

## TERMS AND CONDITIONS OF SALE

### 1 Definitions

- 1.1 In these Conditions, the following definitions apply:
- "Buyer": the person, firm, company, or body to whom the Seller agrees to sell Goods in accordance with these Conditions;
- "Conditions": the terms and conditions set out in this document;
- "Contract": the contract between the Seller and the Buyer subject to and in accordance with these Conditions;
- "Goods": the goods (or any part of them) set out in the order;
- "Price": the amount in £ pound sterling (or such other currency agreed between the Seller and the Buyer) as specified by the Seller to be paid by Buyer for the Goods; and
- "Seller": means GJD Manufacturing Limited

### 2 Basis of the Sale

- 2.1 The Seller shall sell and the Buyer shall purchase the goods in accordance with any quotation of the Seller which is accepted by the Buyer, or any order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.
- 2.2 No variation to these Conditions shall be binding unless agreed in writing between authorised representatives of the Buyer and the Seller.
- 2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of any such representations which are not so confirmed.
- 2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, installation application or use of the Goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

### 3 Orders and Specifications

- 3.1 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements which do not materially affect their quality or performance.
- 3.2 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

### 4 Price of the Goods

- 4.1 The Price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or the quoted price is no longer valid), the price listed in the Seller's published price list current at the date of dispatch.
- 4.2 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis. Where the Seller agrees to deliver the Goods otherwise than at the Buyer's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.
- 4.3 The Price is exclusive of any applicable value added tax which the Buyer shall be additionally liable to pay to the Seller.

### 5 Terms of Payment

- 5.1 Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods.
- 5.2 If the Seller has granted the Buyer monthly account credit facilities, payment for the Goods must be made within 30 days from the date of the invoice.
- 5.3 Otherwise the Buyer shall pay the price of the Goods in cash prior to delivery. The time of payment of the Price shall be of the essence of the Contract. Receipts for payment will be issued upon request.
- 5.4 The Seller reserves the right to cancel or withdraw credit facilities at any time without notice and the Buyer shall pay any sums due to the Seller within 7 days.
- 5.5 If the Buyer fails to make any payment on the due date or the Seller reasonably believes the Buyer may not be able to pay its debts as they fall due then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled, in addition to any other rights the Seller may have, to:
- 5.5.1 cancel the Contract or suspend any further deliveries to the Buyer;
- 5.5.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other Contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
- 5.5.3 charge the Buyer interest, both before and after any judgment, on the amount unpaid at the rate of 4% per annum above Barclays Bankbase rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

### 6 Delivery

- 6.1 The Seller shall deliver the Goods to the address given by the Buyer when the order is placed or if no address is given, to the Buyer's usual place of business.
- 6.2 The Seller shall not be liable for any delay in delivery of the Goods and consequential loss howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing.
- 6.3 Any claim in respect of any loss, theft or damage to the Goods in the course of delivery shall be made by the Buyer to the Seller in writing within 3 days of receipt of the Goods. If any Goods invoiced by the Seller are not delivered, the Buyer must notify the Seller in writing within 5 days of the invoice date.
- 6.4 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate Contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions, or any claim by the Buyer in respect of any one or more instalments, shall not entitle the Buyer to treat the Contract as a whole as repudiated.

### 7 Risk and Property

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery in the case of the United Kingdom and upon dispatch from the Seller's warehouse in the case of Goods to be exported.
- 7.2 The property in the Goods shall not pass to the Buyer until the Seller has received payment in full (in cash or cleared funds) for the Goods and any other amounts payable to the Seller whether under the Contract or otherwise and whether or not any such amount shall have become due hereunder and until payment in full is received the whole right, title and interest both legal and equitable in and to the Goods shall remain with the Seller.
- 7.3 Until property in the Goods has passed to the Buyer, the Buyer shall:
- 7.3.1 keep the Goods as the Seller's fiduciary agent and bailee, properly stored, protected and insured in such a way that they are identifiable as the property of the Seller and are separate from all other goods of the Buyer;
- 7.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 7.3.3 permit the Seller to enter into the premises of the Buyer where the Goods may be situated for the purpose of examining the Goods and checking compliance by the Buyer with the terms of this Clause and on the occurrence of any breach by the Buyer of this Clause the Seller shall, in addition to any other rights the Seller may have, be entitled to sever the Goods from any property of the Buyer or third party and to repossess and to resell the Goods or any part thereof without any liability on the part of the Seller for any damage or loss caused thereby;
- 7.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery or in the case of the Goods to be exported from the date of dispatch from the Seller's warehouse;
- 7.3.5 give the Seller such information relating to the Goods as the Seller may require from time to time; and
- 7.3.6 notify the Seller immediately if it becomes subject to any of the events listed Clause 9.1.
- 7.4 Subject to the provisions of this Clause the Buyer shall be entitled to use the Goods in the ordinary course of its business prior to the transfer of legal ownership but shall in no circumstance be entitled to sell the Goods unless:-
- 7.4.1 it has prior written consent of the Seller; and
- 7.4.2 whether the Seller has given such written consent subject to these Conditions, the Buyer complies with all of these Conditions.
- 7.5 Subject to consent being granted in accordance with Clause 7.4.1, the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance

proceeds, and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

7.6 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain (including the creation of a floating charge) the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall, without prejudice to any other right or remedy of the Seller, forthwith become due and payable.

