoice of the Seller (or any portion of the invoice as specified by the Seller) shall become immediately due and payable by the Buyer, and that furthermore, the Seller will have the option to render a storage charge and be indemnified in respect of all and any associated costs in respect of any Goods which need to remain in the care of the Seller until the date of supply which in any event shall be no later than 3 months. Thereafter the Seller shall be entitled to terminate the Contract. The Buyer will remain liable to the Seller for all and any outstanding costs (including but not limited to the whole of the cost of the Goods).
- 5.8. The Buyer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Buyer shall not be entitled to assert any credit, set-off or counterclaim against the Seller in order to justify withholding payment of any such amount in whole or in part and shall have no right to assert a lien on all or any of the Goods.
- 5.9. The Seller shall have a lien on any property of the Buyer in his possession for any sum due to the Seller.
- 5.10. The Seller does not accept payment to it being conditional upon the Buyer receiving payment from a third party.
- 5.11. Without limiting any other right or remedy of the Seller, if the Buyer fails to make any payment due to the Seller under the Contract by the due date for payment, the Seller shall have the right to charge interest on the overdue amount at the rate of 4% per annum above the then current base rate of the Bank of England, accruing on a daily basis from the due date of such payment until the date of actual payment of the overdue amount, whether before or after judgement, and compounding quarterly.

6. Credit Facility

- 6.1. The Seller may from time to time at its discretion offer credit facility services to the Buyer ("Credit Facility"), under which the Buyer shall be granted a credit allowance of a value to be determined by the Seller and notified to the Buyer in writing ("Credit Limit"), on the terms and conditions of this condition 6. For the avoidance of doubt, the Seller shall be under no obligation to supply or offer to supply the Credit Facility to the Buyer and shall be entitled to refuse to provide the Credit Facility to the Buyer for any reason.
- 6.2. Prior to the Seller supplying or offering to supply the Credit Facility to the Buyer, the Seller shall be entitled to undertake any such credit checks, identity checks or any other similar checks (whether or not required under applicable laws and regulations) ("Credit Checks") that it wishes in considering whether to supply or offer to supply the Credit Facility to the Buyer. The Buyer shall, promptly upon request from the Seller, supply (or procure the supply of) such documentation, information and other evidence as is reasonably requested in order for the Seller to carry out, and be satisfied that it has complied with, any such Credit Checks.
- 6.3. If the Seller decides that it shall offer to supply the Credit Facility for the Buyer, the Buyer may place Orders to purchase Goods and/or Services to a value which does not in aggregate exceed the Credit Limit. The total value of all Contracts entered into by the parties at any one time shall be the "Total Order Value".
- 6.4. At the time of offering the Credit Facility, the Seller shall notify the Buyer in writing of the conditions which shall govern the Buyer's repayment of the Total Order Value, including the dates and/or frequency at which such repayments shall be made (for example, monthly), the value of any such repayments, and the payment terms for such repayments (if different from those specified in condition 5 of these Conditions) ("Repayment Terms"). The Buyer shall repay the Total Order Value in accordance with any such Repayment Terms. The Repayment Terms may be updated by the Seller upon notice to the Buyer from time to time. If the Buyer does not pay any amount it is obliged to pay under the Repayment Terms when it is due:
- 6.4.1. the Buyer shall pay and interest shall accrue on such unpaid amount(s) in accordance with condition 5.11; and
- 6.4.2. the Seller shall have the right to suspend the further supply of Services or all further deliveries of Goods under any Contract entered into the by the parties until all such outstanding amounts have been paid in full.
- 6.5. Upon repayment by the Buyer of any amount in accordance with the Repayment Terms (including any prepayment pursuant to condition 6.8), the Total Order Value shall immediately be reduced by an amount equal to the amount of the repayment.
- 6.6. Subject to condition 6.7, the Buyer shall not be entitled to place any Order to purchase Goods and/or Services under the Credit Facility where the Repayment Terms for that Order would bring the Total Order Value equal to a value above the value of the Credit Limit at any point in time.
- 6.7. The Seller may upon written notice to the Buyer:
- 6.7.1. at any time and at its discretion choose to increase the value of the Credit Limit; or
- 6.7.2. in the event that:
- the Seller becomes aware or reasonably believes that any of the information, documentation, and other evidence supplied by the Buyer pursuant to condition 6.2 is or may no longer be accurate;
 - the Buyer fails to pay any amount due under these Conditions (whether in respect of the Total Order Value or an Order otherwise placed under these Conditions);
 - the Buyer's insurance rating is reduced (or the Sellers reasonably believes the Buyer's insurance rating may soon be reduced);

