



## STANDARD CONDITIONS OF SALE

### 1. INTERPRETATION

For the purpose of the Contract the terms listed below shall bear the meanings respectively ascribed thereto:

**"Acknowledgement of Order"** means the Seller's written acceptance of the Buyer's Order;

**"Buyer"** means the person, firm, company or corporation with whom the Contract is made;

**"Contract"** means the contract for the sale of goods, made between the Seller and Buyer, set out in the Acknowledgment of Order subject to these Terms and Conditions;

**"Goods"** means all or any of the goods described in the Contract and any goods in replacement of such goods;

**"Order"** means the Buyer's purchase order form or the Buyer's written acceptance of the Seller's quotation;

**"Schedule"** means the weekly Order sent electronically by the Buyer and accepted by the Seller;

**"Seller"** means C. W. Fletcher & Sons Limited.

**"Seller's Invoice"** means the invoice submitted to the Buyer pursuant to the Contract;

**"Seller's Works"** means the Seller's premises at Sterling Works, Mansfield Road, Wales Bar, Sheffield, S26 5PQ or such other premises as may be notified by the Seller to the Buyer.

**"Tooling"** means the tooling and equipment used to manufacture the Goods.

### 2. CONTRACT

- a) All quotations given and all contracts of sale, made by the Seller, are subject to these Terms and Conditions ("Conditions") to the exclusion of any other terms referred to by the Buyer or contained in any order, acceptance of quotation, confirmation or otherwise brought to the notice of the Seller and all other representations, terms conditions or warranties, expressed or implied by trade, custom or course of dealing, which are to the extent permitted by law hereby excluded.

- b) These Conditions (as modified in accordance with clause 2(c) below) together with other matters contained in the Contract constitute the whole Agreement between the parties and supersede any prior promises, representations, warranties, undertakings or implications, whether oral or in writing and for the avoidance of doubt the Buyer hereby acknowledges that it has not entered into the Contract in reliance upon any representations other than those that appear in writing in the Contract.
- c) These Conditions may be varied only by agreement, in writing, between the parties and such agreement must be made on behalf of the Seller by a director or other authorised person (and known to the Buyer to be authorised) by the Seller and no other action on the part of the Seller (whether delivery of the Goods or otherwise) shall be construed as an acceptance of any other terms or conditions whatsoever.
- d) Any quotation issued by the Seller may be amended or withdrawn at any time prior to the formation of the Contract. The Order shall only be deemed to be accepted when the Seller issues a written Acknowledgment of Order, at which point the Contract shall come into existence.
- e) It is the duty of the Buyer to provide the Seller with all the information necessary for the fulfilling of the Order or for the carrying out of the terms of the Contract and if any delay takes place on the Buyer's part in giving such information, then the Seller may at its option cancel the Order or rescind the Contract or charge the Buyer and additional price for the delay. In the case of cancellation, the Buyer will be liable to the Seller for any loss incurred in connection with the Order or Contract.
- f) The Seller shall be under no liability, nor shall the Buyer be entitled to any remedy, by any reason of misrepresentation made to the Buyer or any agent of the Buyer by or on behalf of the Seller where the misrepresentation results from information derived from a third party which the Seller has received and acted upon in good faith and without reason to believe or doubt.
- g) The Contract is personal to the Buyer who may not assign it without the prior consent of the Seller and the provisions of the Contract shall survive its termination for as long as may be necessary to give efficacy thereto.
- h) If the Buyer gives any delivery instructions or does anything in confirmation of any transaction for the purchase of Goods from the Seller, after the Buyer's receipt of these Conditions, it is deemed to accept these Conditions.
- i) An Order may only be cancelled or varied with the Seller's written consent. The giving of the Seller's consent shall not in any way prejudice the Seller's right to recover from the Buyer full compensation for any loss or expense arising from cancellation or variation.

### **3. PRICES**

- a) The Seller may vary the price expressed in the Contract to reflect any increase in the cost (whether direct or indirect) incurred by the Seller, between the date of the Acknowledgement of Order and the date of the Seller's Invoice.
- b) Unless otherwise stated in the Acknowledgment of Order, the prices specified are Ex Seller's Works and do not include the costs of packaging or transport from the Seller's Works to the Buyer's premises.

- c) Unless stated otherwise, all prices are exclusive of Insurance, Value Added Tax, Import Duty, Excise Duty or other Taxes, Imposts or Duties payable in respect of the Goods. Any such Taxes, Imposts or Duties shall be payable by the Buyer at the rate prevailing at the tax point date, in addition to the price of the Goods and any other sums due to the Seller from the Buyer.

