

## **MSCM Limited, Marlow (“the Seller”)**

### **CONDITIONS OF SALE**

#### **1. Application**

These conditions apply to all sales of goods by the seller to any purchaser (“The Buyer”) and shall apply in place of and prevail over any terms or conditions contained or referred to in the buyers order or in correspondence or elsewhere or implied by trade custom practice or course of dealing unless specifically agreed to in writing by the seller and any purported provisions to the contrary and hereby excluded or extinguished. The seller’s prices are calculated on the basis that these conditions shall apply without variation.

#### **2. Quotations**

A quotation by the seller does not constitute an order and the seller reserves the right to withdraw or revise the same at any time prior to the seller’s acceptance of the buyers order.

#### **3. Prices**

- (A) The prices payable for goods shall be those contained within the sellers quotation therefore current at the time of despatch. The seller shall have the right at any time to revise prices to take into account increases in costs including (without limitation) costs of any goods, materials, carriage, labour or overheads the increases or imposition of any tax duty or other levy and any variation in exchange rate. This may be raised as a VOR (Condition 9).
- (B) Unless otherwise specified VAT and any other tax or duties payable by the buyer shall be added to the prices.

#### **4. Terms of Payment**

Subject (where appropriate) to Condition 7

- (A) Payment of invoices shall unless otherwise agreed in writing be made in full without any deduction or set-off within 30 days of the date of invoice.
- (B) Any extension of credit allowed to the buyer may be changed or withdrawn at anytime. The buyer will be notified at time of change.

Interest shall be payable on overdue accounts at the rate of 2% per full calendar month to run from the due date for payment thereof until receipt by the seller of the full amount whether or not after judgement.

- (C) If in the opinion of the seller the credit-worthiness of the buyer shall have deteriorated prior to delivery the seller may require full or partial payment of the prices prior to delivery or the provision of security for payment by the buyer in a form acceptable to the seller

#### **5. Delivery**

- (A) Delivery dates mentioned in any quotation acknowledged or order or elsewhere are approximate only and not of any contractual effect and subject to change by mutual agreement and the seller shall not be under any liability to the buyer in respect of any failure to deliver on any particular date or dates.
- (B) Terms of delivery shall be agreed at time of order.
- (C) Delivery shall be at the seller’s premises unless otherwise stipulated or agreed by the seller.
- (D) If the buyer refuses or fails to take delivery of the goods ordered in accordance with the contract the seller shall be entitled to store at the risk of the buyer any goods of which the buyer refuses or fails to take delivery and the buyer shall in addition to the purchase price pay all costs of such storage and any additional costs incurred as a result of such refusal or failure. The seller shall be entitled after the expiration of 3 months from the date upon which the price became payable to dispose of the goods in such manner as the seller may determine. It is the buyer’s responsibility to cover the costs of disposal.
- (E) Unless otherwise expressly agreed the seller may affect delivery in one or more instalments. Where delivery is affected by instalment each instalment shall be treated as a partial delivery.

## 6. Risk

Subject (where appropriate) to condition 7

- (A) Where goods are delivered at the seller's premises risk therein shall pass to the buyer upon delivery of the goods to the buyer or transfer to buyer's carrier 30 days from the seller notifying the buyer that the goods are available for collection. Whichever first occurs.
- (B) Where goods are to be delivered by the seller's own transport or by carrier on behalf of the seller risk therein shall pass to the buyer upon delivery. The seller shall advise the buyer of the scheduled date of despatch.

## 7. Export Sales

- (A) In any case where goods are sold CIF or FOB or on the basis of other international trade term the meaning of such term contained in intercoms (1953) as revised from time to time shall apply except where inconsistent with any of the provisions contained in these conditions.
- (B) Unless otherwise agreed the price of the goods shall be secured by an irrevocable letter of credit satisfactory to the seller established by the buyer in favour of the seller immediately upon receipt of the seller's acknowledgement of order and confirmed by a United Kingdom bank acceptable to the seller. The letter of credit shall be for the contract price inclusive of any tax or duty payable by the buyer and shall be valid for at least 6 months or such longer period as shall be estimated by the seller for delivery. The seller shall be entitled to payment on presentation to such United Kingdom bank of the documents specified by the seller or as herein stipulated.
- (C) Should the buyer fail when requested by the seller and within the time specified by the seller to take any action necessary on the parts for delivery and/or shipment of the goods then:
- (i) The seller shall be entitled by way of delivery to store the goods warehouse at the expense and risk of the buyer.
- (ii) The price shall become immediately payable.

- (iii) If payment is secured by letter of credit the seller shall be entitled to payment on presentation of the copy sales invoice and the warehouse receipt.  
And

- (iv) The seller shall be entitled after expiration of 3 months from the date upon which the seller may determine without accounting to the buyer before.

- (D) Section 32(2) of the sale of goods act 1979 shall not apply. The seller shall not be required to give the buyer the notice in section 32(2) of the act.

## 8. Title

- (A) Title to the goods shall not pass to the buyer until payment in full of the prices therefore. Until such payment the buyer shall have possession of the goods as bailee for the seller and shall store the goods in such a way as to enable them to be identified as the property of the seller, provided that:
- (i) If the buyer is purchasing the goods for resale the buyer may as trustee for the seller sell and deliver the goods to a third party in the ordinary course of the buyer's business on condition that until such payment as foresaid. The buyer shall hold all proceeds of such sales in trust for the seller.
- (ii) If the goods are combined by the buyer with other items or materials or utilised or consumed in the production of other items or materials the seller's title to the goods shall remain unaffected. The buyer shall store such items to a third party subject to the provisions of this condition.
- (B) The seller reserves the right to re-possess any goods in respect of which payment is overdue and thereafter to re-sell the same and for this purpose the buyer hereby grants an irrevocable right and license to the seller's servants and agents to enter upon all or any of its premises

with or without vehicles during normal business hours. This right shall continue to subsist notwithstanding the termination of the contract for any reason and i.e. without prejudice to any accrued rights of the seller there under or otherwise.

