

# Aeropia Ltd. Terms and Conditions

## **1. Interpretation**

- 1.1 In these conditions: 'Buyer' means the person who accepts a quotation of the Seller for the sale of 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 Aeropia Ltd (registered in England under number 3601549).  
'Conditions' means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.  
'Contract' means the contract for the purpose and sale of the Goods.  
'Writing' includes telex, cable, facsimile transmission, e-mail 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 the Sale**

- 2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to all other stated Conditions. This excludes all other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or 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 the 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, and waives any claim for breach of, 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 so 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 Any contract howsoever made, between the Seller and the Buyer ("the Contract") shall incorporate and be subject to these Conditions, and receipt of goods or services by the Buyer, shall be deemed to be conclusive proof that the Buyer has accepted these Conditions in the absence of any express or other implied acceptance of these Conditions by the Buyer.;
- 2.7 Without prejudice to the generality of the foregoing all other Terms and Conditions (except those implied in favour of a Seller which are not inconsistent with these Conditions) whether or not the same are endorsed upon, delivered with or referred to in any purchase order or any other document delivered or sent by the Buyer to the Company, are expressly excluded. Any reference in the Contract to the Buyer's order specification or like document will not be deemed to imply that any terms or conditions endorsed upon, delivered with or referred to in such order, specification or like document will have effect.
- 2.8 Quotations shall be valid for a period of 30 days unless otherwise stated. The Seller may withdraw the Quotation by written notice at any time until the Quotation lapses. Errors and omissions by the Seller on any Quotation may be amended at any time in writing during the validity of the Quotation.

## **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.
- 3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms (particularly including product description) of any order (including any applicable specifications and approvals) 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. The Seller reserves the right to re-quote if the Buyer's order stipulates any special conditions, specifications, approvals, certificates, test reports, or other significant change that was not requested at the time of the original or most recent quotation.
- 3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).
- 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, trade mark 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 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.
- 3.6 Minimum Order Quantities (MOQs) imposed on the Seller by their supplier for non-stock products will be notified to the Buyer. The Buyer will be required to either accept the MOQ or cancel the order in writing.
- 3.7 The Seller guarantees to supply shelf lived product with at least 30% life remaining. Buyer's requiring higher percentages must do so by agreement with the Seller's relevant Sales Manager. The Seller will not guarantee shelf life over 70% for products with a total life of 1 year or less.
- 3.8 If the Buyer requires one complete shipment of the whole order, this must be made clear to the Seller at the time of quotation and/or order confirmation, otherwise Clause 6.3 applies.
- 3.9 The cost of any variation or modification in the design, specification, materials or drawings of the goods or services, or any developmental thereof requested by the Buyer after the date of the Seller's acceptance of order shall, if such variations or modifications are accepted by the Seller, be borne by the Buyer.

#### **4. Price**

- 4.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's price list current at the date of acceptance of the order. All prices quoted are valid for 30 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 specification 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 unpacked ex works basis. (See 6.11 below) 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 No goods are supplied by the Seller on a sale or return basis.
- 4.6 Where the Seller accepts responsibility for the delivery, the Seller will price delivery charges primarily based on weight and/or chemical hazard category. Specific rates are applicable to items supplied in drums or consolidated on pallets. The Seller reserves the right to charge for such drums and pallet supplies retrospectively.
- 4.7 The price of the goods does not ordinarily include the cost of carriage to the contracted place of delivery nor does it include the cost of off-loading the goods, which shall be arranged by the Buyer and performed at the Buyer's risk and expense. If the Buyer instructs the Company to send the goods by rail, parcel post, airfreight, or other special transport, the additional cost will be borne by the Buyer.
- 4.8 A minimum order value (MOV) is applicable, and a small order charge will be applied where relevant. This MOV will be reviewed regularly and may be revised.

