

TERMS AND CONDITIONS OF SALE

1 DEFINITIONS

1.1 The following definitions have the following meanings:

- (a) “**Vendor**” means Texecom Limited, whose registered office is at Bradwood Court, St Crispin Way, Haslingden, Lancashire BB4 4PW (Company No 02084170)
- (b) “**Purchaser**” means the person, company or firm to whom the Goods are supplied
- (c) “**Contract**” means any and each contract between the Vendor and the Purchaser for the sale and purchase of Goods and which in each case incorporates these Terms and Conditions and any special terms agreed by the Vendor under these Terms and Conditions
- (d) “**Goods**” means the goods, products or other items to be supplied by or on behalf of the Vendor

2 GENERAL

2.1 These Terms and Conditions as incorporated into the Contract:

- (a) supersede any previous terms and conditions of the Vendor and are to the exclusion of all other terms and conditions including any that the Purchaser purports to apply under any purchase order, confirmation of order, specification or other document whether in writing, online media or orally;
- (b) constitute the only terms on which the Vendor is willing to sell Goods and any variation shall have no effect unless expressly agreed in writing and signed by an authorised officer of the Vendor.

2.2 The Purchaser acknowledges and agrees that it has not relied on any statement, promise or representation of the Vendor that is not set out in the Contract.

2.3 Any quotation given by the Vendor is valid for a period of [30] days from its date unless the Vendor has withdrawn it before the end of such period.

2.4 Each order or purported acceptance of a quotation for Goods by the Purchaser from the Vendor shall be an offer to purchase Goods. No order placed by the Purchaser shall be deemed to be accepted by the Vendor until a written acknowledgement of order is issued by the Vendor or (if earlier) the Vendor delivers the Goods to the Buyer.

3. DESCRIPTION

Except as otherwise agreed in writing by the Vendor, all descriptive matter, drawings, samples, weights, dimensions, specifications, capacities, brochures, catalogues, price lists and advertising matter are published or issued for the sole purpose of giving an approximate idea of the Goods described therein and no information contained in any of them or in any other document shall form part of the contractual description of the goods nor shall they form part of the Contract and the Contract is not a sale by sample. The Vendor reserves the right to make, with or without notice, such reasonable modifications to the Goods as it deems necessary or desirable prior to delivery and the Purchaser shall not be entitled to object to or reject the Goods or any of them by reason of such reasonable modifications.

4. QUALITY

The Vendor warrants that (subject to the other provisions of the Contract) upon delivery and for [6] months after delivery that the Goods shall be of satisfactory quality and shall be reasonably fit for the purposes for which goods of the nature of the Goods are ordinarily supplied. The Vendor shall not be liable for breach of this warranty if:

- (a) a fault arises due to failure to follow the Vendor's instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are no instructions) good trade practice; or
- (b) where the goods are altered or repaired other than by or on behalf of the Vendor.

5. PRICES

- 5.1 Unless otherwise agreed in the Contract, all prices quoted are exclusive of VAT, customs duties or levies or any similar duties or levies and any charges for packaging, loading, unloading, carriage, insurance or delivery which the Purchaser shall pay in addition (if applicable) when it is due to pay for the Goods. Details of such charges shall be provided by the Vendor on request.
- 5.2 The Goods shall be supplied by the Vendor at prices prevailing on the date of despatch. The Vendor shall make its latest price lists available and will use reasonable endeavours to give the Purchaser advance notice of alterations in prices of Goods. All prices are subject to alteration without notice before an order is accepted by the Vendor. Without prejudice to the foregoing the Vendor may at any time increase prices, if there is an increase in excise or other duty or tax levied on the Goods or in carriage charges.

