

TERMS AND CONDITIONS OF SALE

- 1. GENERAL**

These terms and conditions apply to every contract entered into by Transmag (UK) Ltd ("the Seller") for the sale or supply of goods or services to any other person, firm or company ("the Buyer"). The seller's employees or agents are not authorised to make any representations concerning the goods.

All other terms and conditions whatsoever including any which the Buyer may purport to apply are excluded unless expressly accepted by a Director of the Seller in writing.
- 2. QUOTATIONS**

A quotation is not an offer and may be withdrawn without notice. Any order given in respect of a quotation is not binding upon the Seller until accepted by the Seller in writing or by the Seller taking steps to implement the same.

All prices quoted are exclusive of value added tax and carriage.

The Seller reserves the right to correct any error in any quotation.

Quotations will remain valid for thirty days.

Goods purchased for export (including shipments to Northern Ireland) are quoted for sold and delivered ex-works any packaging and/or carriage being charged at extra cost.
- 3. FORMATION OF CONTRACT**

Where the Seller has quoted for or the Buyer has ordered goods and/or provision of services any acceptance of such quotation or order shall be deemed to constitute acceptance of these and any additional conditions incorporated under clause 1 no order shall be binding on the Seller unless confirmed by the Seller in writing.

The Seller reserves the right to invoice at prices ruling according to the Seller's prices current at the date of despatch.

Any increased costs whatsoever imposed on the Seller during servicing and/or manufacture may be applied to the order price and shall be binding on both parties and shall not give right of cancellation by the Buyer.
- 4. DELIVERY**

Time for delivery shall not be of the essence of the contract unless previously agreed by the Seller in writing.

The goods shall be delivered to the Buyer at the Seller's address.

Where the goods are to be delivered in instalments (as detailed in a schedule of delivery dates) refer also to clause 4.1.

The Seller shall arrange if requested and agreed for carriage of the goods to the Buyer's address. The costs of carriage and any insurance which the Buyer reasonably directs the Seller to incur shall be reimbursed by the Buyer and shall be due on the date for payment of the price. The carrier shall be deemed to be the Buyer's agent. Any time or date for delivery or completion of the provision of a service will be an estimate only and shall not be of the essence of the contract.

Such estimated time for delivery or completion will only run from the date of acceptance of the order or completion of the contract or from the date of receipt of full information and instructions to enable the order to be effective whichever is the later. Any delay in the estimated date for delivery or completion shall not give rise to any right of cancellation by the Buyer nor shall the Seller be liable for any damages costs or expenses arising from such delay. Failure by the Seller to deliver or complete in accordance with one order of a series or orders for the provision of goods and/or service shall not entitle the Buyer to treat such failure as a repudiation of subsequent orders in the series.

4.1 Delivery by instalments

The Seller shall deliver the goods by separate instalments in accordance with the agreed delivery schedule. Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract of sale.

The failure of the Buyer to pay for anyone or more of the said instalments of the goods on the due dates shall entitle the Seller (at the sole option of the Seller) without notice suspend further deliveries of the goods pending payment by the Buyer and/or to treat this contract as repudiated by the Buyer.

4.2 Insolvency of the Buyer

This clause applies if the Buyer makes any voluntary arrangement with its creditors or (being an individual or 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 an encumbrancer takes possession or a receiver is appointed, of any of the property or assets of the Buyer; or the Buyer ceases, or threatens to cease, to carry on business; or 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. 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 and/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. The title to all moulds, tools, dyes, fixtures, plant or other equipment provided by the Buyer to the Seller shall pass to and become the exclusive property of the Seller including drawings, designs, patterns, copyrights or any other similar lien previously held by the Buyer on the tooling and/or products produced from such tooling. The Seller shall be entitled to use the property referred to above or allow it to be used for any purpose in the Seller's absolute discretion and without prejudice to any other rights which it may have. The Seller shall be entitled to a general lien on all goods of the Buyer in the Seller's possession (including goods of the Buyer which have been paid for) for the unpaid price of all goods sold to the Buyer by the Seller under this or any other contract.

