

# TERMS AND CONDITIONS OF SALE OF MOLAN (UK) LIMITED

## 1 INTERPRETATION

### i) In these conditions:-

- "Buyer" means the person who accepts a quotation of the Seller for the sale of the Goods which is subsequently confirmed by the Seller by way of an order confirmation or whose order for the Goods is accepted by the Seller.
- "Goods" means the Goods (including any instalments of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions.
- "Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.
- "Contract" means the contract for the purchase and sale of Goods governed by these Conditions.

## 2 BASIS OF THE SALE

- i) The Contract and all agreements from time to time entered into between the Seller and the Buyer which provide for the sale of any Goods by the Seller to the Buyer shall be deemed to incorporate these Conditions which represent the complete Agreement of the Seller and Buyer with regard to the Goods except as may be otherwise specifically agreed in writing by the Seller. These Conditions shall override any terms and conditions stipulated incorporated or referred to by the Buyer in any correspondence or negotiations with the Seller or in any other way.
- ii) The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer and subsequently confirmed by the Seller by way of order confirmation or written order of the Buyer which is accepted by the Seller in writing or any comparable means of communication including facsimile transmission or telephone call 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.
- iii) No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.
- iv) No order is binding on the Seller until accepted by the Seller in writing by the issue of the Seller's official order confirmation notwithstanding any act or statement of the Seller or its agents or representatives prior to such issue.
- v) Without prejudice to the foregoing acceptance of delivery of the Goods by the Buyer shall be deemed to constitute acceptance of these Conditions to the exclusion of all other terms and conditions whatsoever.
- vi) If any term or condition herein (or part thereof) is held to be invalid for any reason by any Court or competent authority it is to that extent to be deemed removed from the Contract without prejudice to the validity or effectiveness of the remaining terms and conditions hereof.
- vii) The rights of the Seller shall not be prejudiced or restricted by any indulgence or forbearance extended to the Buyer and no waiver of any breach shall operate as a waiver of any subsequent breach.
- viii) The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller by its duly authorised officer or employee 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.
- ix) 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 application or use of the Goods which is not confirmed in writing by the Seller by its duly authorised officer or employee is followed or acted upon entirely at the Buyer's own risk and accordingly the Seller shall not be liable for such advice or recommendation which is not so confirmed. Similarly where the Seller or its representatives attend the premises of the Buyer at the request of the Buyer any advice or assistance proffered to the Buyer by the Seller or its representatives shall be entirely without liability to the Buyer or any third party provided that the Buyer hereby agrees whatsoever and confirms that neither the Seller nor its representatives is under any obligation whatsoever under the terms of this Contract to attend the Buyer's premises, such attendance being at the absolute discretion of the Seller.

## 3 ORDER AND SPECIFICATIONS

- i) The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within sufficient time to enable the Seller to form a contract in accordance with these terms save that the Seller accepts no responsibility for variations falling within reasonable commercial variation tolerances and (without limitation to the above) it is hereby agreed that tolerances of sizes cut to within 3mm in width 10mm in length and 2 degrees in triangle or angle cutting shall be deemed in any event to be reasonable commercial variable tolerances (it also being agreed that larger variable tolerances may be reasonable in the circumstances of the Contract as a whole).
- ii) For the avoidance of doubt orders received by facsimile which are subsequently confirmed by the Seller in accordance with the Conditions which do not state directions of flute of the material shall be bound by the Seller's decision as to the direction in which the material shall be cut.
- iii) If the Goods are to be manufactured or any process to be applied to the Goods by the Seller in accordance with the specification submitted by the Buyer the Buyer shall indemnify and keep fully indemnified the Seller against all loss damages costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent copyright design right trade mark or other right which results from the Seller's use and the Buyer's specification.
- iv) 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 including any order regulation or request of and national or local authority governmental department or other competent authority or where the Goods are to be supplied to the Buyer's specification which do not in the Seller's absolute discretion materially affect their quality or performance.
- v) 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 and keep fully indemnified 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 the cancellation.

## 4 PRICE OF THE GOODS

- i) Subject to Clause 4(ii), the price of the Goods shall be the Seller's quoted price in relation to a written quotation that is subsequently confirmed by the Seller by way of order confirmation or where no price has been quoted (or a quoted price is no longer valid) the price listed in the Seller's published price list current at the date of acceptance of the order.
- ii) The Seller reserves the right by giving notice to the Buyer any time before delivery to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any fact and beyond the control of the Seller (such as without limitation any foreign exchange fluctuation currency regulation alteration of duties significant increase in the cost of labour materials or other cost of manufacture) any change in delivery dates quantities or specifications for the goods which is requested by the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- iii) The Buyer shall not be entitled to make any deduction from the price of the Goods in respect of any alleged rights to set-off or counter-claim unless both the validity and the amounts thereof have been expressly acknowledged and admitted by the Seller in writing.
- iv) Except as otherwise agreed in writing the Buyer shall be liable to pay the Seller's charges for transport packaging and insurance.
- v) The price is exclusive of any applicable value added or other tax which the Buyer shall be additionally liable to pay to the Seller.

