



## Terms and Conditions of Sale

### **1. Interpretation**

1.1. In these Conditions:

“BUYER” means the person who accepts a quotation from the Seller for the Goods or whose order for the Goods is accepted by the Seller

“GOODS” means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these conditions

“SELLER” means THE HUB ENGINEERING CO. LIMITED (a private company registered in England with limited liability under company number 1231569) whose registered office is Unit 21 Izens Industrial Estate, Oldbury Road, West Bromwich, West Midlands, B70 9BS.

“CONDITIONS” means the standard terms and conditions of sale set out in this document and includes any special terms and conditions agreed in Writing between the Buyer and the Seller

“CONTRACT” means the contract for the purchase and sale of the Goods

“WRITING” includes e-mail, facsimile transmission and comparable means of communication

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.

### **2. Basis of Sale**

2.1. The Seller shall sell and the Buyer shall purchase the Goods in accordance with any order of the Buyer which is accepted by the Seller in accordance with clause 3.1 which shall in any event be subject to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such order is made or purported to be made by the Buyer.

2.2. No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and Seller.

2.3. 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 any such representations which are not so confirmed.

2.4. 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 confirmed.

2.5. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of 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.

2.6. A quotation by the Seller does not constitute an offer and the Seller reserves the right to withdraw or revise a quotation at any time prior to the Seller’s acceptance of the Buyer’s order.

### **3. Orders and Specifications**

3.1. No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller’s authorised representative. If the Contract price exceeds £15,000, then the contract must be authorised on behalf of the Seller by any one manager of the Seller. In the event that a Contract in which the Contract price exceeds £15,000 is not authorised by a manager of the Seller, then that Contract shall be voidable at the option of the Seller. Should the Seller exercise this option, then that Contract shall be void and to no effect and neither party shall have any claim of any nature whatsoever against the other.

- 3.2. The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.3. Subject to clause 3.7 below, the quantity, quality and description of and any specification for the Goods shall be those set out in the Buyer's order (if accepted in Writing by the Seller in accordance with clause 3.1)
- 3.4. If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.
- 3.5. The Seller reserves the right to make any changes in the specification of the Goods which are required to conform to any applicable statutory or EU requirements or, where the Goods are supplied to the Seller's specification, which do not materially affect their quality or performance.
- 3.6. No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.
- 3.7. The Seller reserves the right to supply Goods which may vary in quantity by up to 10% from the amount stated in the contract. Where the Seller under-delivers Goods by an amount not exceeding 10% in quantity, the provisions of Sub-section (1) of Section 30 of the Sale of Goods Act 1979 shall not apply and the delivery of such lesser amount of Goods shall be deemed to be delivery under the contract and shall be paid for by the Buyer at the rate set out in the contract. Where the Seller delivers Goods by an amount of no greater than 10% in quantity of the amount set out in the Contract, the provisions of Subsections (2) and (3) of Section 30 of the Sale of Goods Act 1979 shall not apply and the delivery of such greater amount shall be deemed to be delivery under the Contract and paid for by the Buyer at the rate set out in the Contract. In the event of the Seller delivering an amount greater than 10% by quantity in excess of the Quantity set out in the Contract, the Buyer shall have the option of paying for such excess at the rate set out in the Contract or at its option, returning such additional Goods to the Seller (in the same condition as delivered to the Buyer) Provided always that such Goods must be returned no later than 14 days from the date of delivery.

#### **4. Price of Goods**

- 4.1. The price of the Goods shall be the Seller's quoted price. All prices quoted are valid for 7 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.
- 4.2. The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 4.3. Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.
- 4.4. The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

- 4.5. The cost of returnable pallets and containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.

## **5. Terms of Payment**

- 5.1. Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 5.2. The Buyer shall pay the price of the Goods (less any discount to which the Buyer is entitled, but without any other deduction) within 30 days after the end of the month in which the Goods are delivered, and the Seller shall be entitled to recover the price, notwithstanding that the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract Receipts for the payment will be issued only upon request.
- 5.3. If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
  - 5.3.1. cancel the contract or suspend any further deliveries to the Buyer;
  - 5.3.2. appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
  - 5.3.3. charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 8 per cent per annum above Barclays Bank base rate from time to time calculated on a daily basis, until payment in full is made (a part of a month being treated by as a full month for the purpose of calculating interest).
- 5.4. In the event that the Seller owes money to the Buyer under any contract or other arrangement entered into between the Seller and the Buyer the Seller shall be entitled to set off such sums owed by the Seller to the Buyer against any sums which the Buyer shall owe to the Seller pursuant to this contract.