#### **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 within 30 days of the date of the Seller's invoice, notwithstanding that delivery may not have taken place and 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.
- 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 for any other contract for goods and services as the Seller may think fit (notwithstanding any purported appropriation by the Buyer) and charge the buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 3 percent per annum above National Westminster Bank base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 5.4 Unless otherwise agreed in writing the Buyer shall not be entitled to set off against any monies due to the Seller under the Contract, any amount claimed by or due to the Buyer from the Seller whether pursuant to the Contract or on any other account whatsoever.
- 5.5 Where the Seller specifies that payment will be required by Letter of Credit, the Buyer must establish and maintain in favour of the Seller an irrevocable Letter of Credit with or confirmed by a bank in England satisfactory to the Seller. All bank charges (whether of the overseas or United Kingdom bank) in

connection with the Letter of Credit and the opening thereof shall be borne by the Buyer. If for any reason the bank liable to make payment to the Seller under any Letter of Credit established for that purpose fails to do so, the Buyer shall nevertheless remain liable to pay for the goods supplied and/or services performed.

- 5.6 Where the Buyer is dealing with the Seller on a cash basis, the Seller will commence contract satisfaction, once the due monies have been received and cleared by the Seller's bankers.

## **6. Delivery**

- 6.1 Delivery of the goods shall be made to the Buyer at the place specified in the Contract or as subsequently agreed between the parties and the risk in respect of all goods shall pass to the Buyer at the time of delivery. If no place for delivery is specified or agreed within a reasonable period, delivery shall take place at the Seller's works and deemed to be completed... Notwithstanding such delivery, the property in and title to the goods shall not pass to the Buyer except as provided in Clause 5.
- 6.2 Unless otherwise agreed in writing, the Seller shall on behalf of the Buyer and at the Buyer's expense arrange for the carriage of the goods and the carrier selected by the Seller shall be the agent of the Buyer. Special notice is directed to the fact that in accordance with the provisions of Section 32 of the Sale of Goods Act 1979, delivery to the carrier will, in such circumstances constitute delivery to the Buyer;
- 6.3 The Seller shall be entitled to make delivery of the goods by instalments and to invoice the Buyer for each instalment despatched;
- 6.4 Where damage to or loss of the goods occurs before delivery to the Buyer, the Seller undertakes (subject as provided below) to replace or (at its discretion) to repair free of charge any goods so damaged or lost in which event the time for delivery of the damaged or lost goods shall be extended for such period as the Seller shall reasonably require for such replacement or repair.
- 6.5 Where the goods are not manufactured or supplied directly by the Seller and are delivered direct to the Buyer by, or collected by the Buyer from the manufacturer or supplier, the Seller shall not be liable for any damage to or loss of the goods whatsoever or whenever occurring;
- 6.6 Save as expressly provided in this Clause, the Seller shall not have any liability whatsoever for or in connection with any damage to or loss of the goods in transit to the contracted place of delivery.
- 6.7 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer. The Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered.
- 6.8 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions 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:
- 6.8.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage or
- 6.8.2 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.
- 6.9 Times for delivery of the Goods are given as accurately as possible but are not guaranteed. The Buyer shall have no right to damages or to cancel the order for failure for any cause to meet any delivery time stated.
- 6.10 Packaging supplied by the Seller unless otherwise expressly agreed is intended to provide adequate protection throughout normal conditions and duration of transit.
- 6.11 The Seller's standard delivery terms are –
- 6.11.1 All UK mainland orders – Packed Ex Works
- 6.11.2 All Export orders and UK orders travelling across water (eg IOW, IOM, CI, Western Isles) – Unpacked Ex Works.

## **7. Property and Risk**

- 7.1 Ownership of the Goods shall remain with the Seller and will not pass to the Buyer until one of the following events occurs:
- 7.1.1 The Seller is paid for all the Goods and the Buyer owes no other amounts to the Seller in respect of other goods supplied by the Seller.
- 7.1.2 The Buyer sells the Goods in which case ownership of the Goods will pass to the Buyer immediately before the Goods are delivered to the Buyer's customer.
- 7.2 Where the Goods are attached to or incorporated in other goods or are altered by the Buyer, ownership of the goods shall not pass to the Buyer by virtue of the attachment, incorporation or alteration if the Goods remain identifiable and, where attached to or incorporated in other goods, can be detached or removed from them.
- 7.3 If the Buyer is overdue in paying for the Goods or any other goods supplied by the Seller, the Seller may if still the owner of the Goods, recover and resell them. This does not affect any other right of the Seller.
- 7.4 Until the Buyer has paid the Seller for the Goods and all other goods which the Seller has supplied to the Buyer:
- 7.4.1 The Buyer shall hold the Goods on trust for the Seller
- 7.4.2 If the Buyer sells the Goods, the Buyer shall hold the proceeds of sale on trust for the Seller

