

Terms and Conditions of Sale (2008)

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1.0 Definition

1.1 The following expressions shall have the following meanings:

1.1.1 The Company: Salzer UK Ltd

1.1.2 The Buyer: the person, firm or company ordering goods from the Company.

1.1.3 Particulars of Contract: the particulars set out on the Company's acknowledgement of order forms.

1.1.4 Contract: the terms and conditions set out herein together with the Particulars of Contract.

1.1.5 Goods: the quantity and description of items set out on the Particulars of Contract.

1.1.6 "Ex Works" Incoterms: The terms as defined by the International Chamber of Commerce Guide to Incoterms, 1st Edition of February 1979 subject to any variation herein.

2.0 Construction of Contract

2.1 All contracts entered into between the Company and the Buyer for the provision of goods and supply of services shall be deemed to incorporate these conditions save to the extent that they are expressly excluded, added to or varied by any particular contract. No variation or exclusion of or addition to these conditions shall be effective unless expressly agreed in writing by the Company.

2.2 Any standard conditions employed by the Buyer are hereby expressly excluded from any contract with the Company, save to the extent that the Company expressly agrees in writing that they shall be included. In the event of such inclusion these conditions shall prevail in the event of any conflict with the Buyer's conditions.

2.3 The terms and conditions set out herein shall together with the Particulars of Contract constitute the entire agreement between the parties and no variation or pre-contractual representations shall be effective unless made in writing between the parties. On entering into the Contract the Buyer acknowledges that he has not relied upon any pre-contractual representations made by or on behalf of the Company unless specified in writing in the Particulars of Contract.

2.4 These conditions contain exclusion, indemnity and exemption clauses and the Buyer agrees that they are fair and reasonable in all the circumstances of the Contract between the parties.

2.5 A tender or quotation of the Company shall constitute only an invitation for an order subject to these conditions and no contract shall result until confirmed in writing by the Company.

3.0 Property and Risk

3.1 Notwithstanding delivery and the passing of risk as hereinafter contained the property in the Goods shall not pass to the Buyer until payment in cash or cleared funds of all sums owing to the Company under the Contract together with the full price of any other goods the subject of any other contract with the Company and payment of all other debts owed to the company. Until that time the Buyer acknowledges that he is in possession of Goods solely as fiduciary agent and/or bailee for the Company and the Buyer shall keep the Goods properly stored, insured and identified as the Company's property.

3.2 In the event of the Buyer failing to pay any of the Contract price when it becomes due the Company shall be entitled to enter into any premises where the Goods may be situated and to repossess the Goods. The Buyer shall execute all such documents and give to the Company all such assistance as the Company may require in order to register the Company's interest in the Goods or which otherwise be necessary in order to preserve and protect the Company's interest in the Goods.

3.3 The Buyer's right to possession shall automatically cease in the event of the presentation of a winding-up or bankruptcy petition and/or petition for an Administration Order of the appointment of an Administration Receiver over any of the Buyer's assets or undertakings or if a Winding-up or Bankruptcy Order is made against the Buyer or if the Buyer goes into voluntary liquidation or calls a meeting of or makes any arrangement or composition with creditors.

