

TERMS AND CONDITIONS OF SALE

1. INTERPRETATION

- 1.1. In these Conditions the following definitions shall apply:
- “**Business Day**” means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
- “**Conditions**” means the terms and conditions set out in this document as amended from time to time;
- “**Contract**” means the agreement between the Supplier and the Customer for the sale and purchase of the Goods incorporating these Conditions, any Schedule and any Order;
- “**Customer**” means the person or firm who purchases the Goods from the Supplier;
- “**Force Majeure Event**” means an event or circumstance beyond a party’s reasonable control;
- “**Goods**” means the goods to be supplied by the Supplier to the Customer as set out in the Order;
- “**Order**” means the Customer’s order for the Goods, as set out in the Customer’s order form/purchase order, the Customer’s written acceptance of the Supplier’s quotation, or overleaf, as the case may be;
- “**Schedule**” means the schedule of Goods issued by the Supplier to the Customer from time to time (and includes any subsequent amendments or variations to the Schedule by the Supplier);
- “**Supplier**” means Aspex UK Limited (registered in England and Wales with company number 05787953).
- 1.2. In these Conditions, unless the context requires otherwise:
- (a) a reference to a ‘party’ includes that party’s personal representatives, successors and permitted assigns;
 - (b) a reference to a ‘person’ includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person’s personal representatives, successors and permitted assigns;
 - (c) a reference to a ‘company’ includes any company, corporation or other body corporate, wherever and however incorporated or established;
 - (d) words in the singular include the plural and vice versa;
 - (e) any words that follow ‘include’, ‘includes’, ‘including’, ‘in particular’ or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
 - (f) a reference to ‘writing’ or ‘written’ includes any method of reproducing words in a legible, non-transitory form;
 - (g) a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time and includes all

subordinate legislation made from time to time under that legislation.

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 are complete and accurate.
- 2.3. 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. Any samples, drawings or advertising produced by the Supplier and any illustrations contained in the Schedule 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.
- 2.5. A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue (or such other period as agreed by the Supplier in its sole discretion).

3. GOODS

- 3.1. The Goods are as described in the Schedule and an Order shall be an order of Goods as specified in the Schedule applicable at the time of that Order only.
- 3.2. The Supplier reserves the right to amend the Schedule (including the description or specification of the Goods and their packaging) if required by any applicable statutory or regulatory requirements.

4. DELIVERY

- 4.1. The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, any applicable Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 4.2. The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (“Delivery Location”).
- 4.3. Delivery is completed on the completion of unloading of the Goods at the Delivery Location.
- 4.4. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. If no date for delivery is specified, delivery of the Goods shall be made within a reasonable time.
- 4.5. The Supplier shall not be liable for any delay in delivery or failure to deliver 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 Customer fails to take delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then, unless otherwise agreed by the Supplier or 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:

- (a) 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
- (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.7. If 10 Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted 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.

4.8. The Supplier may deliver the Goods by instalments as required, 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 12 months from the date of delivery ("warranty period"), the Goods shall:

- (a) conform in all material respects with their description;
- (b) be free from material defects in design, material and workmanship; and
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

5.2. Subject to Clause 5.3, if:

- (a) the Customer gives notice in writing to the Supplier within a reasonable time (being not more than 30 days) of discovery that some or all of the Goods do not comply with the warranty set out in Clause 5.1;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business,

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:

- (a) the Customer makes any further use of such Goods after giving notice pursuant to Clause 5.2;
- (b) 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;
- (c) the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4. Should the Customer consider that any of the Goods fail to comply with the warranty set out in Clause 5.1, then, prior to taking any remedial action itself, the Customer shall inform the Supplier and a course of action shall be agreed between both parties. No charges or contra charges incurred by the Customer will be accepted, paid for and/or reimbursed by the Supplier for:

- (a) remedial works carried out by the Customer; or
- (b) temporary or replacement goods purchased by the Customer from other sources,

in each case, without prior written consent of the Supplier.

5.5. 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.

5.6. 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.

5.7. 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 which case title to the Goods shall pass at the time of payment of all such sums.

6.3. Until title to the Goods has passed to the Customer, the Customer shall:

- (a) hold the Goods on a fiduciary basis as the Supplier's bailee;

- (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery (and hold any proceeds of such insurance on trust for the Supplier);
- (e) notify the Supplier immediately if it becomes subject to any of the events listed in Clause 8.1(c) to (e); and
- (f) give the Supplier such information relating to the Goods as the Supplier requests 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 8.1(c) to (e), then, without limiting any other right or remedy the Supplier may have, the Supplier may at any time:

- (a) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
- (b) 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 Schedule, as the same may be superseded by any subsequent Schedule.

7.2. The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date, quantities or types of Goods ordered; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

7.3. The price of the Goods:

- (a) 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; and
- (b) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

7.4. Subject to Clause 7.5, the Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery. If the agreed delivery date is moved

to a later date at the request of the Customer after production of the Goods has commenced, then the Supplier reserves the right to invoice the Goods in full or in part on or at any time after the agreed delivery date. The Customer shall also be liable to reimburse the Supplier immediately on demand in respect of any storage costs associated with postponed deliveries. The Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier. Time for payment is of the essence.

7.5. The Supplier reserves the right to require the Customer to pay for the Goods in advance either in whole or in part (in its absolute discretion) if:

- (a) the Customer does not have an account with the Supplier;
- (b) the Customer has a poor credit rating (as determined by the Supplier); and/or
- (c) the Customer's credit rating (in the opinion of the Supplier) does not extend to cover the full value of the Customer's order(s) of Goods.

7.6. 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 (before and after judgment on a daily basis until payment in full) at the rate of 4% per annum above Barclays base rate from time to time. The Customer shall pay the interest together with the overdue amount.

7.7. 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).

8. TERMINATION

8.1. Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment;
- (b) 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 seven days of that party being notified in writing to do so;
- (c) 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;

- (d) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (e) 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.
- 8.2. 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 8.1(c) to Clause 8.1(e), 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.
- 8.3. 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.
- 8.4. 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.
- 8.5. 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.

9. LIMITATION OF LIABILITY

- 9.1. Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - (b) fraud or fraudulent misrepresentation; or
 - (c) any matter in respect of which it would be unlawful to exclude or restrict liability.
- 9.2. Subject to Clause 9.1:
- (a) 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
 - (b) 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 the value of Goods purchased by the Customer in the Order to which the claim relates, per Order.

10. 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 three months, the party not affected may terminate this Contract by giving 14 days' written notice to the affected party.

11. GENERAL

- 11.1. **Assignment and other dealings.** 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. 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.
- 11.2. **Confidentiality.** 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 the Contract.
- 11.3. **Entire agreement.** These Conditions, the Contract, any Order and any Schedule constitute 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.
- 11.4. **Variation.** Any variation to the Contract or an Order that is instructed by the Customer in writing to the Supplier, including emails from any employee, agent or other representative of the Customer, shall be binding on the Customer. The Supplier shall notify the Customer of any changes to the price as a result of such variation(s). The Supplier may vary the Schedules at any time with immediate effect by sending a revised or amended Schedule to the Customer at any time.
- 11.5. **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.
- 11.6. **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.

- 11.7. **Notices.** 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.
- 11.8. **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.
- 11.9. **Governing law and jurisdiction.** 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 and each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any such dispute or claim.