

**THESE CONDITIONS CONTAIN LIMITATIONS OF SELLER'S LIABILITY**

1. **GENERAL**
  - 1.1 These Conditions contain the entire agreement in connection with Products and/or Services and may only be modified or supplemented by separate written agreement between Seller and Buyer. All other terms and conditions, express or implied, present or historic (including any statements made in any brochures, website or advertising literature of Seller) are excluded, save in the case of fraud. Unless expressly and specifically agreed in writing to the contrary, Seller will only contract with Buyer on these terms and conditions and will not accept any subsequent terms and conditions of Buyer.
  - 1.2 In these Conditions, terms defined in the 2000 edition of Incoterms have, unless otherwise specified, the same meaning as in "Incoterms". "Affiliate" means, in relation to any company or unincorporated organization, a company or unincorporated organization which controls, is controlled by or is in common control with it. "Buyer" means the person buying the Products or, if agent for another, that person and the other party and severally.
  - 1.3 "FAC" or "Free AI Quay" means delivery is effected when the Products are placed on the quay or offshore at Buyer's disposal at a named port of shipment and Seller is not required to clear the Products for export.
  - 1.4 "Products" means the products and any part of them described in Seller's written quotation and includes their packaging and any replacement products.
  - 1.5 "Services" means that technical advice if any given by or on behalf of Seller in connection with the Products, whether being specific advice given to Buyer or whether in any of Seller's technical literature, including any advice given by any technical representative of Seller made available by Seller at Buyer's site at any time past premises; and "Specification" means that technical specification (if any) included in Seller's written quotation or any other written specification supplied by Seller.
2. **DELIVERY AND/OR PERFORMANCE**
  - 2.1 Delivery or dispatch dates quoted are given as accepted by Seller in good faith, but not guaranteed unless stated to be "guaranteed" in writing.
  - 2.2 Delivery shall be to such place as Seller may agree or reasonably specify prior to delivery. Unless otherwise agreed, Buyer is responsible for unloading of Products.
  - 2.3 Packaging is not returnable unless otherwise agreed in writing by Seller. Any special packaging requirements will incur an additional charge.
  - 2.4 Seller or clause 8, each delivery and/or performance shall be treated as a separate contract. Unless otherwise agreed in writing Seller may deliver and/or perform in part and any failure to perform or delay or any related breach of contract by Seller shall not affect any other delivery. Buyer shall take delivery of Products on any day to the date quoted or agreed by Seller or (if none) within a reasonable time. Buyer shall bear all storage and other costs (including insurance) arising from Buyer's failure to comply with the contract.
  - 2.5 Conclusive evidence of delivery shall be (i) if Products are sold FAS, FOB, FAC or to Buyer's agent, an on-board bill of lading, a mate's receipt or other document in proof of such delivery; (ii) if Seller or its carrier is responsible for any reason to place Products on board ship at the place of delivery, a warehouse receipt for Products; (iii) if Products are sold CIF or CFR or C&F, a receipted bill of lading or way bill; or (iv) in all other cases, a receipt from a carrier.
  - 2.6 If Seller undertakes to obtain any license required for the export of Products, Buyer shall comply with any such license and shall obtain and comply with all other necessary licenses, permits and consents (including all other export/import licenses).
  - 2.7 **PRICE AND PAYMENT**
    - 2.7.1 Prices are exclusive of VAT and all other applicable taxes, duties or fees. Any delivery charge will be at cost or at otherwise agreed in writing. Buyer shall ensure that any vessel receiving Products as "ship stores in transit" is entitled to receive such stores free of value added taxes and other duties.
    - 2.7.2 Unless otherwise agreed in writing by Seller, payment is due thirty days from date of invoice. Seller may require security for payment before dispatch or performance.
    - 2.7.3 Payment may be made in any freely negotiable currency using the spot rate of exchange shown on the relevant Reuters screen (or, if there is no such screen then available, then offered by HSBC Bank in the foreign exchange market) on the earlier of the date on which payment is made and the date of payment. Seller reserves the right to recover any loss on exchange due to delays in payment.
    - 2.7.4 Unless the contract states precisely to the contrary, Seller may increase prices for unshelved balances and/or unperformed Services in accordance with increases in Seller's costs and/or general price list increases occurring after the date of acceptance of order but before despatch and/or performance. Buyer shall pay any increases in delivery costs after the date of acceptance of order.
  - 2.8 In the circumstances described in clause 7.2, clause 2.4 shall not apply until all unpaid balances owing to Seller from Buyer shall become a debt immediately due and payable to Seller, whether or not property in Products has passed to Buyer.
  - 2.9 Time of payment is of the essence of the contract. Without prejudice to any other remedy Seller may, charge interest at 4% above HSBC Bank base rate for the time being per annum (to accrue from day to day) on any sum which is not paid on the due date after as well as before any judgment.