#### **4. TOOLING AND SAMPLES**

- a) Where the Buyer supplies Tooling, the Seller's quotation shall assume that such Tooling is in good condition, true to drawing and is entirely suitable for the Seller's method of production and for the production of the Goods and the quantities required. The Seller accepts no responsibility for the accuracy of the Buyer's Tooling.
- b) For mutual benefit, when new Tooling is to be made, the Seller must be consulted.
- c) The Seller will notify the Buyer if replacements, alterations or repairs are required to the Buyer's Tooling, due to normal wear and tear, in which case such work shall be invoiced and paid for by the Buyer in addition to the price of the Goods.
- d) Only such Tooling as is specifically made and separately charged in full to the Buyer shall become the property of the Buyer when paid for.
- e) Carriage on Tooling, supplied by the Buyer, will be paid for by the Buyer.
- f) The Seller takes all reasonable care to protect the Buyer's Tooling whilst they are on the Seller's premises, but does not accept liability for any loss, damage or expenses arising from any cause whatsoever which does not directly and solely result from a failure by the Seller to exercise such reasonable skill and care. The Buyer shall be responsible for insuring the Tooling against all risks whilst at the Seller's Works.
- g) The Buyer shall be responsible for the custody of Tooling which has not been used to produce Goods for a period of three years.
- h) Without prejudice to condition 7(a) any period specified for delivery on the Seller's quotation is exclusive of any period occupied in making, altering or adapting Tooling or in any experimental work connected with the Goods.
- i) Samples submitted will be invoiced to the Buyer unless returned to the Seller's Works, carriage paid, within one month from the date of despatch, in all instances, where the Seller is working from new Tooling, an altered Tooling or Tooling new to the Seller's Works. The Seller may submit sample Goods, for approval, before executing the bulk of the order, which will then only commence on receipt of such approval in writing. Where only small quantities are required, submission of a sample will be made only if a specific request is made by the Buyer, at the time of placing an order. Unless otherwise stated the cost of supplying, machining or testing all samples required by the Buyer will be invoiced to the Buyer.

#### **5. DELIVERY**

- a) Unless otherwise agreed with the Buyer, any delivery times specified by the Seller are estimates only and time shall not be of the essence. The Seller shall not be liable to the Buyer for any loss or damage sustained by the Buyer as a result of the Seller's failure to comply with delivery times.

- b) If the sum owing to the Seller, by the Buyer on any account whatsoever, is not paid on its due date or if the Seller otherwise becomes dissatisfied with the Buyer's credit standing, the Seller may withhold delivery of the Goods until such time as arrangements for payment of credit are made which are satisfactory to the Seller.
- c) Unless otherwise agreed in writing delivery will be FCA Sterling Works, Sheffield INCOTERMS 2010.
- d) Delivery of the Goods shall be completed on the completion of loading of the Goods at the Seller's Works.
- e) If the Buyer fails to take delivery of the Goods within three Business Days of the Seller notifying the Buyer that the Goods are ready, then:
  - (i) 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 Seller notified the Buyer that the Goods were ready; and
  - (ii) the Seller shall store the Goods until delivery takes place, and charge the Buyer for all related costs and expenses (including insurance).
- f) Whilst it is the Seller's normal policy to deliver Goods in one lot, the Buyer shall accept delivery by instalments or split deliveries and each instalment of part delivery shall be considered a separate transaction, which shall not affect the rights or liabilities of either party under the Contract as to the other instalments or part deliveries.

## 6. ACCEPTANCE

- a) The Seller warrants that on delivery and for a period of 6 months thereafter (**Warranty Period**), the Goods shall:
  - (i) conform in all material respects with their description;
  - (ii) be free from material defects in material and workmanship; and
  - (iii) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- b) Subject to clause 6(a), if:
  - (i) the Buyer gives notice in writing to the Seller during the Warranty Period within seven (7) days of discovery that some or all of the Goods do not comply with the warranty set out in clause 6(a);
  - (ii) the Seller is given a reasonable opportunity of examining such Goods; and
  - (iii) the Buyer (if asked to do so by the Seller) returns such Goods and the Goods or part Goods is returned, carriage paid, to the Seller's Works and shall in the event of replacement become the property of the Seller,  
  
the Seller shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

- c) The Seller shall not be liable for Goods' failure to comply with the warranty set out in clause 6(a) in any of the following events:
- (i) the Buyer makes any further use of such Goods after giving notice in accordance with clause 6(b);
  - (ii) the defect arises because the Buyer failed to follow the Seller'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;
  - (iii) the defect arises as a result of the Seller following any drawing, design or specification supplied by the Buyer;
  - (iv) the Buyer alters or repairs such Goods without the written consent of the Seller;
  - (v) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - (vi) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- d) Except as provided in this clause 6, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 6a).
- e) 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.
- f) These Conditions shall apply to any repaired or replacement Goods supplied by the Seller.