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- 3.4 Notwithstanding the fact that the Goods of the Company are admixed or incorporated with the goods of the Buyer the Goods shall insofar as they are identifiable and removable, remain the property of the Company. If goods the properties of the Company are admixed with goods the property of any person other than the Buyer or are processed with or incorporated therein the product thereof shall become or shall be deemed to be owed in common with that other person.
- 3.5 The buyer shall be at liberty to agree to sell on any product produced from or with the Company's Goods on the express condition that such an agreement to sell shall take place as fiduciary agent and bailey for the Company whether the Buyer sells on his own account or not and that such proceeds of sale which represent or are equivalent to all the amounts owing to the Company are held in trust ("the Trust") for the Company and not mingled with any other monies and shall at all times be properly stored, protected, insured and identified as the Company's monies.
- 3.6 If the Buyer has not received the proceeds of any such sale he will if called upon so to do by the Company within seven days of such request assign to the Company all rights against the person or persons to whom he has supplied any goods or any product or chattel made from the Company's Goods and the Company shall be entitled to take such legal action as is necessary to recover the proceeds of such sale ("the Book Debts").
- 3.7 The buyer shall not be entitled to pledge or in any way charge by way of security any of the goods which remain the property of the Company and should the Buyer do so, all monies owing by the Buyer shall (without prejudice to any other right or remedy) forthwith become due and payable.
- 3.8 The Company shall be entitled at any time to waive any or all of the above provisions and to pass the property in the Goods to the Buyer by giving to the Buyer written notice to that effect. Without further consideration the Company shall have irrevocable authority of the Buyer to resell any Goods repossessed buy the Company pursuant hereto.
- 3.9 The risk in the Goods shall pass to the Buyer as soon as the Goods leave the Company's premises to be delivered to a place nominated by the Buyer notwithstanding that such delivery may not be to the final destination.
- 3.10 Goods delivered to the Buyer but remaining the property of the Company shall be at the risk of the Buyer and shall not become subject to any encumbrance and shall be retained in good condition and in the possession or control of the Buyer until sold in the normal course of the Buyer's business.
- 3.11 The Buyer shall at its expense and in the joint names of the Buyer and the Company insure all Goods at the risk of the Buyer for their full replacement value against all normal risks and shall receive in Trust for the Company any proceeds of such insurance and upon payment thereof to the Company the Buyer will be given credit therefore against the invoice price of such Goods.

4.0 Payment

- 4.1 The price for the Goods shall be as stated on the Particulars of Contract.
- 4.2 All prices are exclusive of Value Added Tax which shall be an additional liability of the Buyer.
- 4.3 Unless otherwise expressly provided in the Contract, prices are "Ex-Works" Incoterms.
- 4.4 The Company shall be entitled to increase the prices by the amount of any increase import or other duties or in the cost of materials, labour of transport by the amount of any increase in the cost of such items between the Contract and Delivery dates.
- 4.5 Prices are inclusive of the Company's standard packaging. The Company retains the right to use additional packing materials where the Company at its sole discretion believes these to be necessary which cost shall be additionally payable by the Buyer. Packing cases, skids, drums or other containers will be returnable by the Buyer at its expense if so required by the Company.
- 4.6 Invoices shall be payable by the Buyer within 30 days of end of month of despatch subject to any requirement of the Company specified in or prior to the Contract requiring payment of an advance deposit or that the goods will be supplied only against pro-forma invoice. The Buyer will be notified of any discount which may be applicable.

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4.7 Where any invoice is not paid in full by the due date for payment the outstanding balance from time to time shall bear interest (as well after as before any judgement) at the rate of 5% per annum the base lending rate of Barclays Bank Plc from time to time such interest to accrue on a day to day basis. Any monies received by the Company after the due date for payment may (notwithstanding any contrary stipulation by the Buyer) be applied by the Company towards payment of any interest accrued.

5.0 Defaults in Payment

5.1 Without notice by the Company if the Buyer makes default in the payment of any sums due to the Company or in the event that one of the circumstances referred to in Clause 3.3 above arises or execution is levied against the Buyer's goods or if the Company gives notice of a reasonable relief that the security of the indebtedness of the Buyer to the Company is in jeopardy then the next succeeding sub clauses shall apply:

5.1.1 All outstanding invoices including those in respect of which the credit period under Condition 4.6 (if applicable) has not elapsed shall nevertheless immediately become due and payable.

5.1.2 The Buyer (which expression shall include any liquidator or receiver or trustee of the Buyer) shall forthwith upon demand:

- (A) Deliver up all goods in its possession or control which remain the property of the Company and failing such delivery the Company by its authorised representatives may peaceably enter upon any premises wherein such Goods may be for the purpose of repossessing the same.
- (B) Account for any pay to the Company all monies received by the Buyer being the proceeds of sale and/or insurance monies held on Trust pursuant to this Contract.
- (C) Execute in favour of the Company an assignment of the Book Debts and do all other things necessary to ensure that the Company receives the benefit thereof.