- 3.7 Seller may appropriate sums received from Buyer against any debt whatsoever due to Seller from Buyer irrespective of any purported appropriation by Buyer and may, without prejudice to any other right or remedy, by notice in writing to Buyer, set off any or all of the moneys owned by Buyer or any of its Affiliates to Seller or the liability of Products against any indebtedness of Seller or any of its Affiliates to Buyer or to any of its Affiliates. In no circumstances may Buyer (b) without payment or make any self-off on any account.
- 3.8 Buyer shall on demand indemnify Seller against all costs, charges, expenses and legal costs incurred by Seller in recovering sums owing by Buyer (including without limitation in sums of interest).
4. **WARRANTIES**
  - 4.1 Other than for samples or goods sold as obsolete or sub-standard, Seller warrants ("the Warranties") that upon delivery Products are sold with good title and are made with sound materials and workmanship, comply with Seller's then current published product data sheets and comply with the Specification which shall be prepared with reasonable care and are suitable for the purpose for which it was prepared.
  - 4.2 Unless Products are sold to be used in accordance with the Specification Seller does not warrant that Products are fit for any particular purpose or an intended use by Buyer and Buyer shall satisfy itself that Products are so fit. If Products correspond to any sample supplied or accepted by Seller they shall be deemed to comply with the Specification.
5. **LIMITATIONS OF LIABILITY**
  - 5.1 Seller shall not be liable under clause 4 unless Buyer satisfies Seller that it has strictly complied with any instructions of Seller relating to Products and Services. Seller shall not be liable under clause 4 in respect of any Products which are used after notice has been given that the Products fail to comply with the Warranty.
  - 5.2 Buyer shall receive Products as an reasonably practicable after delivery. Buyer shall not immediately notify Seller of any incomplete or failed delivery, loss or damage during carriage, shortage of quantity or if Products fail to comply with the Warranty and shall in the case of damaged Products be entitled to notify Seller that it rejects all or any part of the damaged Products in that delivery. Unless Buyer so notifies Seller within 30 days after the date when Buyer became or ought reasonably to have become aware of any of the above (or, if the Products have been damaged for reasons other than the matter which should have been notified, within 90 days after the date when Buyer became or ought reasonably to have become aware of any of the above) Seller will not be liable to return or replace such Products. Buyer shall be deemed to have waived its rights in respect of such Products in connection with Products. **Notices** and/or the contract unless otherwise provided are issued against Seller within two years after Buyer became or ought to have become aware of the circumstances giving rise thereto.
  - 5.3 Provided notification is made within the above 30 day period, if it is shown to Seller's reasonable satisfaction that Products fail materially to comply with the Warranty, Seller shall be given a reasonable opportunity to correct such failure. If the failure is not corrected, Seller will at Buyer's option either refund the purchase price (or, if the Products have been damaged for reasons other than Seller's default or been used or put into process, a reasonable part of the purchase price) or replace part or the whole of the Products (if reasonably practicable) within a reasonable time, free of charge. **Such correction, refund or replacement shall, subject to clause 5.6, be Seller's sole liability in relation to any such failure and shall in no circumstances exceed three times the invoice value of the Products in question.**
  - 5.4 Products which are alleged not to comply with the Warranty shall as far as possible be preserved for Seller's inspection, and shall be returned to Seller (at Seller's cost) if Seller reasonably so requires. Buyer shall be deemed to have waived its rights in respect of such Products, where possible, it has been in Seller's reasonable opportunity to inspect such Products.
  - 5.5 Seller shall not be liable in any way whatsoever for:
    - (a) the incompleteness of any Products supplied by Seller with the Products or other manufacturers or suppliers;
    - (b) inadequate or incorrect surface preparation or coating application work carried out by, or the faulty equipment or product of, Buyer or any third party;
    - (c) any representations, advice or assistance given or omitted to be given in connection with Products, Services, the Specification or the contract, other than Services specifically charged for by Seller. Where Seller has specifically charged for Services, and in the absence of any other written warning, Seller shall provide the Services with reasonable care and skill and liability for failure shall be limited to a refund of the fee charged for those Services;
    - 9.1 the supervision or quality control (or lack thereof) by or on behalf of any third party;
  - 5.6 (a) Seller does not exclude or restrict any liability which cannot be excluded or restricted as between Buyer and Seller, including in respect of a Buyer who deals as a consumer, as a matter of law under any applicable legislation.
    - (b) Buyer shall promptly notify Seller of any claim against Buyer under any consumer protection legislation, granting rights to consumers which Seller cannot by law exclude or restrict. Seller shall then only be liable to Buyer in the event Products were defective (within the meaning of the applicable legislation), at the time of delivery by Seller and shall not be liable to the extent that any liability arises from any act or omission of Buyer.
- 5.7 **Without prejudice to any other limitation of Seller's liability whether**