## **7. PAYMENT**

- a) Unless otherwise stated in the Contract, payment shall be made within thirty (30) days of the Seller's invoice, if the Buyer has a credit account with the Seller. If the Customer does not have an account payment shall be made on placing the Order.
- b) If any payment under the Contract is overdue, interest shall be chargeable from the day the sum becomes overdue until the sum due (including interest) is paid. Interest shall be paid at the rate of 4% above base rate from time to time of The Royal Bank of Scotland plc.
- c) Time of payment shall be of the essence and failure to make any payment, on the due date, shall entitle the Seller, at its option, to treat the Contract as repudiated and act accordingly. Without prejudice to the foregoing, failure by the Buyer to pay for any Goods (whether under this or any other Contract with the Seller), on the due date shall (without prejudice to any other remedies which it may have) entitle the Seller, at its option, to cancel the sale of any undelivered Goods, whether under this Contract or any other.
- d) All payments shall be made in full without reduction in respect of any set off or counterclaim.
- e) Goods will be invoiced when the goods are ready for collection.

- f) Should the Buyer cancel, suspend or reduce an Order, including the cancellation, suspension or reduction of a Schedule ("a Variation") then the Buyer shall be liable for the cost of any work already in progress and raw materials ordered to satisfy the Order at the time of the Variation.
- g) The Seller reserves the right to withdraw any Buyer's credit account without notice and without giving any reason.

## **8. PASSING OF PROPERTY, RISK AND INSURANCE**

- a) Notwithstanding delivery of the Goods or any part thereof, title in the Goods shall remain with the Seller until the Seller has received payment in full, of all monies due, in respect of the Goods and arising out of or in connection with all other Contracts between the Buyer and the Seller. Until that time:
  - b) the Buyer shall hold the Goods as bailee for the Seller, shall store or retain them in such a way that they are clearly and separately identifiable as the property of the Seller and shall, if requested by the Seller, deliver them up to the Seller;
    - (i) the Buyer shall be liable to the Seller for any loss or damage to the Goods howsoever caused and shall insure the Goods and all other Goods of the Seller, as shall from time to time be in its possession against all risk in their full replacement value.
    - (ii) the Buyer may not mortgage charge pledge permit any lien to subsist or arise on or otherwise encumber or dispose of the Goods in any manner.
  - c) Notwithstanding the above, the Buyer shall have a licence to sell the Goods in the normal course of its business, provided that:
    - (i) the proceeds of any such sale shall, to the extent of all sums owing or due to the Seller from the Buyer, as aforesaid, be held in trust by the Buyer for the Seller and all proceeds of sale received by the Buyer shall be paid by the Buyer into a separate bank account and the Buyer shall assign to the Seller absolutely the benefit of any such contract of sale and the Buyer hereby acknowledges and agrees that it stands in fiduciary relationship to the Seller;
    - (ii) such licence may be terminated by the Seller, at any time forthwith, upon giving the Buyer written notice thereof and shall (without prejudice to any other rights of the Seller) automatically terminate if any of the events listed in Clause 9 (a) hereof shall occur.
- d) The Buyer hereby confirms, to the Seller, an irrevocable licence to enter upon the Buyer's premises in order to repossess any Goods of the Seller pursuant hereto.
- e) Any repossession by or return to the Seller of its property pursuant hereto shall not operate as a rescission of the Contract or any other contract to which such Goods relate and shall be without prejudice to the Seller's rights to sue for sums owed by the Buyer.
- f) The Goods are at the Buyer's risk, from delivery to the Buyer in accordance with Clause 5.

## 9. SELLER'S REMEDIES

- a) Without prejudice to any other rights which the Seller may have (and in particular, but without limitation, its rights under Clause 9 hereof), the Seller shall be entitled to terminate the Contract, demand immediate payment of any amount due or accruing due to the Seller whether under the Contract or otherwise, retain any deposits, resell the Goods in accordance with (b) below and/or to withhold or cancel any deliveries or instalments due to be made hereunder or under any other Contracts between the parties if any of the following circumstances or events occurs or is reasonably likely to occur:
- (i) the Buyer is in breach of its obligations under the Contract and, if capable of remedy, shall not have remedied such breach within thirty (30) days of receiving notice in writing from the Seller; or
  - (ii) the Buyer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due; the other party commences negotiations with its creditors with a view to rescheduling any of its debts or enters into any compromise or arrangement with its creditors; a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (where a company); the other party (being an individual) is the subject of a bankruptcy petition or order; a creditor of the other party attaches or takes possession of the whole or any part of its assets; an application is made to court, or an order is made, for the appointment of an administrator over the other party; a floating charge holder over the assets of that other party (being a company) or other person becomes entitled to appoint or appoints an administrative receiver; any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the preceding events; the other party suspends or ceases to carry on all or a substantial part of its business; or the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs.
- b) If the Seller exercises its right to resell the Goods, it may do so in its absolute discretion without any liability to the Buyer whatsoever.
- c) If any act by or on behalf of the Seller, its agents, its suppliers or any carrier is delayed, prevented or suspended due to any act or omission of the Buyer, including (but not limited to) the provision of or lack of instructions or failure to accept the Goods, any resulting costs and expenses so incurred will be charged to the Buyer.