6. PAYMENT

- 6.1 All payments due under the Contract shall be made in pounds sterling and the Purchaser shall ensure that they are received by the Vendor in cleared funds on their due dates. Time for such payments shall be of the essence.
- 6.2 Payment for the Goods is due within thirty days from the end of the month in which the Vendor's invoice is delivered or by such other date (whether earlier or later) as shall be specified in the Contract or otherwise by the Vendor in writing. The Vendor reserves the right to require payment in advance for the Goods and any other sums that form part of the order (including any additional charges payable under Clause 5.2).
- 6.3 The Purchaser shall pay all amounts due under the Contract without any deduction whether by way of set-off, counterclaim, abatement, withholding or otherwise.
- 6.4 If any payment is in arrears for any Goods delivered under any Contract between the Purchaser and the Vendor; or, in the Vendor's reasonable opinion, the Purchaser's ability to pay for Goods is doubted the Vendor shall be entitled to:
 - (a) suspend, without any liability, all deliveries of Goods under this or any other Contract until payment, or satisfactory security for payment, has been provided; and/or
 - (b) on written notice to the Purchaser, cancel any undelivered instalment of Goods under this or any other Contract between the Purchaser and the Vendor. In the event of any such cancellation:
 - (i) if the Goods are to be or have been provided by a third party and the Vendor is unable to either cancel the order from the third party or sell the Goods to another purchaser within 30 days; and/or

- (ii) if the Goods have been customised for the Purchaser the Purchaser shall pay to the Vendor the full cost of such Goods.

6.5 The Vendor reserves the right to charge interest on overdue sums at the rate of 3% above Lloyds Bank Plc base for the time being accruing on a daily basis until payment is received, whether before or after any judgement.

6.6 If the Purchaser fails to make any payment on the due date then without prejudice to any other right or remedy available to the Vendor all monies for the Goods and all other Goods agreed to be sold by the Vendor to the Purchaser shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary and the Vendor shall be entitled to immediately require payment thereof.

7. DELIVERY

7.1 Unless otherwise agreed in the Contract, delivery shall take place at the Vendor's premises and the Vendor shall determine the method, date and time of delivery. Any delivery dates given by the Vendor are approximate and time for delivery is not of the essence. If the Vendor does not specify a date, delivery shall be within a reasonable time.

7.2 The Purchaser shall be responsible for the taking of the delivery of the Goods at the agreed place. If the Purchaser fails to accept delivery of the Goods or the Vendor is unable to deliver the Goods on time due to the Purchaser not providing sufficient instructions, documents, licences or authorisations:

- (a) the Goods shall be deemed to have been delivered;
- (b) risk in the Goods shall pass to the Purchaser; and
- (c) the Vendor may store the goods until they are delivered to the Purchaser and the Purchaser shall be liable for all related costs and expenses including carriage, storage, insurance and any redelivery costs.

7.3 The Purchaser shall examine the Goods on delivery and sign the appropriate delivery note and note any damage or loss on the same. Any Goods that the Purchaser claims are damaged upon delivery or defective shall be held by the Purchaser without cost to the Vendor and be made available for inspection by the Vendor or its authorised agent. The Vendor shall have no liability for any damaged or defective Goods that are not notified as damaged or defective to the Vendor within 10 days of their delivery (for Goods claimed to be damaged) or within 5 days of the defect becoming apparent (for Goods claimed to be defective).

7.4 Where more than one item of Goods is included in any order the Vendor shall be entitled to make delivery by instalments. No delay shall entitle the Purchaser to reject any delivery or any further instalments or part of the order or any other orders or to cancel or terminate the Contract. Failure to accept delivery of and/or pay for any instalment shall entitle the Vendor to:

- (a) treat the Contract as repudiated; and/or
- (b) store the Goods at the Purchaser's risk and the Purchaser shall be liable to the Vendor for the reasonable costs of doing so.

8. NON-DELIVERY

8.1 The quantity of any consignment of Goods as recorded by the Vendor on despatch shall be conclusive evidence of the quantity received by the Purchaser on delivery unless the Purchaser can provide conclusive evidence proving the contrary.

- 8.2 The Company shall not be liable for any non-delivery of Goods unless the Purchaser gives the Vendor written notice of non-delivery within 10 days of the date when the Goods should have been received.
- 8.3 Any liability of the Vendor for non-delivery shall be limited to delivering the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice for such Goods.