4.3 Export Terms

Where the goods are supplied for export from the United Kingdom, the provisions of this clause shall (subject to any special terms agreed in writing between the Seller and the Buyer) apply notwithstanding any other provision of these conditions. 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. 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. The Buyer will ensure that payment for the goods is made prior to delivery and the Seller will despatch the goods immediately on receipt of the payment.
- 5. DESCRIPTION**

Every endeavour has been made to ensure that goods are accurately described in the Seller's catalogue. The Seller may from time to time make changes to the specification of the goods but these will not materially affect the quality or fitness for the purpose.

Where goods are to be supplied to the Buyer's specification the Buyer shall supply such specifications with sufficient information to enable the Seller to complete the delivery within the estimated period stated. Any alterations which have to be made as a result of any failure by the Buyer to supply the necessary information shall be the subject of an extra charge.

The Buyer shall indemnify the Seller against all actions claims damages penalties costs and expenses to which the Seller may become liable arising from any infringement of any letters patent trade mark trade name copyright or other similar right to which any specification or information supplied by the Buyer might be subject.
- 6. DRAWINGS/MATERIALS etc.**

All drawings materials patterns tools and tooling supplied by the Buyer must be in good condition free of defect and safe for use by the Seller and remain at the Buyer's risk at all times.

All drawings patterns tools and tooling supplied by the Seller to the Buyer under the terms of the contract shall remain the property of the Seller and details of any such items shall not be communicated to any third party.
- 7. ACCEPTANCE**

The Buyer shall be deemed to have accepted the goods 24 hours after delivery to the Buyer. After acceptance the Buyer shall not be entitled to reject goods which are not in accordance with the contract.
- 8. PAYMENT**

Payment for the goods and/or services must be made by the Buyer. Terms of payment are net cash 30 days from month of invoice. Time for payment shall be of the essence. Interest will be charged at 2% over Bank of England minimum lending rate applicable at the date of the invoice on overdue payments and shall accrue from day to day at such a rate after as well as before any judgment.
- 9. RESERVATIONS OF TITLE**

The risk in all goods and materials shall pass to the Buyer on delivery.

In spite of delivery having been made property in the goods and materials shall not pass to the Buyer until the Buyer has paid to the Seller all amounts outstanding in respect of the goods and materials and any other goods or services which have been supplied under this or any other contract between the Seller and the Buyer.

Until the date of payment the Buyer is required to store the "Sellers" goods and materials at no cost to the Seller in such a way that they are clearly identified as being the Seller's property and the Buyer shall hold the goods and materials and each of them on a fiduciary basis as bailee for the Seller.

In default of payment on the due date the Seller shall be entitled on demand to the return of the Seller's goods and materials and the Buyer shall forthwith return the same, and in default the Seller shall be entitled to enter the premises of the Buyer or elsewhere where the goods are situated and recover them.

Without prejudice to the Seller's rights under these terms and conditions and under any other applicable law where the price of the goods and materials has not been paid in full on the due date the Seller shall have the right to withhold delivery of all orders by the Buyer until such payment is made or cancel this or any other order with the Buyer insofar as any goods remain to be delivered.

The Seller shall be entitled to recover the price plus VAT notwithstanding that the property in any of the goods has not passed from the Seller.

Notwithstanding that the goods/materials (or any of them) remain the property of the Seller the Buyer may sell or use the goods/materials in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until property in the goods/materials passes from the Seller the entire proceeds of sale or otherwise of the goods/materials shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdraft bank account and shall be at all material times identified as the Seller's money. The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the goods/materials which are the property of the Seller.