## **6. Delivery, Inspection and Complaints**

- 6.1. Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any 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.
- 6.2. Any dates quoted for delivery of the Goods are approximate only and subject to 6.4 below, 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 of the Contract 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.
- 6.3. 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.
- 6.4. If the Seller fails to deliver the Goods (or any instalment) 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. Provided always that time shall not be of the essence of this contract and no delay by the Seller in the delivery of the Goods (or any instalments) which does not exceed (6 months) shall give the Buyer the right to terminate this contract or purchase similar goods elsewhere.
- 6.5. If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instruction at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's

reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

- 6.5.1. store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of Storage; or
- 6.5.2. sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the contract.
- 6.6. The Buyer shall examine the Goods upon delivery and satisfy itself that they conform to Contract. A claim that Goods are not in accordance with the Contract will not be accepted by the Seller unless notice in writing, specifying the alleged default, is given to the Seller within 7 days of delivery of the Goods.
- 6.7. Failure to notify the Seller of the non-delivery of the Goods, or any of them, within 7 days of the due date for delivery will release the Seller from liability for claims for non-delivery.
- 6.8. Any Goods considered to be damaged or defective (together with their packaging materials) shall be retained by the Buyer intact as delivered for a period of twenty one days from notification of the claim to the Seller, within which time the Seller or its agents shall have the right to investigate the complaint and examine the Goods and, if possible, to remedy any defect. Any breach of this condition will release the Seller from any liability for Goods which are alleged not to conform to Contract.
- 6.9. If the Seller agrees with the Buyer that the Goods are damaged or defective and that it is not possible to remedy any defect then the Seller shall, at its sole option, replace the Goods or credit the Buyer accordingly.
- 6.10. If the Seller disagrees with the Buyer that the Goods are damaged or defective then the dispute shall be referred to an independent third party appointed jointly by the Seller and the Buyer or, failing agreement within 7 days, by a party appointed, on the application of either the Seller or the Buyer by the President for the time being of Institute of Chartered Accountants. Such independent third party shall act as an expert and not as an arbiter and his decision shall be final and binding on, and his costs being borne equally by the Seller and the Buyer.
- 6.11. The Seller shall have no liability to the Buyer in respect of damaged or defective Goods (and the Buyer shall be required to pay the full contract price) where:-
  - (a) Any claim made by the Buyer is not in accordance with these Conditions;
  - (b) Damage has been sustained after delivery of the Goods to the Buyer, or its agents;
  - (c) Any subsequent operations, work or processes have been carried out on the Goods
  - (d) Defects are caused by installation, operation or maintenance carried out other than in accordance with any instructions supplied orally or in writing with the Goods or by wear and tear, or misuse, improper operation or neglect or if any adjustment, alteration or other work has been performed on the Goods by any person other than the Seller or its employees or agents;
  - (e) A receipt has been obtained by the Seller, duly signed by the Buyer or one of its employees or agents, confirming that the Goods have been delivered in a satisfactory condition.

## **7. Risk and Property**

- 7.1. Risk of damages to or loss of the Goods shall pass to the Buyer:
  - 7.1.1. in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
  - 7.1.2. in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 7.2. Notwithstanding delivery and the full passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds, payment in full of the price to the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 7.3. Until such time as the property 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, the Buyer irrevocably authorises the Seller and its agents and employees to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.4. 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 moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## **8. Warranties and Liabilities**

- 8.1. 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 3 months from the date of delivery.
- 8.2. The above warranty is given by the Seller subject to the following conditions:
- 8.2.1. the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
- 8.2.2. 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 written approval;
- 8.2.3. the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the price due for the Goods has not been paid;
- 8.2.4. 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 manufacturer to the Seller.
- 8.3. If the Seller agrees that it is or (as the case may be) it is found to be liable under the provisions of clause 8.2 above, then the Seller's entire liability to the Buyer shall be limited, at the option of the Seller, to repairing or replacing the Goods or refunding the purchase price (or a proportionate part thereof) for them.
- 8.4. Subject as expressly provided in these Conditions and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.5. Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) order 1976) the statutory rights of the Buyer are not affected by these Conditions.
- 8.6. Nothing in these Conditions is intended to exclude or limit the liability of the Seller to the Buyer for the following matters:-
- 8.6.1. death or personal injury caused by the Seller's negligence
- 8.6.2. failure to give good title to the Goods
- However, save for these matters and save for the liability accepted by the Seller under clauses 8.3 and 6.4 and clause 9 below the Seller shall have no liability of any nature whatsoever to the Buyer whether for breach of contract, any act or omission (including negligence), breach of any statutory duty, breach of any warranty, condition or other term implied by law, misrepresentation (unless fraudulent) or in any other manner whatsoever. Under no circumstances shall the Seller be liable to the Buyer for any loss of profits, loss of contracts, loss of goodwill, administration and management expenses, or any consequential loss or damage of any nature even if any of these matters were reasonably foreseeable
- 8.7. The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as cases beyond the Seller's reasonable control:
- 8.7.1. Act of God, explosion, flood, tempest, fire or accident;
- 8.7.2. war or threat of war, sabotage, insurrection, civil disturbance or requisition;

