

All quotations and orders arising between Elite Interfaces Limited ("the Seller") and the Buyer shall be governed by the following Terms and Conditions to the exclusion of any other terms and conditions and the acceptance of the contract by the Buyer shall be deemed to be an acceptance of these Terms and Conditions. **No other terms and conditions except those implied by law shall be of any effect unless the same are expressly agreed in writing by both the Seller and the Buyer.**

'Goods' shall mean the products supplied by the Seller to the Buyer.

1. PRICE

- 1.1 The Goods shall be invoiced at the Price prevailing at the date of the despatch of Goods and the Seller may increase the Price at any time prior to delivery of the Goods to reflect increases in the Seller's costs.
- 1.2 The Price stated is exclusive of value added tax, carriage and any other impositions whatsoever which if applicable shall be paid in addition to the Price by the Buyer.
- 1.3 The Price stated is exclusive of expenses reasonably incurred as a result of additional requirements or expectations subsequently determined or made known by the Buyer that were not reasonably anticipated by the Parties at the commencement of this agreement. In the event that such expenses arise, the Seller shall provide an additional quotation to the Buyer in order to encompass those amounts.
- 1.4 All quotations remain open to acceptance by the Buyer within 30 calendar days of their date of issue unless otherwise stated on the quotation.
- 1.5 The contract between the Buyer and the Seller shall only come into force upon the Seller's express acceptance of the Buyer's order to supply the goods or services pursuant to the quotation and these terms and conditions.
- 1.6 The Buyer warrants and represents that it is entering into this Agreement wholly in the course of its business, trade or profession and not as a consumer. The Buyer further agrees that it shall not assert, and shall have no entitlement to assert, any rights or remedies available only to consumers under the Consumer Rights Act 2015 or any successor legislation.

2. Warranties

- 2.1 Subject to the terms set out below the Seller warrants to the Buyer that the Goods will remain free from defects in materials and workmanship for a period of 1 year subject to the Buyer retaining ownership, possession and control of the Goods (the 'Warranty').
- 2.2 The Warranty shall be contingent upon the Price having been paid in full and on time.
- 2.3 All repair or replacement enquiries pursuant to the Warranty must be directed to the Seller and include the Supplier invoice number, detailed description of the fault and any repair request instructions.
- 2.4 The Seller shall investigate all Warranty claims and the Buyer undertakes to perform all reasonable steps to assist such investigation including but not necessarily limited to the provision of photographic or videographic evidence.
- 2.5 The Warranty does not apply to consumable parts, damage or failure which results from misuse, fair wear and tear, mechanical damage or abuse, exposure to harmful or noxious substances or environments, neglect, or where the Goods have been modified or in any way interfered with. Where it is found that in the Supplier's reasonable opinion any of the aforementioned apply, any repair or replacement costs will be borne by the Buyer and the Buyer may seek an estimate from the Seller prior to proceeding with any such repair or replacement.
- 2.6 Where Goods are the subject of a warranty claim they may not be returned to the Seller without the prior written agreement of the Seller. Upon such consent being given, the Goods may be returned to the Seller at the Buyer's expense such that thereafter the Seller may, at their discretion, repair or replace the Goods, or refund the Price of the Goods or such a proportionate part thereof as may be equitable in the circumstances.
- 2.7 The Seller expressly disclaims any warranty for fitness for purpose or merchantability to the fullest extent permitted by law.

3. ACCOUNT FACILITIES AND PAYMENT

- 3.1 Save where the Buyer has an approved account facility with the Seller, the contract Price (or the proportion thereof as stated on the invoice) shall be payable on a pro forma basis in Sterling at the point of ordering.
- 3.2 The Seller will only permit account facilities to continue to be made available to the Buyer where payment of all invoices is made within 30 days of invoice date without deductions.
- 3.3 If account facilities are unused for 36 months the Seller reserves the right to close the account facility and to require payment on a pro forma basis at the point of order for any subsequent transactions until such time as new account facilities may be agreed.
- 3.4 All overdue accounts shall be charged on a daily basis with interest at 8% above the Bank of England reference rate in force on the date the debt becomes overdue and at any subsequent rate where the reference rate changes and the debt remains unpaid in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 3.5 Full payment of invoices must reach the Seller within 30 days of the date of the invoice unless otherwise specified in the Seller's quotation or order acknowledgement.
- 3.6 The Buyer shall have no right of offset unless otherwise agreed in writing in advance by a Director of the Seller.
- 3.7 The Seller shall attribute payments received from the Buyer to the oldest invoice outstanding.
- 3.8 The Buyer may not make any deduction from the invoiced price.
- 3.9 All transactions are to be conducted in currency stated upon the invoice.
- 3.10 All bank and transaction charges levied on direct credit transfers from overseas shall be borne by the Buyer.