- 7.4.3 The Seller may trace the proceeds of sale that the Buyer receives into any bank or other account, which the Buyer maintains.
- 7.4.4 If the Buyer sells the Goods, the Seller may, by written demand, require the Buyer to assign to the Seller the Buyer's rights to recover the price from its purchaser
- 7.4.5 The Buyer shall not assign to any other person any rights arising from a sale of the Goods without the Seller's written consent.
- 7.5 Risk in the Goods shall pass to the Buyer on delivery in accordance with clause 6.1
- 7.6 The Buyer must insure the Goods against all insurable risks for the price due to the Seller for the Goods.
- 7.7 If the Goods are destroyed by an insured risk under the Buyer's liability before the Buyer has paid for them, the Buyer shall pay to payment terms as agreed between the parties.

## **8. Performance**

- 8.1 The Seller will use its reasonable endeavours to comply with any date or dates for despatch or delivery of the goods and for the supply or completion of the services (as the case may be) as stated in the Contract, but unless the Contract otherwise expressly provides such date or dates shall constitute only statements of expectation and shall not be binding. If the Seller having used its reasonable endeavours fails to despatch or deliver the goods or to supply or complete the services by such date or dates, such failure shall not constitute a breach of the Contract. Nor shall the Buyer be entitled to treat the Contract as thereby repudiated, or to rescind it, or any related contract in whole or in part, or claim compensation for such failure, or for any consequential loss or damage resulting therefrom;
- 8.2 If the Seller is prevented or hindered from performing the Contract or any part thereof by any circumstances beyond its reasonable control, including (but without limiting the generality of the foregoing) strikes, lock-outs or other industrial action, inability to obtain materials or labour, power or machinery breakdown or failure, fire, flood, civil commotion or any cause of whatever kind and whenever occurring, further performance of the Contract shall be suspended for so long as the Seller is so prevented or hindered provided that if the performance of the Contract is suspended for more than three consecutive calendar months, the Buyer shall be entitled by notice in writing to the Seller forthwith to terminate the Contract or to cancel any outstanding part thereof and in such circumstances the Buyer shall pay at the Contract rate for all goods and services supplied and materials used by the Seller to the actual date of such termination. The Seller shall not have any liability to the Buyer for any direct or consequential loss or damage suffered by the Buyer as a result of the Seller's inability to perform its obligations under the Contract by reason of any such circumstances;
- 8.3 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.
- 8.4 Where goods are to be supplied or delivered by the Seller in accordance with periodic delivery schedules or similar notification of the delivery requirements of the Buyer, the Buyer shall not be entitled to cancel or vary any such delivery schedule or requirement which is expressed by the Buyer to be a firm requirement without the prior written consent of the Seller and the Seller shall be entitled to reimbursement of any additional costs and expenses incurred, including stock purchases, or suffered as a result of such cancellation or variation;
- 8.5 When expedited delivery or completion is agreed to by the Seller and necessitates overtime or other additional costs, the Buyer shall reimburse the Seller for the amount of such overtime payment or other costs.
- 8.6 Where postponement of delivery or completion is agreed by the Seller, the Buyer shall, if required by the Seller pay all costs and expenses (including a reasonable charge for storage and insurance of the goods and interest on the contract price) occasioned thereby but the goods shall be held at the Buyer's risk as from the time of postponement;
- 8.7 If performance of the Contract is suspended at the request of or delayed through default of the Buyer, including (without prejudice to the generality of the foregoing) lack of, incomplete or incorrect instructions or refusal to collect or accept delivery of the goods or any part thereof within 28 days of written notification from the Seller that the goods are ready for collection or delivery, the Seller shall be entitled (without prejudice to its other remedies under the Contract for such breach) to sell or at its option destroy the goods and to apply the proceeds of sale thereof if sold and the scrap value if destroyed towards payment of all sums due to the Seller under the Contract;
- 8.8 Without prejudice to the Buyer's rights under Clause 11, the Buyer shall be deemed to have accepted the goods as being in conformity with the Contract and shall be bound to pay for them, unless written notice of rejection thereof is received by the Seller within 7 days of delivery. Save in the circumstances referred to in Clause 11, goods accepted by the Buyer cannot subsequently be returned and any claim which the Buyer might otherwise have, shall be deemed to have been waived;
- 8.9 If after notice of rejection has been given, the Buyer deals with the goods as owner thereof or if any conduct of the Buyer is inconsistent with such rejection or with the ownership of the goods by the Seller, the Buyer shall be deemed to have accepted the goods and be bound to pay for them.
- 8.10 The Seller will not be liable for any penalty in performance of the contract, if by the Buyer's actions, the Seller places the Buyer's account on credit stop.