7.7 The Seller's rights contained in this Clause and the exercise thereof shall be without prejudice to all other rights of the Seller and the Seller shall be entitled to maintain an action for the price of the Goods notwithstanding that the legal ownership in the Goods may not have passed to the Buyer.

### 8 Warranties and Liability

- 8.1 If under proper use the Goods appear to develop any defect during the warranty period the Buyer shall return the Goods to the Seller who at its own expense shall replace or repair such goods as are defective so as to remedy the defects subject to the following conditions:
- 8.1.1 The Seller's liability shall be limited to the cost of any repair or replacement.
- 8.1.2 The Seller shall be under no liability in respect of any defect arising from wilful damage, negligence, abnormal working conditions, failure to follow Seller's instructions whether oral or in writing, faulty installation, misuse or alteration or repair of the Goods without the Seller's approval;
- 8.1.3 The Seller shall be under no liability to the Buyer nor his agents to exchange or repair any Goods whose warranty expiry date has been tampered with or removed.
- 8.1.4 The Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.
- 8.1.5 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.
- 8.2 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.
- 8.3 The Seller shall have no liability to the Buyer for loss (including consequential loss), expense or claim whatsoever or however caused whether arising under contract, tort, (including negligence) or otherwise including without limitation loss of production, loss of profits or of contracts, loss of operation time, loss of goodwill or loss of anticipated savings, even if the Buyer has advised the Seller of such a possibility.
- 8.4 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 not exceed the price of the Goods under that said Contract.
- 8.5 Nothing in these Conditions shall limit or exclude the Seller's liability for:
- 8.5.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 8.5.2 fraud or fraudulent misrepresentation; or
- 8.5.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- 8.5.4 defective products under the Consumer Protection Act 1987; or
- 8.5.5 any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.
- 8.6 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:
- 8.6.1 Act of God, explosion, flood, tempest, fire or accident;
- 8.6.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 8.6.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on any part of any governmental, parliamentary or local authority;
- 8.6.4 import or export regulations or embargoes;
- 8.6.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
- 8.6.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 8.6.7 power failure or breakdown in machinery.

### 9 Insolvency of the Buyer

- 9.1 This clause shall apply if:
- 9.1.1 any distress or execution shall be levied on the Buyer's assets or if the Buyer shall make or offer to make any arrangement or composition with creditors or commit an act of bankruptcy or an administration order shall be presented or made against the Buyer or, if the Buyer is a limited company, any resolution or petition to wind up the same (other than for the purposes of solvent reconstruction or amalgamation notified to the Seller) shall be passed or served or an administration order be made or if a receiver or administrator be appointed of the Buyer's assets and undertaking or any part thereof, or
- 9.1.2 the Buyer ceases or threatens to cease to carry on business; or
- 9.1.3 the Buyer suspends, or threatens to suspend, payments of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or
- 9.1.4 the Buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
- 9.1.5 the financial position of the Buyer deteriorates to such an extent that in the opinion of the Seller the capability of the Buyer to fulfil its obligations adequately under the Contract has been placed in jeopardy; or
- 9.1.6 the Seller reasonably apprehends that any of the events mentioned in clause 9.1.1 to 9.1.5 above is about to occur in relation to the Buyer or if in the opinion of the Seller serious doubts arise as to the solvency of the Buyer.
- 9.2 If any of the events in Clause 9.1 arise then, without prejudice to any other right or remedy available to the Seller:-
- 9.2.1 the Seller shall be entitled to terminate the Contract or suspend any further deliveries under the Contract without any liability to the Buyer; and
- 9.2.2 any entitlement of the Buyer hereunder to use Goods delivered but not paid for in full shall terminate forthwith; and
- 9.2.3 the Buyer shall allow the Seller to enter any premises of the Buyer to sever the Goods from any property and to repossess and resell any Goods delivered but not paid for in full or any part thereof without any liability to the Buyer for any damage caused to such property in removing said Goods; and
- 9.2.4 if Goods have been delivered but not paid in full, the price outstanding shall become immediately due and payable notwithstanding any agreement to the contrary reached between the Buyer and the Seller prior to any event referred to in clause 9.1.
- 9.3 Without prejudice to any of the Seller's rights to claim damages, the Buyer will on termination or cancellation of the Contract for any reason whatsoever or if the Buyer cancels, delays or purports to cancel, or delay the Contract or fails to take delivery of any Goods, indemnify the Seller against loss, costs, damage or expenses, incurred by the Seller in connection with the termination or cancellation of the Contract.

### 10 Assignment and Subcontracting

- 10.1 The Seller may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 10.2 The Buyer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without prior written consent of the Seller.

### 11 Waiver

- 11.1 A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

### 12 General

- 12.1 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 provisions in question shall not be affected thereby.
- 12.2 Any dispute arising under or in connection with these Conditions, the Contract, or the sale of the Goods shall be referred to arbitration by a single arbitrator appointed by agreement or, in default, nominated on the application of either party.
- 12.3 This Contract shall be governed by the laws of England and the parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.