## 5 TERMS OF PAYMENT

- i) 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.
- ii) The Buyer shall pay the price of the Goods in full and together with any value added or other tax within 30 days of the date of the Seller's invoice. The time of payment of the price shall be the essence of the Contract. Receipts for payment will be issued only upon request.
- iii) If the Buyer fails to make any payment on the due date or if the Seller in its sole discretion at any time considers the financial condition of the Buyer to be such as to justify the following then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to:-
- 1) cancel the Contract or suspend any deliveries to the Buyer;
  - 2) appropriate any payment made by the Buyer to such of the Goods;
  - 3) charge the Buyer interest on the amount unpaid at that time at the rate of 4% per annum above Barclays Bank PLC base rate from the date of the invoice until payment in full is made; and / or
  - 4) demand security for payment and / or cancel any allowance of further credit terms.

## 6 DELIVERY

- i) Any dates quoted for delivery of the Goods are approximate only and are not a contractual commitment and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed in writing.
- ii) The Seller reserves the right to deliver the Goods in instalments in its sole discretion.
- iii) 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.
- iv) If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery then without prejudice to any other right or remedy available to the Seller the Seller may:-
- 1) store until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
  - 2) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall.
- v) In the absence of written agreement as to the place of delivery of the Goods notification of the Seller to the Buyer that the Goods are available shall constitute delivery of the Goods to the Buyer at the Seller's premises.

## 7 RISK IN PASSING OF PROPERTY

Risk of damage to or loss of the Goods shall pass to the Buyer:-

- 1) in the case of Goods delivered at the Seller's premises at the time when the Seller notifies the Buyer that the Goods are available; or
- 2) in the case of the Goods to be delivered otherwise than at the Seller's premises at the time of delivery or if the Buyer wrongfully fails to take delivery of the Goods at the time when the Seller has tendered delivery of the Goods.

## RETENTION OF TITLE

Notwithstanding delivery the property in the Goods shall not pass to the Buyer until the Buyer has paid in full the price of the Goods.

- i) Furthermore the property in the Goods shall not pass to the Buyer unless and until the full price of any other delivered goods the subject of any other business transaction between the Buyer and the Seller has been paid. Such price and the price of the Goods shall hereinafter together be called "the value" and shall where the context so permits include in addition thereto any costs of repossession incurred pursuant to paragraph (d) of Clause (iii) hereof.
- ii) Until the value has been received by the Seller the Buyer will hold the Goods as bailee on behalf of the Seller and the Buyer hereby acknowledges that there shall accordingly subsist a fiduciary relationship in respect of the Goods between the Buyer and the Seller. Subject thereto;
  - a) the Buyer will store the Goods on its premises separately from its own Goods or those of any other person in such a way that they can be readily identified as the Goods of the Seller;
  - b) until payment as aforesaid the Buyer will take all necessary measures for the protection of the Goods including the insurance thereof against all usual risks with an insurance company approved by the Seller for the full replacement value of the Goods. The Buyer will procure that the interest of the Seller is noted upon any policy of insurance effected pursuant hereto and that a copy of the same is supplied to the Seller on the creation hereof.
  - c) The Buyer is authorised by the Seller to agree to sell on the Goods at a price which shall nevertheless be no less than the purchase price of the Goods hereunder subject to the express condition that the entire proceeds thereof are held in trust for the Seller and are not mingled with other monies or paid into any overdrawn bank account and shall be at all times identifiable as the Seller's money. The Buyer shall keep records (to be produced to the Seller whenever required) of the name and address of any such sub-purchaser and the date and contract price of each delivery and shall if the Seller so requires in writing assign such claims as the Buyer has against such sub-purchasers as emanate from this transaction;
  - d) the Seller may at any time if payment is overdue in whole or in part without prejudice to any other right arising pursuant to or consequent upon this Agreement for the purpose of recovery of the Goods enter upon any premises where the Goods are stored or where they are reasonably thought to be stored and may repossess the same. All costs and expenses reasonably incurred by the Seller in connection with such recovery shall be paid by the Buyer;
  - e) it is declared for the avoidance of doubt without prejudice to the generality of the foregoing that the Seller may recover the Goods and payment shall become due if:
    - 1) the Buyer does or fails to do anything which would entitle an Administrator or Administrative Receivers to take possession of any of its assets or which would entitle any person to present a petition to wind up the Buyer; and / or
    - 2) the Buyer passes any resolution to wind itself up or publishes a notice convening a meeting of its creditors pursuant to Section 98 of the Insolvency Act 1986 or any statutory modification or replacement thereof; and / or
    - 3) The Buyer if an individual has a Bankruptcy Order made against it or enters into any arrangement for the benefit of its creditors generally .
  - iv) a) The Buyer may admix the goods with property not belonging to the Seller. However if goods the property of the Seller are admixed with goods the property of the Buyer or are processed with or incorporated therein the product thereof shall become and / or shall be deemed to be the sole and exclusive property of the Seller. If Goods the property of the Seller are admixed with Goods the property of any person other than the Buyer or reprocessed with or incorporated therein the product thereof shall become or shall be deemed to be owned in common with that other person.  
b) The provisions of Paragraph c) of Clause (iii) hereof shall apply mutatis mutandis to the proceeds of sale of any product referred to in Paragraph a) of this Clause (iv).
  - v) Each of the preceding Clauses and sub-paragraphs shall be construed and shall take effect separately and in the event of one or more such Clauses or sub-paragraphs being held ineffective this shall not affect the validity of the remaining Clauses or sub-paragraphs.