5.2 Notwithstanding that the Goods shall remain the property of the Company the Buyer shall not be entitled to any refund or credit upon the Goods being returned to or repossessed by the Company except in accordance with the following conditions:

5.2.1 Credit will be given to the Buyer (after deduction of any costs and expenses including legal costs on an indemnity basis incurred by the Company in exercising its rights against the Buyer) for monies received by the Company pursuant to the aforesaid Trust and for the net invoice price of goods repossessed by the Company subject to such reduction for damage to or deterioration of such Goods as the Company shall consider reasonable.

5.2.2 If Goods which the Company is entitled to repossess exceed in invoice value the total amount due from the Buyer the Company may select which Goods it wishes to repossess and if the credit to which the Buyer thereupon becomes entitled extinguishes its outstanding liability to the Company all other goods in the possession of the Buyer including any excess repossessed by the Company shall become the Buyer's property.

5.3 In the event that the circumstances referred to in Clause 5.1 above arise then the following conditions shall apply:

5.3.1 The Company may cancel the Contract or suspend work, and withhold delivery on outstanding contracts which will only be reinstated on terms thereafter agreed. Subject to such reinstatement any loss of profit or irrecoverable expenditure incurred by the Company on a cancelled contract shall constitute a debt due from the Buyer.

5.3.2 The Company shall be entitled to sell elsewhere any goods or the benefit of any work referred to in the preceding paragraph.

5.4 The Company's other rights and remedies at law shall not be restricted by these conditions and any costs and expenses incurred by the Company as aforesaid shall forthwith upon the same being incurred constitute a debt owed by the Buyer to the Company.

6.0 Delivery

6.1 Delivery of Goods shall be "Ex-Works" Incoterms and the risk in the goods shall pass in accordance with Clause 3.9 hereof.

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- 6.2 The Company may at its discretion agree to deliver goods by its standard method provided that the risk passes to the Buyer as soon as the Goods leave the Company's premises. Any express or next day delivery shall be at the cost of the Buyer and the risk shall pass in accordance with this clause.
- 6.3 The Company has the right in its absolute discretion to make part or instalment delivery and to invoice such instalments separately. Each part or instalment shall be treated as a separate contract for all purposes of these conditions.
- 6.4 Dates or periods for delivery stated in the Contract are approximate and not essential terms though the Company will make all reasonable endeavours to comply therewith. The Company's obligations to deliver shall at all times be subject to the prompt receipt of all specifications, final approved prints and any other details, drawings, documents or information essential to the proper execution of the Contract.
- 6.5 The Buyer may not claim for shortage in any delivery unless (where reasonably practicable) noted by the Buyer on the receipted delivery note or (where not reasonably practicable) notified to the Company within three days of the Buyer becoming aware of the shortage and in any case within 5 days of delivery.
- 6.6 The Buyer may not claim for any damage in transit unless notified to the Company within three days of the Buyer becoming aware of the damage and in any case within 5 days of delivery.
- 6.7 Any liability of the Company for shortage in delivery or damage in transit shall be subject to the Company being reasonably satisfied that such shortage or damage has occurred not due to the neglect of the Buyer or delivery method.
- 6.8 The Buyer shall promptly unload the Goods when delivered and the Company shall not be liable for damage caused after the Goods have been unloaded including damage during unloading unless caused by the Company's servants or agents. Clear and reasonable access to the delivery point shall be made available by the Buyer.
- 6.9 The Company shall not be liable for any consequential loss to the Buyer arising out of delay in delivery or non delivery of goods due to force majeure as defined in Clause 12.0 hereof or any other cause whatsoever beyond the Company's complete control.
- 6.10 The Company may by notice in writing cancel the Contract to the extent that it is unfulfilled if production and/or delivery is delayed by more than three months as a result of technical changes introduced by the Buyer to the Goods or in the event that the Buyer fails to provide information on quantity, quality description and any specification for the Goods.
- 6.11 The Company may at its discretion agree to the return by the Buyer of the Goods provided that:
- 6.11.1 The Company shall make a handling charge of 20% of the invoice value of the Goods.
- 6.11.2 The Goods are returned in their original packaging and are in a resalable condition.

