

SAYWELL INTERNATIONAL - TERMS AND CONDITIONS OF SALE

1. INTERPRETATION

In these Conditions:

'BUYER' means the person firm or company to whom any quotation is addressed or with whom the Contract is made

'GOODS' means the goods agreed to be sold to a Buyer in accordance with these Conditions

'SELLER' means Saywell International Limited registered in England and Wales under number 00579488 and having its principal place of business at Aviation Centre, Downlands Business Park, Worthing, West Sussex BN14 9LA England.

'CONDITIONS' means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between Buyer and Seller

'CONTRACT' means the contract for the purchase and sale of the Goods

2. BASIS OF THE SALE

- 2.1. Seller shall sell and Buyer shall purchase the Goods in accordance with any written quotation of Seller which is accepted by Buyer, or any written order of Buyer which is accepted by Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions.
- 2.2. All terms and conditions and exceptions referred to by the Buyer or contained in the Buyer's order or in any other document or communication from the Buyer which amend or vary these Conditions are excluded.
- 2.3. No variation to these Conditions shall be binding unless agreed in writing.
- 2.4. Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by Seller in writing. Buyer acknowledges that it does not rely on any such representations which are not so confirmed.
- 2.5. Any advice or recommendation given by Seller or its employees or agents to Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by Seller is followed or acted upon entirely at Buyer's own risk, and accordingly Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.6. Any typographical or other error in any quotation, acceptance of offer, invoice or other document or information issued by Seller shall be subject to correction without any liability on the part of Seller.
- 2.7. Any quotation is given on the basis that no Contract will come into existence until the Seller despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date provided the Seller has not previously withdrawn it.

3. ORDERS AND SPECIFICATIONS

- 3.1. No order submitted by Buyer shall be deemed to be accepted by Seller unless and until the earlier of confirmation in writing or fulfilment of the order by Seller
- 3.2. Buyer shall be responsible to Seller for ensuring the accuracy of the terms of any order submitted by Buyer, and for giving Seller any necessary information relating to the Goods within a sufficient time to enable Seller to perform the Contract in accordance with its terms.
- 3.3. The quantity, quality and description of and any specification for the Goods shall be those set out in Seller's quotation (if accepted by Buyer) or Buyer's order (if accepted by Seller).
- 3.4. If the Goods are to be manufactured or any process is to be applied to the Goods by Seller in accordance with a specification submitted by Buyer, Buyer shall indemnify Seller against all losses, damages, costs and expenses awarded against or incurred by Seller in connection with or paid or agreed to be paid by Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from Seller's use of Buyer's specification.
- 3.5. Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable Civil Aviation Authority, Joint Aviation Authority, statutory or EC requirements or, where the Goods are to be supplied to Seller's specification, which do not materially affect their quality or performance.
- 3.6. It is the Buyer's responsibility to ensure that the Goods are suitable for the use the Buyer intends to make of them, having regard to the environment in which they will operate and the assemblies of which they will form and the Seller shall not be liable for any failure of the Goods to operate in such use/environment unless the intended use has been notified by the Buyer to the Seller and the Seller has given written approval.

4. CANCELLATION

No order which has been accepted by Seller may be cancelled or reduced by Buyer except with Seller's written agreement. Buyer shall indemnify Seller in full against all loss, costs and expenses incurred by Seller as a result of any cancellation or reduction.

5. PRICE OF THE GOODS

- 5.1. The price of the Goods shall be Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in Seller's price list current at the date of acceptance of the order.
- 5.2. Seller reserves the right, by giving notice to Buyer at any time before delivery, to increase the price of the Goods to:
 - 5.2.1. reflect any increase in the cost to Seller which is due to any factor beyond the reasonable control of Seller (for example, foreign exchange fluctuation, increase in the costs of labour, materials or manufacture);
 - 5.2.2. reflect any change in delivery dates, quantities or specifications for the Goods requested by Buyer; or
 - 5.2.3. delays caused by Buyer's instructions or Buyer's failure to give Seller adequate information or instructions.
- 5.3. Except otherwise agreed in writing between Buyer and Seller, all prices are given by Seller on an ex works basis, and where Seller agrees to deliver the Goods otherwise than at Seller's premises, Buyer shall be liable to pay Seller's charges for transport, packaging and insurance. The price is exclusive of any applicable Customs and Excise duties, all of which shall be paid by Buyer.