- 10.2 **effective or not;**
  - 10.2.1 In no circumstances whatsoever (including any fault or default of Seller) shall Seller be liable for any loss of profits, use, contract, goodwill, business, anticipated savings, any reification costs; (subject to clause 5.9) any third party claims; or for any indirect or consequential losses in connection with Products, Specification, Services or the contract;
  - 10.2.2 Seller's liability under clause 5.9 shall be limited to the total aggregate liability under any proceedings or law in connection with Products, Specification, Services or the contract limited to the cost of Products sold.
  - 10.2.3 The Warranty and Buyer's remedies under clauses 5 and 7.1 are in substitution for any other warranties, obligations, representations, liabilities, terms or conditions (whether they are express or implied, in law or in fact, and whether or not involving Seller's negligence) which are beyond Seller's reasonable control and which prevent or restrict Seller from complying with the contract. However, Seller may always reasonable and without liability suspend or terminate all or some of its obligations under the contract if Seller's ability to fulfil such obligations is materially impaired.
6. **EVENTS BEYOND SELLER'S REASONABLE CONTROL**
  - 6.1 Seller shall not be liable for any failure to comply with the contract related to any circumstances whatsoever (whether or not involving Seller's negligence) which are beyond Seller's reasonable control and which prevent or restrict Seller from complying with the contract. However, Seller may always reasonable and without liability suspend or terminate all or some of its obligations under the contract if Seller's ability to fulfil such obligations is materially impaired.
  - 6.2 **TERMINATION AND SUSPENSION**
    - 6.2.1 Except where Buyer has caused or contributed to any delay, Buyer may (as Buyer's sole remedy, without affecting the balance of the contract) terminate the contract by notice to Seller in respect of any instalment of Products which is not completed by any date stated in writing to be "guaranteed" by Seller or within 90 days after any date indicated by Seller or quoted on Seller's written quotation, unless the goods have been specially manufactured or adapted for Buyer.
    - 6.2.2 Seller may without prejudice to its other rights (remedies) terminate or suspend Seller's performance of the whole or any outstanding part of the contract in the relevant circumstances. Seller may also suspend deliveries or supply of Services while investigating any claim relating to prior shipments (under any contract) of Products. Clause 2.4 shall not apply in these circumstances. The relevant circumstances are:
      - (a) Buyer failing to take delivery of or to accept for Products and/or Services (if any) by the due date, or breaches any other term of the contract or Seller's terms and conditions; or
      - (b) Buyer being in late delivery or in default of its obligations, or Buyer suffering any equivalent of the foregoing.
    - 6.2.3 Seller having reasonable grounds for suspecting that an event in clause 7.2(b) has occurred or will occur, or that Buyer will not pay for Products or Services on the due date, and so notifies Buyer or where the contract is for a fixed price, there has been a substantial increase in Seller's costs of manufacture and supply of Products and/or Services between the date of contract and date of despatch arising from circumstances beyond Seller's reasonable control; and Seller and Buyer have failed within 30 days of Seller notifying Buyer of such increase, to reach agreement on a reasonable adjustment to the price for remaining deliveries to recognise such increase.
    - 6.2.4 If Buyer provides Seller with security for the contract price, reasonably acceptable to Seller, within 3 working days after a notice has been given under clause 7.2(c), Seller shall withdraw the notice.
  - 6.3 **RISK AND TITLE**
    - 6.3.1 Risk in Products shall pass to Buyer upon delivery. Seller shall retain ownership of products until:
      - (a) Seller has received payment in full for Products and of all other sums which are or become due to Seller from Buyer on any account; or
      - (b) the Products are mixed, processed or used so that they lose their identity or are irreversibly incorporated in, mixed with or applied to other goods; or
      - (c) Buyer sells Products at arm's length in good faith to an unrelated third party. Buyer shall insure Products against all usual risks to full replacement value and ownership passes to Buyer. Buyer shall sell, use or part with possession of them only in the ordinary course of trading and shall, where reasonably possible, keep each delivery separate and clearly identified as Seller's property. Any insurance monies received by Buyer in respect of Products owned by Seller shall be held in trust for Seller. In the circumstances described in clause 7.2, Buyer's right to sell, use or part with possession of Products shall terminate immediately. Seller may without prejudice to Seller's other remedies terminate immediately and recover and/or sell such Products.
    - 6.3.2 Buyer shall not use any trademarks or tradenames applied to or used by Seller in relation to Products in any manner not approved by Seller.
  - 6.4 **THIRD PARTY CLAIMS AND CONDUCT OF CLAIMS**
    - 6.4.1 Buyer shall indemnify Seller against any liability incurred by Seller (if, from, arising from, or arising out of) in Products or complying with any specification or other instruction of Buyer relating to Products; and (if arising from the use of or dealings in Products by or on behalf of Buyer, except as provided in clause 5.6 or if arising from Seller's willful default). Each party shall promptly notify the other of any relevant claim under this contract (including, without limitation, under clause 5.8). Seller shall comply with the other's reasonable requirements to minimise and/or avoid further liability and shall allow the other conduct of any action and/or settlement negotiations, on reasonable terms.
  - 6.5 **INFORMATION AND COMPLIANCE WITH LAWS**
    - 6.5.1 Seller shall ensure that all Products are safely and lawfully received, stored, maintained, used or applied by Buyer and shall obtain relevant information in