7.0 Description

- 7.1 All descriptive specifications, drawings and particulars or weights and dimensions submitted with any tender or quotation of the Company are approximate only and the description and illustrations in the Company's catalogues, price lists and other advertising matter are intended merely to give a general idea of the Goods and shall not constitute any term of the Contract.
- 7.2 Performance figures stated in the Contract shall be subject to recognised tolerances and rejection limits.

8.0 Fitness for Purpose and Merchantable Quality

- 8.1 The Company will accept responsibility for the reasonable fitness of any Goods which are supplied and which are used for any specific purpose which has been expressly notified by the Buyer to the Company prior to Contract. The Company will further accept responsibility for the fitness of any Goods supplied for any use for which such Goods are commonly offered for sale by the Company. Save as aforesaid the Company shall not be responsible for the fitness of the Goods for any purpose for which the same may otherwise be used by the Buyer.

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- 8.2 The Company warrants to the original Buyer subject to the terms and conditions hereinafter stated that any device sold by the Company is free from any defect in materials or workmanship and will perform the number of operations specified for such devices in the relevant technical catalogue. This warranty is subject to the following conditions:
- 8.2.1 That the device shall have been properly selected by the Buyer from the Company's catalogue for the purpose of its intended use.
- 8.2.2 That the actual applied voltage used in connection with the device shall be within the limits namely from 15% below to 10% above the normal voltage.
- 8.2.3 With regard to radio interference-that unless otherwise agreed in writing it is the responsibility of the Buyer to apply any necessary suppression at the point of installation.
- 8.2.4 That the device shall have been mounted in an enclosure of good quality which effectively excludes dust and moisture.
- 8.2.5 That short circuit protection (either HRC fuses or circuit breakers) shall not exceed the maximum capacity called for in the Company's catalogue.
- 8.2.6 That contact welding caused by short circuit shall not constitute a failure of the device to comply with the said warranty.
- 8.2.7 That any alleged failure of or defect in the device shall have been notified in writing to the company at its Head Office within seven days of its discovery and within the period of its service life stated in the Company's catalogue.
- 8.2.8 That the warranty extends only to such parts of the device as have been manufactured by the Company or by any company within the Group of which the Company forms part.
- 8.2.9 That the Company shall not be liable in any way for the quality of performance or fitness for any purpose of any part of the goods which were not manufactured by the Company or by any company within the Group of which the Company forms part save to the extent that the Company is able to recover in respect of such liability as against the manufacturer thereof.
- 8.2.10 That any express warranty given in respect of the Goods and the obligations in respect thereof herein set out are undertaken by the Company only to the original Buyer.
- 8.3 Any device alleged to be faulty shall be returned if so required by the Company at the Buyer's costs to such place in the United Kingdom as the Company may specify and if the alleged complaint is in the opinion of the Company justified the Company will refund such cost and will at its own cost and without further cost to the Buyer at its option either repair or replace the same and redeliver the repaired or substituted device to the Buyer whereupon the Company shall be under no further liability to the Buyer in respect of such device.

9.0 Limitation of Liability

- 9.1 Notwithstanding any of the other conditions herein contained and (insofar as it is legally effective so to do) notwithstanding any other express or implied conditions in the event of any negligence or breach of contract (including any breach of warranty) by the Company the Company's liability shall not extend beyond refunding to the Buyer the net invoice price of the contract and (without prejudice to the generality) the Company shall have no liability for any consequential loss suffered by the Buyer whether or not the Buyer's intended use of or purpose for the Goods is known to the Company. 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.

10.0 Patents and Trademarks etc.

- 10.1 The Buyer shall not remove from the Goods any imprint or insignia affixed upon it recording any patent, trademark, copyright or other intellectual property right applicable to it.