- the Seller becomes substantially concerned about the Buyer's ability to pay any amounts that may fall due under any Contract; or
- it becomes unlawful for the Seller to offer the Credit Facility, or to allow any Total Order Value to remain outstanding, as a result of:
 - any law or regulation being introduced or changed, or any change in the way any court or regulatory authority interprets or applies any law or regulation;
 - complying with any direction, request or requirement (whether or not having the force of law) of any monetary agency, central bank, or governmental or regulatory authority; or
 - any judgment, order or direction of any court, tribunal or authority binding on the Seller,

at its option:

- decrease the value of the Credit Limit (and to require prepayment of the amount by which the Total Order Value exceeds the decreased value of the Credit Limit);
- require the Buyer to prepay the entire value of the Total Order Value;
- cancel any outstanding Orders which have been accepted by the Seller in respect of which the Seller has not yet supplied any Goods or Services;
- require immediate payment of the Seller's outstanding unpaid invoices and interest and any other sums due to the Seller pursuant to the Contract, including (but not limited to) any work undertaken to provide the Services or Goods and for which no invoice has yet been submitted, in respect of which the Seller shall submit an invoice or invoices, which shall be payable by the Buyer immediately on receipt; and/or
- immediately withdraw the provision of the Credit Facility.

To require prepayment under this condition 6.7, Seller shall give notice to the Buyer demanding prepayment, detailing the amount to be prepaid, and giving the date for that prepayment. The Buyer shall prepay the Total Order Value as set out in the notice.

6.8. The Buyer may prepay part or all of the Total Order Value by notifying the Seller of its desire to do so, at which point the Seller may at its discretion choose to accept such prepayment (in which case, the Buyer shall prepay that amount of the Total Order Value in accordance with condition 5 of these Conditions) or refuse such prepayment (in which case, the Buyer shall not prepay that amount of the Total Order Value). The Repayment Terms shall continue to apply in respect of any outstanding Total Order Value following any prepayment under this condition 6.8.

7. Delivery / Supply

7.1. Delivery of the Goods shall be made in accordance with the terms of the Contract within normal working hours. Delivery of the Goods may also be made by the Buyer collecting the Goods at the Seller's premises at any agreed time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.

7.2. Any dates quoted for delivery of the Goods and/or supply of the Services are approximate only and time for delivery of the Goods and/or supply of the Services shall not be of the essence. Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer. The date(s) for delivery shall only commence upon full and final information from the Buyer and the approval of the Seller's information in writing by the Buyer.

7.3. The Seller may deliver the Goods by instalments which shall be invoiced and paid for separately (unless otherwise agreed by the Seller).

7.4. Without prejudice to any other exclusion or limitation on the Seller's liability under the Contract, if the Seller fails to deliver the Goods the Seller's liability shall be no greater than the reasonable cost to the Buyer (in the cheapest available market) of similar Goods to replace those not supplied over the price of the Goods.

7.5. If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time the Goods are ready for delivery then, without prejudice to any other right or remedy available to the Seller, the Seller may store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage. Where the Seller had already transmitted the Goods to the Buyer but the Buyer has failed to take delivery, the Buyer shall also indemnify the Seller against any and all costs, losses and charges incurred by the Seller in transporting the Goods back to the Seller's place of business or storage.