- 8.7.3. acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any government, parliamentary or local authority;
  - 8.7.4. import or export regulations or embargoes;
  - 8.7.5. strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
  - 8.7.6. difficulties in obtaining raw materials, labour, fuel, parts or machinery;
  - 8.7.7. absenteeism of members of the workforce whether foreseeable or not
  - 8.7.8. power failure or breakdown in machinery.
- 8.8. These Conditions do not create any right enforceable by any person not a party to it except that a person who is the permitted successor to or assignee of the Seller is deemed to have the benefit of all rights of the Seller.

## **9. Indemnity**

- 9.1. If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial intellectual property rights of any other person, then unless the claim arises from the use of any drawing, design or specification supplied by the Buyer, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:
- 9.1.1. the Seller is given full control of any proceedings or negotiations in connection with any such claim;
  - 9.1.2. the Buyer shall give the Seller all reasonable assistance for the purposes of any such claim;
  - 9.1.3. except pursuant to a final award, the Buyer shall not pay or accept an such claim, or compromise any such proceedings without the consent of the Seller (which shall not unreasonably be withheld);
  - 9.1.4. the Buyer shall do nothing which would or might vitiate any policy or cover (which the Buyer shall use its best endeavours to do);
  - 9.1.5. the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not unreasonably be withheld) to be paid by, any other party in respect of any such claim; and
  - 9.1.6. without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonable require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause

## **10. Insolvency of Buyer**

- 10.1. This clause applies if:
- 10.1.1. the Buyer makes any voluntary arrangement with its creditors or (being an individual or a firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
  - 10.1.2. an encumbrancer takes possession, or a receiver or administrative receiver is appointed, of any of the property or assets of the Buyer; or
  - 10.1.3. the Buyer ceases, or threatens to cease, to carry on business; or
  - 10.1.4. the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 10.2. 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.

## **11. Export Terms**

- 11.1. In these Conditions “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. 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, the latter shall prevail.
- 11.2. Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 11 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.
- 11.3. 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 on them.
- 11.4. Unless otherwise agreed in Writing between the Buyer and the Seller, the Goods shall be delivered to the air or sea port of shipment and the Seller shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979.
- 11.5. The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller’s premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.
- 11.6. Payment of all amounts due to the Seller shall be made by irrevocable letter of credit opened by the Buyer at Buyer’s expense in favour of the Seller and confirmed by a recognised European Bank acceptable to the Seller or, if the Seller has agreed in Writing on or before acceptance of the Buyer’s order to waive this requirement, by acceptance by the Buyer and delivery to the Seller of a bill of exchange drawn on the Buyer payable 60 days after the sight to the order of the Seller at such branch of Barclays Bank in England as may be specified in the bill of exchange.
- 11.7. The Buyer undertakes not to offer the Goods for resale in any country notified by the Seller to the Buyer at or before the time the Buyer’s order is placed, or to sell the Goods to any person if the Buyer knows or has reason to believe that that person intends to resell the Goods in any such country.

## **12. General**

- 12.1. Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 12.2. No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.3. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 12.4. The Contract shall be governed by the laws of England. In the event of any dispute or difference arising between the parties which cannot be resolved through negotiation, the parties shall attempt to resolve the same in accordance with the Guidelines for Conciliation and Mediation or the Guidelines for Supervised Settlement Procedure (“Mini Trail”) of the Chartered Institute of Arbitrators. If such dispute or difference is not resolved by one of these procedures within 28 days of the parties entering into it, or if either party refuses to participate in it, the same shall be referred to a single arbitrator to be agreed upon by the parties pursuant to section 16(3) of the Arbitration Act 1996 (“the Act”) or in default of agreement, to be appointed by the President or Vice President for the time being of the Chartered Institute of Arbitrators. In this clause 12.4, “dispute or difference” does not include a claim for the price of Goods by the Seller from the Buyer. The Arbitration shall be regarded as commenced for the purposes set out in section 14(1) of the Act when one party sends to the other a notice to concur in the appointment of an Arbitrator. The seat of

the arbitration shall be in Birmingham. The Arbitrator shall determine the dispute or difference in accordance with the Law of the Contract.