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- 10.2 Any reference by the Company to patents, copyright registered designs, trademarks and analogous forms of protection shall not constitute a warranty of the validity thereof.
- 10.3 In the event that Goods are manufactured or any process is applied to the Goods by the Company in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from the Company's use of the Buyer's specification.
- 10.4 In the event that the Buyer receives notice of any infringement of any patent, trademark, copyright or other intellectual property right of the Company the Buyer shall immediately notify the Company of the circumstances of the infringement.

11.0 Waiver

- 11.1 Any waiver by either party of a breach of any provision of this contract shall not be considered as a waiver of any subsequent breach of the same or other provision.

12.0 Force Majeure

- 12.1 The Company shall not be liable to the Buyer or deemed to be in breach of Contract by reason of any delay in performing, or any failure to perform any of the Company's obligations in relation to the supply of Goods and/or commissioning, installation and Fitting Work, if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond the Company's reasonable control:
- 12.1.1 Acts of God, Explosion, flood, fire, theft or accident.
- 12.1.2 War or threat of war, sabotage, civil disturbance or requisition.
- 12.1.3 Acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any Governmental or Local Authority.
- 12.1.4 Import or export regulations or embargoes.
- 12.1.5 Strikes, lockouts, shortened working hours or other industrial actions or trade disputes (whether involving employees of the Company or those of any sub-contractor or of a third party).
- 12.1.6 Difficulties in obtaining raw materials, labour, fuel, parts or machinery.
- 12.1.7 Delays in transport, accidents, power failure or breakdown in machinery.

13.0 Severance

- 13.1 If any provision of this contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this contract and the remainder of the provisions in question shall not be affected thereby.

14.0 Use of Product and Product Maintenance

- 14.1 Manufacturers, designers, importers or suppliers of articles for use at work have a duty to ensure, so far as reasonably practicable, that the article will be safe and without risk to health when properly used. An article is not regarded as being "properly used" if it is used without regard to any relevant information or advice relating to its use made available by the manufacturer, designer, importer or supplier.
- 14.2 Having regard to these provisions, the following is given as a guide to the information which is readily available to the Buyer, in order that the obligations of all concerned may be met as fully as is reasonably practicable. This information relates to those products detailed in the Company's offer/Catalogues or associated literature.

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- 14.3 Information on the design, construction and installation or the Company's products, to ensure that so far as is reasonably practicable they are safe and without risk to health when properly used may be found in:
 - 14.3.1 Relevant Standards, Specifications and Codes of Practice.
 - 14.3.2 Regulations for Electrical Installations (published by the institution of Electrical Engineers).
 - 14.3.3 Catalogue and product leaflets of the Company. This information may be obtained by specific request to the Company.
- 14.4 It is important that the products concerned should be installed, commissioned, operated and maintained or under the supervision of competent persons in accordance with good engineering practice and the relevant:
 - 14.4.1 Regulations for the Electrical Installations (published by the Institution of Electrical Engineers).
 - 14.4.2 Codes of Practice
 - 14.4.3 Statutory Requirements
 - 14.4.4 Instructions specifically advised by the Company and, where appropriate, with particular reference to information marked on the product.
- 14.5 The Buyer must take such steps as are necessary to ensure that any appropriate information relevant to the Company's products is made available by the Buyer to anyone concerned.
- 14.6 The Buyer shall ensure that the Goods supplied and/or assembled, commissioned, installed and fitted shall be maintained in accordance with the product information supplied by the Company and insofar as the Goods are resold the Buyer shall ensure that such information is received by all customers.
- 14.7 The Buyer shall inspect the product regularly and shall notify the Company immediately upon becoming aware of or upon being notified of any defects, malfunction or deterioration in the state of the product.

15.0 Notice

Any notice required or authorised to be given hereunder shall be in writing and may be served by telephone, facsimile, telex cable or 1st class letter sent to the address given above or any other address notified for the purpose and shall be deemed to be served in the case of a cable 24 hours and in the case of a letter three days after proven despatch provided that any other mode of service shall be valid if the said notice or other communication is actually received by the addressee.