7.6. Subject to condition 7.2, the Seller shall use reasonable endeavours to meet the time for delivery of Goods and/or supply of Services.

7.7. Without prejudice to any other exclusion or limitation of the Seller's liability in these Conditions, the Seller shall not be liable to the Buyer for any delay caused by the following events or circumstances:

7.7.1. the Seller not having received from the Buyer (or if appropriate from any third party) in due time any necessary instructions, information, calculations, drawings, details and/or parts;

7.7.2. the Seller's inability for reasons beyond his control to secure such Goods or materials or services as is essential to meet the requirements of the Buyer;

7.7.3. any act or omission of the Buyer;

7.7.4. if the Buyer is entitled to any extension of time for completion of any works pursuant to any contract the Buyer has with a third party; or

7.7.5. if the Buyer would have been delayed in his performance of any other contract in any event due to the act or omission of any other person.

7.8. The Buyer shall not return any Goods to the Seller without the Seller's prior written authorisation. In any event any such return shall be made at the sole risk and expense of the Buyer and shall not entitle the Buyer to a refund in respect of any Goods already paid for by the Buyer. Unless agreed in writing by the Seller, the Seller shall always be entitled to payment in accordance with these Conditions for any returned Goods. Any Goods which are accepted for return by the Seller shall not have been used or altered in any respect and shall be in the same condition as they were at the date of delivery.

7.9. Unless otherwise agreed in writing between the Buyer and the Seller, the Goods shall be delivered ex works (as defined by Incoterms) and therefore not including package, loading, transport, delivery, unloading, insurance, and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

7.10. The Buyer shall be responsible for arranging inspection of the Goods at the Seller's premises if required before shipment. For clarity, the Warranty Period for claims pursuant to condition 9.2 shall commence on the date of inspection.

7.11. Where the Goods are supplied for export from the United Kingdom:

7.11.1. the Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon;

7.11.2. the Seller does not warrant that the Goods will comply with any legislation or regulations applicable in the country of destination; and

7.11.3. unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

8. Risk and Title

8.1. The risk in all or any of the Goods shall pass to the Buyer either:

8.1.1. at the time when the relevant Goods have been delivered to the Buyer;

8.1.2. at the time when the relevant Goods are ready for delivery, but the Buyer has refused to take delivery or provide adequate instructions for delivery to be effected;

8.1.3. on collection of the Goods by the Buyer or their servants or agents; or

8.1.4. where the Buyer has requested they collect the Goods, within 3 calendar days of the date of notification by the Seller to the Buyer that all or any of the Goods are ready for collection,

whichever is the earlier.

8.2. In respect of conditions 8.1.2 and 8.1.4, prior to the Buyer collecting the Goods or actual delivery, the Seller may at his absolute discretion store the Goods anywhere at the Buyer's risk and expense.

8.3. Notwithstanding the above and the passing of risk in the Goods or any other provision of these Conditions, title in all or any of the Goods shall not pass to the Buyer until the Seller has received payment in full for the Goods and additionally has received payment in full of any and all other sums which may be due to the Seller pursuant to the Contract (in cash or cleared funds).

8.4. Until such time as title in the Goods passes to the Buyer, the Buyer shall:

8.4.1. hold the Goods as the Seller's fiduciary agent and bailee;

8.4.2. keep the Goods separate from those of the Buyer and third parties;

8.4.3. keep the Goods stored in dry and clean conditions and insured and identified as the Seller's property;

8.4.4. take all reasonable precautions to protect the Goods from damage or loss arising from any cause;

8.4.5. keep the Goods insured in the amount of the price at which the Goods are sold to the Buyer against loss, damage and theft, and if the Goods are destroyed by any such insured risk prior to the same being paid for by the Buyer, the Buyer shall receive the proceeds of any such insurance as trustee for the Seller; and

8.4.6. not incorporate the Goods into any other property.

