

Filton (L/Spa) Limited – Terms and Conditions for the Supply of Goods

1. INTERPRETATION

1.1 Definitions:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 12.4.

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods, the terms of which are set out in these Conditions and the form of the Order accepted by the Supplier in accordance with clause 2.3.4.

Customer: the person or firm who purchases the Goods from the Supplier.

Delivery Location: means:

- (a) in relation to delivery pursuant to clause 4.2, the location set out in the Order;
- (b) in relation to delivery pursuant to clause 4.3, the Supplier's premises,

(unless otherwise agreed in writing between the parties).

Force Majeure Event: an event, cause or circumstance beyond a party's reasonable control including, but not limited to, non-performance by suppliers or subcontractors.

Goods: the goods (or any part of them) set out in the Order.

Intellectual Property Rights: the patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world in or associated with the Goods.

Mainland Britain: locations on the mainland of England, Wales and Scotland. For the avoidance of doubt this shall not include:

- (a) Northern Ireland;
- (b) the Scottish Highlands;
- (c) the Inner and Outer Hebrides;
- (d) Isle of Man;

- (e) Isle of Wight;
- (f) the Channel Islands;
- (g) the Shetland Islands;
- (h) the Orkney Islands;
- (i) the Isles of Scilly.

Order: the Customer's order for the Goods, as communicated to the Supplier by the Customer's written acceptance or acceptance via telephone of the Supplier's Quotation, as the case may be.

Quotation: the Supplier's offer to provide the Goods to the Customer in writing or over the telephone, which shall be subject to these Conditions.

Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.

Supplier: Filton (L/Spa) Limited (registered in England and Wales with registered office at 10 Cheyne Walk, Northampton, NN1 5PT and company number 07860226).

1.2 **Interpretation:**

1.2.1 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.2 any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.3 a reference to **writing** or **written** includes faxes and emails.

2. **BASIS OF CONTRACT**

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.3 The Customer shall place an Order with the Supplier via the following process:

2.3.1 the Customer shall (either in writing or via telephone) request a Quotation from the Supplier for the provision of certain Goods or notify the Supplier that it wishes to place a repeat Order for the provision of certain Goods;

- 2.3.2 the Supplier may provide a Quotation to the Customer for those Goods;
- 2.3.3 the Customer shall place an Order with the Supplier by providing written confirmation of the Quotation or confirming acceptance of the Quotation with the Supplier via telephone; and
- 2.3.4 the Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.5 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.6 A Quotation given by the Supplier shall not constitute an offer. A Quotation shall only be valid for the period stated on it.

3. **GOODS**

- 3.1 The Goods are described in the Supplier's catalogue as modified by any applicable Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend any Specification if required by any applicable statutory or regulatory requirements.

4. **DELIVERY**

- 4.1 The Supplier shall ensure that:
 - 4.1.1 each delivery of the Goods is accompanied by a delivery note that shows the Order reference number, all relevant Customer and Supplier reference numbers, the date the Goods were dispatched to the Delivery Location, the type and quantity of the Goods (including the part number of the Goods and any other special instructions relating to the Goods; and

- 4.1.2 if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request and in any event within thirty (30) days of delivery. Returns of packaging materials shall be at the Supplier's expense.
- 4.2 Where the Customer requests that the Supplier delivers the Goods to a location in Mainland Britain, the Supplier shall deliver the Goods to the Delivery Location at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.3 Where the Customer requests that the Supplier deliver the Goods to a location which is not in Mainland Britain then the following provisions shall apply;
- 4.3.1 the Supplier shall make the Goods available at the Delivery Location at any time after the Supplier notifies the Customer that the Goods are ready;
- 4.3.2 the Customer (or, where the parties agree in writing, the Supplier) shall be responsible for arranging, in all cases at the Customer's cost, the onward transportation of the Goods from the Delivery Location to a location requested by the Customer; and
- 4.3.3 the Customer is responsible for obtaining and arranging, at its own cost, all export clearances, import licences and other consents in relation to the Goods as are required from time to time and, if required by the Supplier, the Customer shall make those licences and consents available to the Supplier prior to the relevant shipment.
- 4.4 Delivery is completed on the arrival of the Goods at the Delivery Location. For the avoidance of doubt, the Customer shall be responsible for unloading the Goods from any container or other state of carriage at the Delivery Location.
- 4.5 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.7 If the Customer fails to take delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure

or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:

- 4.7.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready; and
- 4.7.2 the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.8 If ten (10) Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.
- 4.9 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. **QUALITY**

5.1 The Supplier warrants that on delivery, and for a period of twelve (12) months from the date the Goods were dispatched to the Delivery Location (**Warranty Period**), the Goods shall:

5.1.1 conform in all material respects with their description and any applicable Specification; and

5.1.2 be free from material defects in design, material and workmanship.