6. TERMS OF PAYMENT

- 6.1. Subject to any special terms agreed in writing between Buyer and Seller, Seller shall be entitled to invoice Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by Buyer or Buyer wrongfully fails to take delivery of the Goods, in which case Seller shall be entitled to invoice Buyer for the price at any time after Seller has notified Buyer that the Goods are ready for collection or (as the case may be) Seller has tendered delivery of the Goods.
- 6.2. Buyer shall pay the price of the Goods by the last working day of the month following the date of Seller's invoice ('the due date'), and Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 6.3. If Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to Seller, Seller shall be entitled to cancel the Contract or suspend any further deliveries to Buyer and/or charge interest on the amount unpaid, at the rate set for late payment by the Late Payment of Commercial Debts (interest) Act 1998 where the buyer is acting in the course of a business and in other cases at the rate of 5% per annum above the current National Westminster Bank plc base rate.
- 6.4. All payments shall be made in pounds sterling into such bank account as the Seller shall nominate from time to time. No payment shall be deemed to have been received until the Seller has received cleared funds. The Buyer shall make all payments due under this Contract without any deduction whether by way of set-off, counterclaim or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer. The Seller may appropriate any payment made by the Buyer to the Seller to such of the Goods as the Seller things fit despite any purported appropriation by the Buyer.

7. DELIVERY

- 7.1. Delivery of the Goods shall be made by Buyer collecting the Goods at Seller's premises at any time after Seller has notified Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by Seller, by Seller delivering the Goods to that place.
- 7.2. Any dates quoted for delivery of the Goods are approximate only and Seller shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract.
- 7.3. Unless specifically stated on the quotation or order acknowledgement delivery of Goods shall be regarded as complete if the quantity delivered is within 5% of the quantity ordered. It is the Buyer's responsibility to make any necessary adjustments to subsequent orders.
- 7.4. Each delivery constitutes a separate contract and failure of any delivery shall not vitiate the Contract as to other deliveries.
- 7.5. If Seller fails to deliver the Goods (or any instalment) for any reason other than any cause beyond Seller's reasonable control or Buyer's fault, and Seller is liable to Buyer under these Conditions, Seller's liability shall be limited to the Contract price for the delayed Goods.
- 7.6. If Buyer fails to take delivery of the Goods or fails to give Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond Buyer's reasonable control or by reason of Seller's fault) then, without prejudice to any other right or remedy available to Seller, Seller may store the Goods until actual delivery and charge Buyer for the reasonable costs (including insurance) of storage or sell the Goods at the best price readily obtainable and (after deducting all reasonable storage, restocking and selling expenses) account to Buyer for the excess over the price under the Contract or charge Buyer for any shortfall below the price under the Contract.
- 7.7. Goods for delivery to locations in the UK will not be insured unless specified by Seller.
- 7.8. Forthwith after delivery of the Goods the Buyer will examine and inspect the Goods.

8. RISK/OWNERSHIP

- 8.1. Risk of damage to or loss of the Goods shall pass to Buyer as follows:
 - 8.1.1. *Goods to be delivered at Seller's premises:* upon Seller notification to Buyer that the Goods are available for collection;
 - 8.1.2. *Goods to be delivered otherwise than at Seller's premises:* at the time of delivery or, if Buyer wrongfully fails to take delivery of the Goods, the time when Seller tenders delivery.
- 8.2. Title and property in the Goods shall not pass to Buyer until Seller has full payment of the price of the Goods and all other goods agreed to be sold by Seller to Buyer for which payment is then due.
- 8.3. Until such time as the property in the Goods passes to Buyer, Buyer shall hold the Goods as Seller's bailee, and shall keep the goods separate from those of Buyer and third parties and properly stored, protected and insured and identified as Seller's property, but Buyer shall be entitled to resell or use the Goods in the ordinary course of its business.