4. DELIVERY

- 4.1 Delivery of the Goods shall not include off loading, un-wrapping, un-packing, storage or site work attendance unless otherwise agreed in writing between the Buyer and the Seller.

- 4.2 The Seller will use its reasonable endeavours to comply with estimated despatch or delivery dates but in no circumstances will the Seller be liable for any delay in delivery or loss arising therefrom to the fullest extent permitted by law. Time shall not be of the essence of the contract but as a guidance only.
- 4.3 If payment is to be made on a pro forma basis delivery will not be made until the Seller is in receipt of cleared funds.
- 4.4 If, owing to non-availability of Goods, materials or for any other reason the Seller is unable to effect delivery the Seller shall be at liberty by notice in writing to determine the contract or part thereof without thereby incurring any liability to the Buyer.
- 4.5 The Seller may deliver the Goods by instalments and each delivery shall be treated as a separate contract and the contract price or an appointed part shall be due and payable.
- 4.6 Where delivery is delayed by late payment of the pro forma or at the request of the Buyer, the cost of handling and storage or warehousing plus a 10% handling fee shall be paid by the Buyer to the Seller in addition to the contract Price before the Seller shall be required to make delivery.
- 4.7 Where Goods are offered for delivery to site, the Seller shall deliver as close to site as hard road permits. The Buyer shall be responsible for checking the Goods for any transport damage before unloading and shall record any such damage with the haulier.
- 4.8 The Seller will accept no liability for damage to Goods occurring in transit unless notified in writing by the Buyer (by email with photographic evidence) on the day of delivery and provided only that the Goods have been signed for by the Buyer as 'damaged' on the haulier's delivery note. For the avoidance of doubt, the Seller will not accept liability for damaged goods that have been signed for but not signed for as 'damaged'.

5. ACCEPTANCE OF GOODS

- 5.1 The Buyer shall make reasonable inspection of the Goods within 48 hours of delivery and shall give written notice to the Seller of any defects within 72 hours of delivery.
- 5.2 In the event that the Buyer has not notified the seller in writing of any defects within 72 hours of delivery, the Buyer shall be deemed to have accepted the goods and shall not be entitled to reject them.

6. TITLE AND RISK

- 6.1 Legal and equitable title to the Goods shall remain with the Seller and the Seller shall have the sole and unencumbered right to dispose of the Goods until payment in respect of the Goods has been made in full to the Seller. Where the Buyer is renting the Goods, Legal and equitable title to the Goods shall remain with the Seller until such time as the Buyer validly exercises their purchase option and makes full payment to the Buyer pursuant to the exercise of that option pursuant to the rental agreement.
- 6.2 The Seller may (without prejudice to any other rights) recover or resell the Goods or any portion of them and the Buyer hereby agrees that the Seller or its servants or agents may enter upon the Buyer's premises for that purpose.
- 6.3 The risk of damage or loss of the Goods shall pass from the Seller to the Buyer when the Goods are delivered to the Buyer or, where the Buyer elects to collect the Goods, when the Seller notifies the Buyer that the Goods are ready for collection.
- 6.4 Whilst the Goods are upon the Buyer's premises or site of works, the Buyer shall ensure that they are stored undamaged and free of charge in such a way that they are shown to be the property of the Seller.
- 6.5 Until payment has been made in full the Buyer has no legal or equitable title to the Goods or authority (unless otherwise confirmed in writing by the Seller) to sell, mortgage, charge or lease any of the Goods.

7. CONTRACT VARIATIONS OR CANCELLATIONS

- 7.1 Variations and order cancellations will only be acceptable if requested to the Seller in writing within the timescale specified on the order confirmation.
- 7.2 Cancellation of an order by the Buyer must be in writing and the Buyer shall forthwith pay to the Seller by way of compensation a cancellation charge of 20% of the order value or the total amount of the actual loss to the Seller whichever shall be the higher.