8.5. Before title in the Goods has passed to the Buyer and without prejudice to any of its other rights and to the extent permitted by law, if:

8.5.1. the Buyer is Insolvent; or

8.5.2. the Buyer is in breach of condition 5 (Prices and Terms of Payment) in respect of the Goods,

the Seller shall have the right to recover or re-sell the Goods or any of them and may enter upon the Buyer's premises or any third party premises where the Goods are stored and repossess the Goods.

8.6. Until such time as title in the Goods passes to the Buyer, the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

8.7. If Goods supplied by the Seller whether in their original state or mixed or processed or otherwise are sold by the Buyer prior to any payment of any monies due from the Buyer to the Seller the monies received by the Buyer shall be received by him in trust for the Seller to the extent of the Buyer's indebtedness to the Seller and shall without prejudice to any other claim or right of the Seller against the Buyer be paid over to the Seller forthwith upon receipt by the Buyer.

9. Warranties

9.1. Every description or specification of the Goods and, if any, the Services, is given in good faith but all warranties, conditions and other terms implied by statute or common law as to the description of the Goods and/or Services or otherwise, are, to the fullest extent permitted by law excluded, and for the avoidance of doubt, the sale of the Goods and/or Services is not a sale by description.

9.2. Subject to condition 9.6, the Seller warrants to the Buyer that, in respect of Goods manufactured by it, the Goods will at the time of delivery be free from material defects in design, material and workmanship and shall remain so for the Warranty Period, irrespective of whether the Buyer had taken delivery of the Goods on such date. For the avoidance of doubt, the Seller shall have no liability whatsoever for or in relation to the Goods after the expiry of the relevant Warranty Period.

9.3. In the event that the Goods are not used and / or installed and / or applied as directed by the DoP and / or IOM:

9.3.1. the Seller cannot give any assurances as to how the Goods will operate and the Seller shall in any event have no liability, whether in contract or otherwise in law, to the Buyer or any third party, arising out of or in relation to such use of the Goods; and

9.3.2. any warranty that would otherwise arise in relation to the Goods shall be null and void, including all express or implied conditions, warranties, representations or other terms that may apply by statute any warranties that would otherwise arise under this condition 9.

9.4. Save as set out above, any conditions or warranties (whether express or implied by statute, common law or arising from conduct or a previous course of dealing or trade, custom or usage) as to the quality or fitness of the Goods and/or Services for any particular purpose, even if that purpose is made known expressly or by implication to the Seller, are hereby expressly excluded.

9.5. Subject to condition 9.6, if the Buyer gives notice in writing within the Warranty Period that some or all of the Goods do not comply with the warranties set out in this condition 9, and:

9.5.1. the Seller is given a reasonable opportunity of examining such Goods; and

9.5.2. the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Buyer's cost,

then the Seller may, at its option, repair or replace the defective Goods free of charge or at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price). Any repaired or replaced Goods shall be subject to these Conditions (save that any repaired or replaced Goods shall not extend the original Warranty Period). Save as set out in this condition 9.5, the Seller shall have no further liability to the Buyer in respect of any defective Goods.

9.6. The Seller shall not be liable for the Goods' failure to comply with the warranty in condition 9.2, if:

9.6.1. the Buyer makes any further use of such Goods after giving a notice in accordance with condition 9.5;

9.6.2. the defect arises because the Buyer failed to follow the Seller's oral or written instructions and / or the DoP and / or IOM as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

9.6.3. the defect arises as a result of the Seller following any drawing, design or specification supplied by the Buyer whether as part of the Goods Specification or otherwise;

9.6.4. the Buyer alters or repairs such Goods without the written consent of the Seller;

9.6.5. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or

9.6.6. the Goods differ from the Order as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

10. Liabilities

10.1. This condition 10 sets out the entire financial liability of the Seller (including any liability for the acts or omissions of its respective employees, agents and sub-contractors) to the Buyer in respect of: a) any breach of these Conditions and/or the Contract howsoever arising; b) any use made by the Buyer of the Goods and/or Services or any part of them; and c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with these Conditions.