5.2 Subject to clause 5.3, if:

5.2.1 the Customer gives notice in writing to the Supplier during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;

5.2.2 the Supplier is given a reasonable opportunity of examining such Goods; and

5.2.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business (with the parties agreeing in writing or by telephone who will bear the cost of such return),

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:

- 5.3.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
 - 5.3.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - 5.3.3 the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
 - 5.3.4 the Customer alters or repairs such Goods without the written consent of the Supplier;
 - 5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - 5.3.6 the Goods differ from their description and/or any applicable Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6. TITLE AND RISK

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 6.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

- 6.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 9.1; and
 - 6.3.5 give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 9.1, then, without limiting any other right or remedy the Supplier may have, the Supplier may at any time:
- 6.4.1 require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
 - 6.4.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. **PRICE AND PAYMENT**

- 7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of the Order.
- 7.2 The price of the Goods:
 - 7.2.1 excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice;
 - 7.2.2 where clause 4.2 applies, includes the costs and charges of packaging, insurance and transport of the Goods; and
 - 7.2.3 where clause 4.3 applies, includes the costs and charges of packaging of the Goods but excludes the costs and charges of insurance and transport of the Goods and all export clearances, import licences, taxes and other consents applicable to the Goods, which shall be borne by the Customer or invoiced to the Customer where the Supplier agrees to arrange for onward transportation of the Goods from the Delivery Location.
- 7.3 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 7.4 The Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice unless otherwise agreed between the parties. Payment shall be made to the bank account nominated in writing by the Supplier. Time for payment is of the essence.
- 7.5 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue

amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

- 7.6 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

8. **INTELLECTUAL PROPERTY**

- 8.1 The Customer agrees and acknowledges that the Supplier shall retain ownership of all the Intellectual Property Rights.

- 8.2 The Supplier grants to the Customer a non-exclusive, perpetual, royalty-free licence to use the Goods solely in relation to its own business purposes.

- 8.3 If at any time it is alleged that the Goods infringe the rights of any third party or if, in the Supplier's reasonable opinion, such an allegation is likely to be made, the Supplier may at its option and its own cost:

8.3.1 modify or replace the Goods in order to avoid the infringement; or

8.3.2 procure for the Customer the right to continue using the Goods; or

8.3.3 repurchase the Goods at the price paid by the Customer, less depreciation at the rate the Supplier applies to its own equipment.

- 8.4 The Customer shall promptly and fully notify the Supplier of:

8.4.1 any actual, threatened or suspected infringement of any Intellectual Property Rights which comes to the Customer's notice; and

8.4.2 any claim by any third party that comes to the Customer's notice that the sale or advertisement of the Products infringes the rights of any person.

- 8.5 The Customer agrees (at the Supplier's request and expense) to do all such things as may be reasonably required to assist the Supplier in taking or resisting any proceedings in relation to any infringement or claim referred to in clause 8.4.

- 8.6 In the event of any claim, proceeding or suit by a third party against the Customer alleging an infringement of any Intellectual Property Rights, the Supplier shall defend the Customer at the Supplier's expense, subject to:

8.6.1 the Customer promptly notifying the Supplier in writing of any such claim, proceeding or suit; and

8.6.2 the Supplier being given sole control of the defence of the claim, proceeding or suit,

and provided that the Supplier shall not be liable for infringements to the extent that they arise out of or in connection with:

- 8.6.3 modifications to the Goods made by anyone except the Supplier or its authorised representative;
 - 8.6.4 use or combination of the Goods with products or third party materials not specified or expressly approved in advance in writing by the Supplier
 - 8.6.5 the Supplier's adherence to the Specification, the Customer's requested changes to the Specification or from any other infringing items of the Customer's origin, design or selection.
- 8.7 The Customer shall indemnify the Supplier 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 Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's adherence to any applicable Specification.

9. TERMINATION

- 9.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:
- 9.1.1 the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within fourteen (14) days of that party being notified in writing to do so;
 - 9.1.2 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 9.1.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 9.1.4 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 9.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 9.1.1 to clause 9.1.4,

or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

- 9.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 9.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.
- 9.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 9.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

10. **LIMITATION OF LIABILITY**

- 10.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
 - 10.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 10.1.2 fraud or fraudulent misrepresentation;
 - 10.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - 10.1.4 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 10.2 Subject to clause 10.1:
 - 10.2.1 the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - 10.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the Goods.

11. **FORCE MAJEURE**

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for twenty (20)

Business Days, the party not affected may terminate this Contract by giving one (1) week's written notice to the affected party.

12. GENERAL

12.1 Assignment and other dealings.

12.1.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

12.1.2 The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

12.2 Confidentiality.

12.2.1 Each party undertakes that it shall not at any time during this agreement, and for a period of two years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.2.2.

12.2.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 12.2; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.2.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

12.3 Entire agreement.

13.3.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

13.3.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim

for innocent or negligent misrepresentation based on any statement in this agreement.

- 12.4 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 12.5 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 12.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 12.7 **Notices.**
- 12.7.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.
- 12.7.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.7.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.
- 12.7.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 12.8 **Third party rights.** No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.
- 12.9 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 12.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual

disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.