9. TITLE AND RISK

- 9.1 The Goods are at the risk of the Purchaser from the time of delivery.
- 9.2 Ownership of the Goods shall not pass to the Purchaser until the Vendor has received payment in full of all sums due to it in respect of the Goods and all sums which are or become due from the Purchaser to the Vendor whether under the Contract or otherwise.
- 9.3 Until ownership of the Goods has passed to the Purchaser, the Purchaser shall:
- (a) hold the Goods as bailee for the Vendor;
 - (b) store them (at no cost to the Vendor) separately from all other goods in the Purchaser's possession and in such a way that they remain readily identifiable as the property of the Vendor;
 - (c) maintain the Goods (including packaging) in satisfactory condition and keep them insured on the Vendor's behalf for their full price against all risks.
- 9.4 The Purchaser grants the Vendor, its agents and employees an irrevocable licence to enter upon the premises where the Goods, for which ownership has not passed to the Purchaser, are reasonably believed to be in order to inspect them or where the Purchaser's right to possession has terminated, to remove them.
- 9.5 Unless ownership of the Goods has passed to the Purchaser, the Purchaser's right to possession of the Goods shall terminate immediately if:
- (a) the Purchaser suspends payment or is unable to pay its debts within the meaning of section 123 Insolvency Act 1986; a petition is granted by a competent court or an order is made or a resolution is passed for winding up (whether voluntary or compulsory); the Purchaser is dissolved (other than for the purpose of a reconstruction or amalgamation whilst solvent); a petition is granted by a competent court for the appointment of an administrator, notice of appointment or intention to appoint an administrator is presented or an order appointing an administrator is made by a competent court; the Purchaser enters into an arrangement, compromise or composition in satisfaction of its debts with its creditors (or any class of them), takes steps to obtain a moratorium or makes an application to a court of competent jurisdiction for protection from its creditors (or any class of them);
 - (b) a distress, execution or other legal process is levied or issued on or against the whole or part of the Purchaser's undertaking or assets; or
 - (c) the Purchaser encumbers or in any way charges the Goods.
- 9.6 The Purchaser shall be entitled to use or sell the Goods in the normal course of the Purchaser's business before ownership of them passes to the Purchaser but only upon the condition that the Purchaser's right to possess the Goods has not terminated and that if the Purchaser sells the Goods the sale shall be on behalf of the Vendor as owner and the proceeds of any such sale shall be held in trust for the Vendor and in a separate identified account.

10 LIABILITY

- 10.1 Save as expressly provided otherwise in this Clause 10, the Vendor's entire liability under the Contract, whether in contract, tort (including negligence or otherwise) shall be limited to replacing defective, damaged or non-delivered Goods in accordance with Clause 7 or 8 (as applicable). The Vendor shall not be liable for any direct, indirect or consequential loss or damage of any nature (whether for loss of profits, loss of business, pure economic loss, loss of goodwill or otherwise) arising out of any act or omission of the Vendor and whether caused by the delivery, non-delivery, supply or otherwise of the Goods.
- 10.2 The Vendor's obligations under the Contract are confined to those set out in the Contract and all other warranties and conditions implied by statute, common law, course of dealings or otherwise (except the implied conditions as to title in Section 12 of the Sale of Goods Act 1979) are hereby expressly excluded to the maximum extent permitted by law.
- 10.3 Nothing in these Terms and Conditions excludes or limits either party's liability:
- (a) for death or personal injury caused by its negligence;
 - (b) under section 2(3) of the Consumer Protection Act 1987;
 - (c) for fraud or fraudulent misrepresentation; or
 - (d) to the extent that such liability cannot be excluded or limited by law.

11. MISCELLANEOUS

- 11.1 **Assignment.** The Vendor may assign and/or transfer the Contract to any other person. The Purchaser shall not be entitled to assign or transfer the Contract or any part of it without the Vendor's prior written consent.
- 11.2 **Remedies.** Each right and remedy of the Vendor under the Contract is without prejudice to any other right or remedy of the Vendor whether under the Contract or not.
- 11.3 **Third party rights.** Nothing in the Contract is intended to be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.
- 11.4 **Law and jurisdiction.** The Contract shall be construed in accordance with and governed by the law of England and Wales and the parties hereby submit to the exclusive jurisdiction of the English courts.