## **9. Cancellations and Returns**

- 9.1 Cancellations will not be accepted by the Seller under the following circumstances-a) for stock lines - after the goods are invoiced and despatched; b) for scheduled/exceptional orders and non-stock lines – after the goods are ordered from the supplier.
- 9.2 Pre delivery cancellation will only be agreed to by the Seller on condition that all costs and expenses incurred by the Seller up to the time of cancellation and all loss of profits and other loss or damage resulting to the Seller by reason of such cancellation will be paid forthwith by the Buyer to the Seller.
- 9.3 Goods correctly supplied by the Seller pursuant to a special order of the Buyer cannot be returned to the Seller for credit.
- 9.4 Subject to 9.3 above and to a handling charge of 25%, the Seller may at its discretion accept the return for credit of Goods correctly supplied. Returns which arrive at the Sellers premises without a properly authorised Seller's return number may be liable to a further handling charge to cover additional reasonable costs.
- 9.5 Where goods are agreed by the parties to be retained or returned to the Sellers premises, at the request of the Buyer and where the Buyer accepts responsibility for such circumstance, the Seller reserves the right to charge a reasonable rate for storage.

## **10. Loss, Shortages and Defects Apparent or not on visual Inspection**

- 10.1 The Buyer shall have no claim for shortages or defects in the goods supplied apparent on visual inspection unless:-
  - 10.1.1 the Buyer inspects the Goods within one working day following their arrival at its premises or other agreed destination, and
  - 10.1.2 a written complaint is made to the Seller within 24 hours of receipt of the Goods or such shorter period as the carrier's conditions (if applicable) require specifying the loss, shortage or defect, and the Seller is given an opportunity to inspect the Goods and investigate any complaint before any use or alteration to or interference with the Goods.
- 10.2 The Buyer shall have no claim in respect of defects in the Goods supplied which are not apparent on visual inspection at the time of delivery unless:-
  - 10.2.1 the Seller is notified within 24 hours of such appearance by the Buyer, and a suitable course of action is agreed between the parties. The Seller reserves the right to investigate any claim including physical inspection of goods, in order to establish the claim's validity. This investigation does not indicate approval of said claim, and all cases will be reasonably considered on their particular merits. Save that in the case of items not manufactured by the Seller, all claims must be made within the guarantee period specified by the manufacturer of such Goods.
- 10.3 If a damage or defect complaint is not made to the Seller as herein provided, and subject to the time limitation in Clause 8.8, then the Goods shall be deemed to be in all respects in accordance with the contract and the Buyer shall be bound to pay for the same accordingly.
- 10.4 Defects in quality or dimension in any instalment delivery shall not be a ground for cancellation of the contract.
- 10.5 The Buyer shall not be entitled to any claim against the Seller, where repairs or alterations are undertaken by the Buyer without the prior specific written consent of the Seller.
- 10.6 The Buyer shall not be entitled to any claim against the Seller in respect of any defect arising by reason of fair wear and tear or damage due to misuse.
- 10.7 The Seller shall not be liable for loss or damage suffered by reason of use of the Goods after the Buyer becomes aware of any defect or after circumstances which should reasonably have indicated to the Buyer the existence of any defect.
- 10.8 In the event of the condition of the Goods being such as might or would (subject to these Conditions) entitle the Buyer to claim damages or to repudiate the contract, the Buyer shall not then do so. The Buyer shall first ask the Seller to repair or supply satisfactory substitute Goods, and the Seller shall thereupon be entitled within a reasonable timeframe, to repair or take back the defective Goods and to supply satisfactory substitute Goods. If the Seller does so repair the Goods or supply satisfactory substitute Goods, the Buyer shall be bound to accept such repaired or substituted Goods. Accordingly, the Seller shall be under no liability in respect of any loss or damage howsoever arising, from the initial delivery of the defective Goods, or from the delay before the repair or delivery of the substitute Goods.