10.2. Nothing in these Conditions shall limit or exclude the Seller's liability for death or personal injury resulting from negligence, or fraud or fraudulent misrepresentation.

10.3. The Seller's total liability arising under or in connection with these Conditions, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall in all circumstances be:

10.3.1. in respect of liability arising in connection with the Goods, no greater than the cost of the Goods provided to the Buyer under the Contract (excluding delivery and other additional charges); and

10.3.2. in respect of liability arising in connection with the provision of the Services, no greater than the fee for the Services received by the Buyer under the Contract

each as calculated pursuant to the relevant Contract.

10.4. Without prejudice to condition 10.3 the Seller shall not, under any circumstances whatsoever, be liable to the Buyer whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any of the following types of loss, whether the loss is direct, indirect or consequential:

10.4.1. loss of profit;

10.4.2. loss of data or settings

10.4.3. loss of business;

10.4.4. loss of business opportunity;

10.4.5. loss of anticipated saving;

10.4.6. loss or corruption of data or information; or

10.4.7. special, indirect or consequential damage or loss,

suffered by the Buyer under or in connection with the Contract.

10.5. Any claim which the Buyer intends to make against the Seller shall be made (in respect of the Goods) within the Warranty Period and/or (in respect of the Services) within 12 months of the date of the provision of the Services. No claim made after the expiry of such period shall be valid.

10.6. Subject to condition 10.3 and without prejudice to any other exclusion or limitation of liability in these Conditions, damages, loss, expense or costs, the liability of the Seller for any claim or claims in respect of the provision of any Services shall be limited to such a sum as it would be just and equitable for the Seller to pay having regard to the extent of their responsibility for the loss or damage giving rise to such claim or claims ("the loss and damage") and on the assumption that:

10.6.1. all other consultants, contractors, sub-contractors, suppliers, project managers or advisers engaged in connection with the relevant project shall have provided contractual undertakings on terms no less onerous than those set out in the terms and conditions in respect of the carrying out of their obligations; and

10.6.2. there are no exclusions of, or limitations of liability nor joint insurance nor co-insurance provisions between the Buyer and any other party and any such other party who is responsible to any extent for the loss and damage is contractually liable to the Buyer for the loss and damage; and

10.6.3. all such other consultants, contractors, sub-contractors, suppliers, project managers or advisers have paid to the Buyer such a sum as it would be just and equitable for them to pay having regard to the extent of their responsibility for the loss and damage.

10.7. The Seller will not be liable for any loss or damage, or failure to fulfil any of its obligations under the Contract which arises in whole or in part out of its reliance on inaccurate, incomplete or insufficient information provided by the Buyer (including but not limited to delivery information).

10.8. The Seller shall have no duty, express or implied, to warn the Buyer in respect of Goods and/or Services supplied to the Buyer by the Seller.

11. Intellectual Property Rights

11.1. All designs drawings specifications and information supplied to the Buyer whether directly or indirectly are confidential.

11.2. All Intellectual Property Rights in or arising out of or in connection with the Goods and/or Services shall be owned by the Seller. The use by the Buyer of any such Intellectual Property Rights shall only be permitted where given expressly in writing by the Seller.

11.3. The Buyer acknowledges that, in respect of any third party Intellectual Property Rights in the Goods and/or Services, the Buyer's use of any such Intellectual Property Rights is conditional on the Seller obtaining a written licence from the relevant licensor on such terms as will entitle the Seller to license such rights to the Buyer (which the Seller shall have no liability for failing to so obtain).

11.4. All designs, drawings, specifications, and information used and/or supplied to the Buyer in the course of the Contract remain the exclusive property of the Seller.

12. Termination

12.1. Without limiting its other rights or remedies and without liability to the Buyer save to the extent set out in condition 13, the Seller may terminate the Contract by giving written notice to the Buyer:

12.1.1. for any reason, on 14 days' notice;

12.1.2. with immediate effect if the Buyer fails to pay any amount due under this Contract on the due date for payment;

12.1.3. with immediate effect if the Buyer is Insolvent.