#### **9.Variations**

If there are any variations to the order then the seller shall issue a VOR which is to be agreed before work and changes can commence.

#### **10. Third Party Rights**

- (A) The buyer shall indemnify the seller against any and all liabilities claimed and costs incurred by or made against the seller as a direct or indirect result of the carrying out or specifications of the buyer involving any infringement or alleged infringement of any rights of any third party.
- (B) The liability of the seller to the buyer in the event of goods infringing or being alleged to infringe the rights of third party subsisting at the place of delivery shall be subject to the limit specified in clause 12(B) subject thereto if the goods are or maybe subject of third party rights the seller shall be obliged to transfer to the buyer only such titles as the seller may have.
- (C) The buyer shall notify the seller forthwith of any claim made or action brought or threatened alleging infringement of the rights of any third party. The buyer shall provide all such reasonable assistance in connection therewith as the seller may request. The cost of any such proceedings shall be in such proportions as the parties shall mutually agree.

#### **11.Specifications and information**

- (A) Unless expressly agreed in writing by the seller all drawings, design, specifications and particulars of weight and dimensions submitted by the seller are approximate only and the seller shall have no liability in respect of any deviation what so ever. The seller accepts responsibility for any errors omissions or other defects in any drawings, designs or specifications not prepared by the seller and the seller shall be indemnified by the buyer

against any and all liabilities and expenses incurred by the seller arising there from.

- (B) All drawings, designs, specifications and information submitted by the seller are confidential and shall not be disclosed to any third party without the seller's written consent.

#### **12.Liability**

- (i) For shortages in quantity delivered the Seller shall not be liable unless the buyer notifies the seller of any claim for short delivery within 14 days of receipt of the goods.
- (ii) For damage to or loss of the goods or any part thereof in transit (where the goods are carried by the sellers own transport or by a carrier on behalf of the seller) unless the buyer shall notify the seller of any such claim within 14 days of receipt of the goods or the scheduled date of delivery whichever shall be the earlier.
- (iii) For defects in the goods caused by fair wear and tear abnormal conditions of storage or use or any act, neglect or default of the buyer of any third party or any failure by the buyer to comply with any instructions or advice communicated to the buyer by the seller.
- (iv) For other defects in the goods unless notified to the seller within one month of receipt of the goods by the buyer.
- (v) Where liability is accepted by the seller under paragraph 12(A) the seller's only obligation shall be at its option to make good any shortage or non-delivery and/or as appropriate to replace or repair any goods found to be damaged or defective and/or to refund the cost of such goods to the buyer.
- (vi) With exception of death or personal injury caused by the negligence of the seller, the seller's aggregate liability to the buyer whether for negligence, breach of contract, misrepresentation or otherwise shall in no circumstances exceed the cost of the goods which give rise to such liability as determined by net price invoiced to the buyer in respect of any occurrence or series of such occurrences

Liability Continued.

(vii) In the event that the Buyer notifies the seller of any defects in the work, the seller shall not be responsible for recovery or (re-) installation of the work below the waterline at the worksite. The seller shall not be responsible for the return of the goods or associated costs.

### **13. Licences and Consents**

If any licences or consent of any government or other authority shall be required for the acquisition, carriage or use of the goods by the buyer, the buyer shall obtain the same as its own expense and if necessary produce evidence of the same to the seller on demand. Failure to do so shall not entitle the buyer to withhold or delay payment of the price. Any additional expenses or charges incurred by the seller resulting from such failure shall be charged to the buyer.

### **14. Force Majeure**

- (A) The seller shall not be liable to the buyer for any loss or damage which may be suffered by the buyer as a direct or indirect result of the supply of goods by the seller being prevented, hindered, delayed or rendered uneconomic by reason of circumstances of events beyond the seller's reasonable control including but not limited to Act of God, war, riot, strike, lock-out, trade, dispute or labour disturbances, accident breakdown of plant machinery, fire, flood, storm difficulty or increased expense in obtaining workmen materials or transport or other circumstances affecting the supply of the goods or of raw material therefore by the seller's normal source of supply of the manufacture of the goods by the seller's normal means or the delivery of the goods by the seller's normal route or means of delivery.
- (B) If a limited quantity of goods is available to the seller by reason of such circumstances or events the seller may apportion the available quantity between its customers at its entire discretion

### **15. Insolvency and Default**

If the buyer enters into a deed or arrangement or commits an act of bankruptcy or compounds with its creditors or if a receiving order is made against him or if (being a company) an order is made or a resolution is passed for the winding up of the buyer or if a receiver is appointed of any of the buyer's assets or undertaking or if circumstances arise which entitle the court or a creditor to appoint a receiver or manager or which entitle the courts to make a winding-up order or if the buyer takes or suffers any similar or analogue action in consequences of debt or commits any breach of this or any other contract between the seller and the buyer the seller may without prejudice to any of its other rights stop any goods in transit and/or suspend further deliveries and/or determine the rights of the buyer under condition \* and/or by notice in writing to the buyer determine the contract.

### **16. Waiver**

Failure by the seller to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bear the exercise or enforcement thereof at any time or times thereafter.

### **17. Notices**

Any notice hereunder shall be deemed to have been duly given if sent by prepaid first class post or facsimile to the party concerned at its last known address. Notices sent by first class post shall be deemed to have been given seven days after despatch and notices sent by facsimile shall be deemed to have been given on the date of despatch.

### **18. Governing Law**

The contract shall be governed by and construed in accordance with the laws of England and the parties hereby submit to the jurisdiction of the English Court.