8. SUBSTITUTION AND MODIFICATION

- 8.1 The Seller reserves the right to make modifications, improvements or substitutions to the specification of the Goods provided that that such actions do not materially affect the performance of the Goods to the Buyer's detriment.

9. DEFAULT IN PAYMENT AND INSOLVENCY

- 9.1 In the event that the Buyer becomes unable to pay its debts as and when they fall due, goes into liquidation, makes any composition with its creditors or if a Receiver or Manager is appointed, the Seller may withhold deliveries, cancel or suspend outstanding orders and recover Goods delivered unless payment is made in full to the Seller for the Goods.

10. INDEMNITY

- 10.1 The Buyer shall be solely responsible for and shall keep the Seller indemnified against any and all losses, damages, liability, costs (including legal fees) and expenses which the Seller may suffer or incur directly or indirectly from the Buyer's breach of any of its obligations under this agreement including any liability in relation to the use of the Goods.
- 10.2 The Buyer recognises that any breach or threatened breach of the Contract may cause the Seller irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Seller, the Buyer acknowledges and agrees that the Seller is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.
- 10.3 The Buyer undertakes not to export the Goods either directly or indirectly where to do so would be in contravention of any law, statute or regulation or without first obtaining all required licences and permits from all relevant governmental departments or agencies.

11. RETURNED GOODS

- 11.1 The Seller will not accept returned Goods for credit unless such return has been authorised in writing by the Seller and the Goods are returned back to the Seller's place of business at the expense of the Buyer in stock condition including with undamaged original packaging, accessories, and manuals.
- 11.2 All items for return must be accompanied by the original invoice number.
- 11.3 The Seller shall retain the sole discretion as to whether to accept return of Goods taking into account the nature of the Goods concerned and the extent to which they may be bespoke to their application and hence the extent to which they might be saleable to other parties.
- 11.4 The Seller reserves the right to levy a re-stocking charge of 25% to cover inspection, testing, handling and storage.

12. SELLER'S LIABILITY TO BUYER

- 12.1 The Seller shall under no circumstances be liable to the Buyer whether in contract, tort, breach of statutory duty or otherwise for any loss of profit, or any indirect or consequential loss or damages arising under or in connection with the contract between them.
- 12.2 The Seller's liability to the Buyer for any default or breach whatsoever and howsoever arising shall in no case exceed the invoice value of the Goods.
- 12.3 This clause 12 shall survive termination of the contract.
- 12.4 Nothing in this Agreement excludes the Seller's liability for death or personal injury caused by the Seller's negligence, or for fraud or fraudulent misrepresentation.

13. BUYER'S OBLIGATIONS

- 13.1 The Buyer shall be entitled to use the Goods only for its own purpose and shall not provide the Products for use by any other party without the prior written consent of the Seller which shall not be unreasonably withheld.
- 13.2 The Buyer shall make the Goods available to the Seller as required so as to enable any necessary maintenance or repairs.
- 13.3 The Buyer shall provide for any operating supplies necessary such that they are compatible for use with the Goods. The Buyer hereby agrees not to use any consumables, stationery, or magnetic media which does not meet the specification of the Seller and/or the Goods manufacturer.
- 13.4 The Buyer shall maintain the Goods in suitable premises and operating conditions and follow the Buyer's operating and maintenance instructions as shall be provided from time to time.

14. SITE PREPARATION, DELIVERY AND INSTALLATION

- 14.1 The Buyer shall prepare the Installation Site, including the desired operating location, at its sole expense and in accordance with the Seller's written site specification.
- 14.2 The Buyer shall be solely responsible and liable for securing all necessary licenses and consents pursuant to the installation and usage of the Goods and shall ensure that the usage of the products is compliant with any local laws.
- 14.3 All delivery, transportation, handling, installation and demurrage charges entailed in transporting the Goods to the Installation Site shall be the responsibility of the Buyer.
- 14.4 The Seller shall make reasonable endeavours to ensure that the delivery schedule is fulfilled, but time shall be a guidance only and not of the essence. The Seller shall in no circumstances be liable for any damages, costs or losses (whether direct or indirect) incurred by the Buyer as a result of delays or damage in transit.

15. INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS IN SOFTWARE PRODUCTS

- 15.1 All plans, drawings, specifications and details prepared by the Seller are the copyright of the Seller and the Buyer shall not reproduce or otherwise use such documentation in any manner which would constitute a breach of that copyright.
- 15.2 The Buyer hereby acknowledges that any and all proprietary rights in any software Goods or Third Party Software supplied hereunder including but not limited to any title or ownership rights, patent rights, copyrights and trade secrets rights, shall at all times and for all purposes vest and remain vested in the Seller or the third party owner as the case may be.
- 15.3 No title or ownership of the software Goods or any Third Party Software licensed to the Buyer under this Agreement is transferred to the Buyer under any circumstances.
- 15.4 The Buyer is granted and hereby accepts a non-transferable (without the prior written consent of the Seller) and non-exclusive licence (hereinafter called "License") to use the software comprised in the Goods subject to the following terms and conditions.
 - (a) The License shall persist until notice of termination is given by either party except that the Seller shall not be entitled to terminate the License unless the Buyer fails to remedy any non-compliance with the terms of the License within 28 days of notice from the Seller requiring it to do so.
 - (b) Software and any part thereof may be used only on the computer system for which it was supplied and may only be copied in whole or in part, for use on such system with the proper inclusion of the Seller's copyright and proprietary notices on the software, and except for archive purposes, to replace a defective copy or for program error identification by the Customer, and may not be copied for any other purpose.
 - (c) The Buyer shall not provide or otherwise make available the software or any part of copies thereof or any related documentation in any form to any third party (except the Buyer's employees or agents directly concerned with the Buyer's licensed use of the software).
 - (d) On termination of this License, the Buyer agrees to return immediately the software and related documentation then in its possession together with all portions and copies thereof and provide written certification that all such software and documentation has been returned.

15.5 The Buyer agrees to comply with any additional Third Party Software conditions of any Third Party Software (including if so required the execution and return of a Third Party Software License) and to indemnify the Seller in respect of any costs, charges or expenses incurred by the Seller as a result of any breach by the Buyer of such conditions.

16. FORCE MAJEURE

16.1 In the event that the Seller is unable to perform its obligations to the Buyer (or only able to perform them at unreasonable cost) because of circumstances beyond the Seller's control, the Seller may cancel or suspend any of its obligations to the Buyer without liability.

17. GENERALLY

17.1 All descriptions and samples are approximate only and intended to be a guide. The Seller accepts no liability for their accuracy. The Seller may alter Goods to introduce improvements and no such variation shall entitle the Buyer to rescind the contract or shall be the subject of any claim against the Seller.

17.2 If any of these Terms and Conditions shall be found to be unlawful it shall not vary or affect the validity or enforceability of the remainder of the terms and conditions.

17.3 No waiver by the Seller of any breach of these terms and conditions shall constitute a waiver of any subsequent breach of the same or other condition.

17.4 No failure, delay or indulgence on the part of either Party in exercising any power or right conferred by this agreement shall constitute a waiver or preclude future exercise of such power or right.

17.5 A person who is not a party to the contract between the Buyer and the Seller shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.

17.6 The contract is entered into between the Seller and the Buyer as principals and the Buyer shall not be entitled to assign the benefit or burden of it without the prior written consent of the Seller. The Seller shall be entitled to sub-contract the whole or part of its obligations under the contract and to assign its interest in the contract.

17.7 Nothing in this contract shall establish a partnership or agency between the Seller and the Buyer. The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

17.8 The Agreement constitutes the entire agreement between the Buyer and the Seller and supersedes any previous agreement pertaining to the subject matter. Each Party warrants to the other that it has not relied upon any representation not recorded herein.

17.9 This contract is and shall be deemed to have been made in England and shall in all respects be governed by English Law. Each Party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales in relation to any claim or matter arising under or in connection with this Agreement.

18. DISPUTE RESOLUTION

18.1 Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 18.

18.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.

18.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:

18.3.1 Within 7 days of service of the notice, the contract managers of the parties shall meet to discuss the dispute and attempt to resolve it.

18.3.2 If the dispute has not been resolved within 7 days of the first meeting of the contract managers, then the matter shall be referred to the chief executives (or persons of equivalent seniority). The chief executives (or equivalent) shall meet within 7 days to discuss the dispute and attempt to resolve it.

18.4 The specific format for the resolution of the dispute under clause 18.3.1 and, if necessary, clause 18.3.2 shall be left to the reasonable discretion of the parties, but may include the preparation and submission of statements of fact or of position.

18.5 If the dispute has not been resolved within 14 days of the first meeting of the chief executives (or equivalent) under clause 18.3.2 then the matter may be referred to mediation.