12.2. Without limiting its other rights or remedies, the Seller shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Buyer and the Seller if:

12.2.1. the Buyer fails to pay any amount due under the Contract (or any other contract) on the due date for payment; or

12.2.2. the Buyer is Insolvent.

12.3. In the event that performance of any part of the Contract is affected by any unforeseen circumstances whatsoever or any cause beyond the Seller's reasonable control the Seller may delay, suspend or terminate performance of the Contract or any part thereof. The Seller shall be under no liability whatsoever for any loss or damage arising in any way out of such delay suspension or termination of the Contract or any part thereof.

12.4. For the avoidance of doubt, the Buyer shall not be entitled to cancel or terminate the Contract for any reason.

13. Consequences of Termination

13.1. On termination of a Contract for any reason:

13.1.1. the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and any other sums due to the Seller pursuant to the Contract, including (but not limited to) for Services or Goods carried out but not yet supplied and for which no invoice has yet been submitted (and including, for the avoidance of doubt, any outstanding Total Order Value pursuant to the supply of a Credit Facility), in respect of which the Seller shall submit an invoice or invoices, which shall be payable by the Buyer immediately on receipt; and

13.1.2. the accrued rights and remedies of the Seller as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

13.1.3. conditions which expressly or by implication have effect after termination shall continue in full force and effect.

13.2. For the avoidance of doubt, condition 16 shall survive any termination of a Contract.

14. Disputes

14.1. Without prejudice to condition 17 and the right of either Party to refer any dispute to the Courts, in respect of any dispute pursuant to a Contract the Seller and Buyer shall act in good faith to attempt an amicable settlement as an alternative to Court proceedings.

14.2. The Parties agree that arbitration shall not apply and shall not be used as a method to resolve or determine disputes pursuant to a Contract.

15. General

15.1. No failure or delay by a Party to exercise any right or remedy provided under these Conditions by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

15.2. A person who is not a Party has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

15.3. No variation of these Conditions and/or a Contract shall be binding unless made or confirmed in writing by an Authorised Signatory of the Seller.

15.4. Assignment and subcontracting:

15.4.1. The Seller may at any time assign, novate, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

15.4.2. The Buyer shall not, without the prior written consent of the Seller, assign, novate, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

15.5. Notices:

15.5.1. Any notice or other communication required to be given to a Party under or in connection with the Contract shall be in writing and shall be delivered to the other Party personally or sent by email, prepaid post, special delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business.

15.5.2. Any notice or other communication shall be deemed to have been duly received if delivered by email, personally, when left at such addressor, if sent by prepaid post or recorded delivery, at 9.00 am on the second business day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

15.6. The Buyer shall comply with any policies of the Seller notified to it from time to time.

15.7. The Buyer shall indemnify the Seller against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Seller arising out of or in connection with any breach of any legislation or statute by the Seller which has been caused or contributed to by the Buyer.

16. Confidentiality

16.1. A Party (Receiving Party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other Party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.



16.2. The restrictions set out in condition 16.1 above do not apply to any use or disclosure authorised by the Disclosing Party or required by law; or any information which is already in, or comes into, the public domain otherwise than through the Receiving Party's unauthorised disclosure.

17. Governing Law

A Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the Parties irrevocably submit to the exclusive jurisdiction of the courts of England (subject to the right of either Party to enforce a judgment obtained in the courts of England in any other jurisdiction).

Any complaints or queries in respect of these Conditions should be directed to an Authorised Signatory of the Seller, or by contacting our Customer Service Manager (<https://www.troxuk.co.uk/contact-5a50afde91bbb0e0>).

Last updated: 23 April 2024

 TROX UK Ltd Terms and Conditions of Sale	350 KB	pdf
 TROX UK Ltd Standard Terms and Conditions of Purchase	190 KB	pdf