## 9 WARRANTIES AND LIABILITIES

- i) Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of six months from the date of their initial use or twelve months from delivery whichever is the first to expire.
- ii) The above warranty is given by the Seller subject to the following conditions:-
  - 1) the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing design or specification supplied by the Buyer; and
  - 2) the Seller shall be under no liability in respect of any defect arising from fair wear and tear wilful damage negligence abnormal working conditions failure to follow the Seller 's instructions misuse or alteration or repair of the Goods without the Seller's approval.
- iii) The Seller shall be under no liability under the above warranty if the total price for the Goods has not been paid by the due date for payment.
- iv) The Buyer is under a duty to inspect the Goods immediately after collection or delivery as the case may be. The Seller shall be under no liability for any defects or shortages that would be apparent on careful inspection if the terms of this clause are not complied with. Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall be notified to the Seller within seven days from the date of the delivery or where the defect or failure was not apparent on reasonable inspection within a reasonable time after discovery of the defect or failure.
- v) Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specifications is notified to the Seller in accordance with these conditions the Seller shall if it admits liability be entitled to replace the Goods free of charge or at the Seller's sole discretion refund to the Buyer the price of the Goods (or proportionate part of the price) but the Seller shall have no further liability to the Buyer.
- vi) The Seller shall not be liable for any consequential or indirect loss suffered by the Buyer whether this loss arises from breach of a duty in contract or tort or in any other way (including loss arising from the Seller's negligence). Non-exhaustive illustrations of consequential or indirect loss would be:-
  - loss of profits
  - loss of contracts
  - damage to property of the Buyer or anyone else and
  - personal injury to the Buyer or anyone else (except so far as such injury is attributable to the Seller 's negligence).
- vii) In any event the Seller's total liability for all claims arising out of any one Contract shall not exceed the Contract price.
- viii) 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 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 including import or export regulations or embargoes employment problems or difficulties in obtaining raw materials or energy supply.

## 10 ASSIGNMENT

The Buyer shall not assign the Contract without the written agreement of the Seller.

## 11 SALES PROMOTION DOCUMENTATION

Whilst the Seller takes every precaution in the preparation of its catalogues technical circulars price lists and its other literature (including quotations) these documents are for the Buyer's general guidance only and the particulars contained therein shall not constitute representations by the Seller and the Seller shall not be bound thereby .

## 12 NOTICES

Any notice to be given hereunder shall be in writing and shall be deemed to have been duly given if sent or delivered to the party concerned at its address specified in the Contract or such other address as that party may from time to time notify to the other in writing and shall be deemed to have been served if sent by post when it would have been delivered in the ordinary course of the post.

## 13 GOVERNING LAW AND JURISDICTION

The Contract shall be governed by and construed in accordance with English law and all disputes arising in connection with the Contract shall be submitted to the jurisdiction of the English Courts.

I declare that I have read and understood your terms and conditions of sale as stated above and overleaf which apply to each and every supply of goods and services supplied by Molan (UK) Limited and that I am a duly authorised officer to accept and sign on behalf of the company applying for a credit account.

Signature \_\_\_\_\_ Position \_\_\_\_\_ Date \_\_\_\_\_

Print Name \_\_\_\_\_ Company \_\_\_\_\_