Seller's possession relating thereto.

Buyer shall ensure that all appropriate safety information (whether supplied by Seller, Buyer or another) is distributed and drawn to the attention of customers and all others (including Buyer's employees and contractors) who require it for the safe handling or use of Product and shall promptly supply to Seller all information and assistance required for Seller to execute Buyer's order.

11.1 The contract may not be assigned by Buyer without Seller's prior written consent. Notices must be in writing to Seller's or Buyer's address and are deemed delivered on the first working day after delivery by hand or (subject to confirmation of transmission) by facsimile, or, where sent by first class or express post, five clear working days after the date of posting to Buyer's or Seller's address. Qualified acceptance by Buyer on delivery notes shall not constitute notice of any claim or acceptance by Seller of any such qualification. No failure by Seller to enforce any provision of this contract shall be construed as a release of its rights relating thereto or to sanction any further breach. If any provision of the contract is found to be invalid or unenforceable it shall have effect to the maximum extent permitted by law, or if not so permitted, shall be deemed deleted.

11.2 **MISCELLANEOUS**

- 11.2.1 The contract may not be assigned by Buyer without Seller's prior written consent. Notices must be in writing to Seller's or Buyer's address and are deemed delivered on the first working day after delivery by hand or (subject to confirmation of transmission) by facsimile, or, where sent by first class or express post, five clear working days after the date of posting to Buyer's or Seller's address. Qualified acceptance by Buyer on delivery notes shall not constitute notice of any claim or acceptance by Seller of any such qualification. No failure by Seller to enforce any provision of this contract shall be construed as a release of its rights relating thereto or to sanction any further breach. If any provision of the contract is found to be invalid or unenforceable it shall have effect to the maximum extent permitted by law, or if not so permitted, shall be deemed deleted.

- 11.3 **NO THIRD PARTY RIGHTS**
- 11.3.1 No term or condition of this contract is enforceable by any person who is not a party to the contract and Seller and Buyer may exercise, without the consent of any third party, any rights they may have to amend or rescind this Contract.
- 11.4 **LAW**
- 11.4.1 This contract shall be governed by and construed in accordance with the law of Seller's country. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this contract or the transactions contemplated by this contract. Buyer hereby agrees, for Seller's exclusive benefit, that the courts of Seller's country shall have jurisdiction to hear all claims or proceedings connected with Products, Services or the contract. Seller may nevertheless bring claims in any other court of competent jurisdiction.