- 8.4. Until such time as the property in the Goods passes to Buyer (and provided the Goods are still in existence and have not been resold), Seller shall be entitled at any time to require Buyer to deliver up the Goods to Seller and, if Buyer fails to do so forthwith, to enter upon any premises Of Buyer or any third party where the Goods are stored and repossess the Goods.
- 8.5. Buyer shall not be entitled to in any way charge by way of security any of the Goods which remain the property of Seller, but if Buyer does so all moneys owing by Buyer to Seller shall (without prejudice to any other right or remedy of Seller) forthwith become due and payable.

9. WARRANTIES AND LIABILITY

- 9.1. Subject to the other provisions of these Conditions, Seller warrants as follows:
- 9.1.1. In the case of new Goods supplied by the Seller, where the Seller is not the manufacturer of the Goods, the Buyer shall be entitled to such assignable benefits of those warranties or guarantees (if any) as have been given to the Seller by the manufacturer.
- 9.1.2. In the case of any used, second-hand, overhauled or reconditioned Goods the Buyer shall be entitled to the benefits of such assignable warranties or guarantees (if any) as have been given to the Seller by the overhauler. The Seller shall be under no liability at any time in respect of any defect in such Goods. All sizes, dimensions, capacities and all other information supplied given or quoted by the Seller in relation to such Goods are not warranted correct by the Seller and should be verified by the Buyer.
- 9.1.3. In the case of new Goods manufactured and supplied by the Seller, the Seller warrants that (subject to the other Conditions) upon delivery such Goods will, and for a period of 12 months from the date of delivery be free from defects in materials or workmanship.
- 9.2. The above warranty shall not apply in the following cases:
- 9.2.1. in respect of any defect in the Goods arising from any drawing, design or specification supplied by Buyer;
- 9.2.2. in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow Seller's or other applicable specifications and instructions as to storage, shelf-life, installation, commissioning use or maintenance, misuse or alteration or repair of the Goods without Seller's written approval;
- 9.2.3. if the total price for the Goods has not been paid by the due date for payment;
- 9.3. Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 9.4. Any claim by Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by Buyer) be notified to Seller within 14 days and if the defect is as a result of damage in transit to the Seller and the carrier within 3 days, of:
- 9.4.1. the date of delivery (where the defect would be apparent to the Buyer upon a reasonable inspection); or
- 9.4.2. the date when the Buyer knew or ought reasonably to have known of the defect (where the defect would not be apparent to the Buyer upon a reasonable inspection). If delivery is not refused, and Buyer does not notify Seller accordingly, Buyer shall not be entitled to reject the Goods and Seller shall have no liability for such defect or failure, and Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 9.5. Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to Seller in accordance with these Conditions and the Seller is liable under these Conditions, Seller shall be entitled to repair or replace the Goods (or the part in question) free of charge or, at Seller's sole discretion, refund to Buyer the price of the Goods (or a proportionate part of the price), but Seller shall have no further liability to Buyer.
- 9.6. Except in respect of death or personal injury caused by Seller's negligence (which if proved is not excluded), Seller's obligation in clause 9.5 above to repair, replace or refund shall constitute the full extent of Seller's liability in respect of any loss or damage sustained by Buyer whether caused by breach of Contract or by misrepresentation or by negligence of Seller, its employees or agents or arising from any other cause whatsoever and Seller shall not be liable to Buyer for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever
- 9.7. If the Seller so requests, the Buyer shall, at the Buyers expense, return the Goods or the part of such Goods which is defective to the Seller.

10. FORCE MAJEURE

Seller shall not be liable for delay in or failure to perform any of Seller's obligations under these Conditions if the delay or failure was due to any cause beyond Seller's reasonable control (including without limitation Act of God, explosion, flood, tempest, fire or accident, acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental or parliamentary authority including the CAA, JAA, import or export regulations, industrial action, difficulties in obtaining raw materials, goods, labour, fuel, parts or machinery or power failure or breakdown in machinery)