Without prejudice to the other rights of the Seller, if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable. The Buyer shall promptly deliver the prescribed particulars of this contract to the Registrar in accordance with the Companies Act 1985 Part XII as amended without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 10. WARRANTY**

Every effort is made to ensure sound materials and good workmanship at except where the Buyer is dealing as a consumer (as defined in the Unfair Contract Terms Act 1977 Section 12) all other warranties terms or conditions whether express or implied relating to fitness for purpose merchantability or conditions of the goods or materials and whether implied by statute or common law or otherwise are excluded.
- 11. LIABILITY**

A claim in respect of any defect or failure to comply with the specification or order in respect of any part thereof shall not entitle the Buyer to cancel or refuse delivery of or payment for any other order delivery or instalment or any part of the same order delivery or instalment.

The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of this contract.

Where the Buyer accepts or has been deemed to have accepted any goods then the Seller shall have no liability whatever to the Buyer in respect of those goods.

The Seller shall not be liable to the Buyer for late delivery or short delivery of the goods. In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the price of the goods.
- 12. FORCE MAJEURE**

In the event of war invasion hostilities (whether war has been declared or not) or civil war the Seller shall be relieved of liabilities incurred under this contract wherever and to the extent of which the fulfilment of such obligation is affected prevented frustrated or impeded as a consequence of any such event or by any government restriction condition control or from strikes labour disputes natural catastrophe fire or accident to the plant of the Seller or any other cause beyond the Seller's control.
- 13. TERMINATION**

The contract will terminate immediately upon service of written notice of termination by the Seller on the Buyer if the Buyer commits any act of bankruptcy or makes any arrangements or composition with creditors or otherwise takes the benefit of any act for the time being in force for the relief of insolvent debtors or has suffered or allowed any execution whether legal or equitable to be levied upon his or its property or obtained against him or (being a body corporate) has convened a meeting of creditors (whether formal or informal) or has entered into liquidation whether voluntary or compulsory (except a voluntary liquidation for the purpose only of reconstruction or amalgamation) or has a receiver appointed of its undertaking or any part thereof.

On giving such notice the Seller shall not be liable for any loss or damage whatever arising from such cancellation. The Seller may in its absolute discretion and without prejudice to any other rights it may have suspend all future deliveries of goods to the Buyer and exercise any of its rights pursuant to clause 10.
- 14. PACKAGING**

The Buyer undertakes that he will not alter remove or otherwise interfere with the packaging branding trade or other marks and labels supplied with or relating to goods materials intended for resale in the form in which they are supplied by the Seller or any products data sheets warnings notices and instructions supplied with or relating to the goods as to the property application fitting servicing or use thereof or intended for the information of the ultimate user thereof and that he will observe all recommendations and instructions of the Seller as to the correct storage and where applicable as to the correct installation and use of the goods.

The Buyer will indemnify the Seller against any failure by the Buyer to carry out this obligation.
- 15. RETURN OF GOODS**

Goods which have been supplied in accordance with the Buyer's order will only be accepted for credit providing the Seller's written agreement is first obtained. Credit will be allowed at original invoice or current price whichever is the lower less a handling charge of 20%.

Packing cases, crates, cable drums and other packing materials must be returned in good condition and duly advised to the Seller's works within thirty days otherwise they will be charged for.
- 16. APPLICABLE LAW**

This contract shall be construed and take effect in all respects in accordance with English Law.
- 17. SET OFF AND COUNTERCLAIM**

The Buyer may not withhold payment of any invoice or other amount due to the Seller by reason of any right of set off or counterclaim which the Buyer may have or allege to have or for any reason whatever.

The Seller shall be entitled to a general lien on all goods of the Buyer in the Seller's possession (including goods for which the Buyer has paid) for the unpaid price of all goods sold to the Buyer by the Seller under this or any other contract.
- 18. SEVERANCE**

Any provision of this contract which is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision of this contract.
- 19. WAIVER**

No waiver or forbearance by the Seller (whether express or implied) in enforcing any of its rights under this contract shall prejudice its right to do so in the future.
- 20. HEADINGS**

All headings are for ease of reference only and shall not affect the construction of this contract.