## 10. LIABILITY OF THE SELLER

In respect of Goods supplied, but not manufactured by the Seller, the Seller gives to the Buyer only such guarantees or warranties (if any) as the Seller may have and can enforce, but the Seller shall not fall under any other liability whatsoever.

## 11. LIMITATION OF LIABILITY

- a) Nothing in these Conditions shall limit or exclude the Seller's liability for:
- (i) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - (ii) fraud or fraudulent misrepresentation;

(iii) breach of the terms implied by section 12 of the Sale of Goods Act 1979;

(iv) defective products under the Consumer Protection Act 1987; or

b) Subject to clause 11(a):

(i) the Seller shall under no circumstances whatever be liable to the Buyer, 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

(ii) the Seller's total liability to the Buyer 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.

## **12. FORCE MAJEURE**

The Seller shall not be liable for any loss or damage caused by delay in the performance or non-performance of any of its obligations hereunder where the same is occasioned by any cause whatsoever that is beyond the Seller's control including, but not limited to fire, flood, strikes (whether involving the Seller's employees or those of another party), lockout or other labour dispute, accident or breakdown of machinery, shortage of labour or materials or delay in transport, civil commotion, insurrection, embargoes, quotas, acts or restrictions of Government, import or export regulations, Governmental regulations or any other event beyond the control of the Seller any should any such event occur the Seller may cancel or suspect the Contract, without incurring any liability for any loss or damage thereby occasioned.

## **13. MISCELLANEOUS**

a) The invalidity, illegality or unenforceability for any reason of any part of the Contract shall not prejudice or affect the validity, legality or enforceability of the remainder.

b) No failure on the part of either party hereto to exercise any rights under the Contract, at any time, shall operate as a waiver thereof, nor shall any single or partial exercise of any right under the Contract preclude any other or further exercise of any other right. The election by either party of a particular remedy in the event of default by the other party shall not be exclusive of any other remedy and all rights and remedies of the parties hereto shall be cumulative and not exclusive of any other rights or remedies provided by law.

c) The Seller may, without prejudice to its liability hereunder, assign transfer or subcontract this Contract or any part thereof to any other person or company.

d) No right or licence is granted by the Contract to the Buyer under any patent, copyright, registered design or other protection except the right to use or resell the Goods.

e) No responsibility is accepted for the accuracy of drawings, Tooling or specifications supplied by the Buyer.



- f) Any notice or other communication required or permitted to be given under the Contract shall be in writing and shall be served on the Seller and the Buyer respectively by delivering the same or sending it by facsimile transmission or by registered mail or airmail to the registered office of the respective party or to such other address as either party may notify in writing to the other party hereto. Any such notice shall be deemed to have been served at the expiration of seven (7) days after posting, by registered mail or airmail or at the time of transmission in the case of a facsimile transmission, provided that a confirming copy thereof is sent by first class pre-paid post to the other party within twenty-four (24) hours of transmission.
- g) The Buyer shall indemnify the Seller against all damages, penalties, costs and expenses arising out of the infringement of any payment, registered design, trade mark, trade name or copyright or any claim for such infringement or any claim to passing off involved in or arising out of work carried out in accordance with the Buyer's specification.
- h) When figures or particulars relating to physical or chemical properties are indicated, they are to be regarded as general guides only and constitute no guarantee from the Seller, unless specified margins have been agreed at the time of placing the order.
- i) The headings used in these Conditions are for the purpose of convenience and identification and are not to be taken as limiting in any way the scope or possible construction of any Clause.

#### **14. GOVERNING LAW AND JURISDICTION**

The Contract and the rights of the parties hereto shall be governed by and interpreted in accordance with English Law. The Buyer hereby irrevocably agrees to submit to the exclusive jurisdiction of the English Courts and waives any objection to any legal action proceedings to the said court on the grounds of venue or forum non-conveniens.