11. INTELLECTUAL PROPERTY

- 11.1. Seller will indemnify Buyer against all loss, damages, costs and expenses awarded against or incurred by Buyer in connection with any claim that the Goods infringe or that their use or resale infringes the patent, copyright, trade mark or other intellectual property rights of any other person. This indemnity shall not apply to any infringement which is due to Seller following or using any drawing, design or specification supplied by Buyer or to the use of such Goods in a manner or for a purpose or in a foreign country not specified or disclosed to Seller prior to Seller making a quotation or to the use of such Goods in association or combination with any other article material or service not supplied by Seller.
- 11.2. The indemnity contained in Clause 11.1 above is conditional on Buyer giving Seller the earliest possible notice in writing of any claim being made or action threatened or brought against Buyer, Seller being given control of proceedings or negotiations in connection with any claim and except pursuant to a final award, Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of Seller (which shall not be unreasonably withheld).

12. INSOLVENCY OF BUYER AND TERMINATION

- 12.1. Clause 12.3 applies if:
- 12.1.1. Buyer makes any voluntary arrangement with its creditors, becomes bankrupt, subject to an administration order, goes into liquidation, or ceases or threatens to cease, to carry on business;
- 12.1.2. an administrative receiver or manager is appointed of any property or assets of Buyer;
- 12.1.3. Seller reasonably apprehends that any of the events mentioned above are about to occur in relation to Buyer and notifies Buyer accordingly.
- 12.1.4. the Buyer suffers or allows any execution whether legal or equitable to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations or duties under the Contract or any other contract between the Seller and the Buyer
- 12.2. If this clause applies then, without prejudice to any other right or remedy available to Seller, Seller shall be entitled to terminate the Contract or suspend any further deliveries under the Contract without any liability to 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.
- 12.3. The termination of the Contract howsoever arising shall be without prejudice to the rights and duties of either the Buyer or the Seller accrued prior to termination.

13. EXPORT TERMS

- 13.1. In these Conditions 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made.
- 13.2. Where the Goods are supplied for export from the UK, the provisions of this clause 13 shall (subject to any special terms agreed in writing between Buyer and Seller) apply notwithstanding any other provision of these Conditions.
- 13.3. 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 and for notifying the Seller in writing or any importation requirements.
- 13.4. Unless otherwise agreed in writing between Buyer and Seller, the Goods shall be delivered FOB (Free on Board) the air or sea port of shipment and the cost thereof will be charged to the account of Buyer. Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act
- 13.5. Unless otherwise agreed in writing between Buyer and Seller, the Seller shall test and inspect the Goods before shipment. Seller shall have no liability for any claim in respect of any damage to the Goods during transit.

14. DISTANCE SELLING REGULATIONS

- 14.1. This Clause deals with the Consumer Protection (Distance Selling Regulations) 2000 ('the Regulations').
- 14.2. On receipt of an order via telephone, e-mail or fax Seller will provide within 48 hours an order acknowledgement form.
- 14.3. Under the Regulations a Buyer who is dealing as a consumer (ie for purposes outside his business), has the right to cancel a Contract within 7 days commencing from the day after Buyer received or collects the Goods and such cancellation must be to Seller in writing, by fax or e-mail setting out Buyers details, invoice or order no and cancellation instructions.
- 14.4. It is Buyer's responsibility to ensure the Goods are maintained and returned to Seller in "as new conditions".
- 14.5. If the Goods that are returned to Seller are not faulty or wrongly despatched but returned as not required or for any other reason, Buyer shall be responsible for the cost of returning such Goods to Seller.
- 14.6. Monies paid by Buyer for the Goods will be refunded to the Buyer in the same manner as the original payment within 30 days of the date the cancellation notice was given. Money will be deducted from the refund if costs are incurred to recover the goods.
- 14.7. If the Goods cannot be supplied as per the original order, a notification of substitution will be sent. In such case, Buyer has the right to refuse the substitution offer and cancel the order with no penalties.
- 14.8. Clause 14 and the Regulations do not apply to Goods that have been specifically made or altered to suit Buyers own requirements.

15. GENERAL

- 15.1. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 15.2. These Conditions do not affect the statutory rights of the consumer.
- 15.3. The Contract shall be governed by English law and Buyer agrees to submit to the exclusive jurisdiction of the English courts.
- 15.4. No waiver by Seller of any breach of the Contract by Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.