## **11. Warranties and Liabilities**

- 11.1 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.
- 11.2 The above warranty is given by the Seller subject to the following conditions:
  - 11.2.1 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.
  - 11.2.2 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 approval
  - 11.2.3 The Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.

- 11.2.4 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.
- 11.3 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.
- 11.4 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.
- 11.5 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise) costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.
- 11.6 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 causes beyond the Seller's reasonable control:
  - 11.6.1 Act of God, explosion, flood, tempest, fire or accident
  - 11.6.2 War or threat of war, sabotage, insurrection, civil disturbance or requisition
  - 11.6.3 Acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority
  - 11.6.4 Import or export regulations or embargoes
  - 11.6.5 Strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party)
  - 11.6.6 Extreme difficulties in obtaining raw materials, labour, fuel, parts or machinery
  - 11.6.7 Power failure or breakdown in machinery

## 12. Indemnity

- 12.1 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 or intellectual property rights of any other person, 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:
  - 12.1.1 the Seller is given full control of any proceedings or negotiations in connection with any such claim
  - 12.1.2 the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations
  - 12.1.3 except pursuant to a final award the Buyer shall not pay or accept any such claim or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld)
  - 12.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do)
  - 12.1.5 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 be unreasonably withheld) to be paid by any other party in respect of any such claim and
  - 12.1.6 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 reasonably require to mitigate or reduce such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this Clause.

## 13. Solvency of Buyer

- 13.1 This clause applies if:
  - 13.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or
  - 13.1.2 a bailiff takes possession, or a receiver is appointed, of any of the property or assets of the Buyer or
  - 13.1.3 the Buyer ceases, or threatens to cease, to carry on business or
  - 13.1.4 the Seller reasonably understands that if any of the events mentioned above, is about to occur in relation to the Buyer, and notifies the Buyer accordingly.
- 13.2 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.

#### **14. Health and Safety**

- 14.1 The attention of the Buyer is drawn to the provisions of Section 6 of the Health and Safety at Work Act 1974. The Seller will make available such information as is appropriate relating to the goods and materials supplied, to ensure that as far as is reasonably practicable, they are safe and without risk to health when properly used;
- 14.2 The Buyer hereby undertakes pursuant to Section 6 (8) of the Health and Safety at Work Act 1974 to take such measures as are practicable, that the goods will at all times be safe and without risk to health when properly used. The goods and materials shall not be regarded as properly used when they are utilised without regard to any relevant information or advice relating to their use which has been communicated to the Buyer pursuant to this Clause;
- 14.3 The Seller shall not be liable to the Buyer in any civil proceedings brought by the Buyer against the Seller under any Health and Safety Regulations made pursuant to the Health and Safety at Work Act 1974 where such exclusion of liability is permitted by law;
- 14.4 The Buyer shall indemnify and keep indemnified, the Seller in respect of any liability, monetary penalty or fine, in connection with the goods or services provided, whether incurred directly or indirectly by the Seller under the Health and Safety at Work Act 1974 (or any other regulations, orders or directions made thereunder).
- 14.5 The Buyer will be expected to maintain a current library of product technical and health & safety sheets. The Seller will provide safety data sheets on initial trading per product line and further copies on request thereafter. Liability for any negligent use or handling of the Goods, will remain with the Buyer.

#### **15. General**

- 15.1 The Seller is a member of the group of companies whose holding company is Umeco PLC and accordingly, the Seller may perform any of its obligations or exercise any of its rights hereunder, by itself or through any other member of its group. This is provided that any act or omission of any such other member shall be deemed to be the act or omission of the Seller.
- 15.2 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.
- 15.3 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.
- 15.4 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 thereby.
- 15.5 Any dispute arising under or in connection with these Conditions or the sale of the Goods shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the incumbent President of the Institute of Directors.
- 15.6 The Seller shall be entitled without the prior approval of the Buyer to assign, sub-contract or sub-let the Contract or any part thereof, but the Buyer shall not be so entitled without the prior approval of the Seller.
- 15.7 The Contract shall be governed by the laws of England.

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