

## 1 Interpretation

1.1 In these Conditions:

<b>"Buyer"</b>	means the person who orders the Goods from TFS
<b>"Conditions"</b>	means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) include any special terms and conditions agreed in writing between the Buyer and TFS
<b>"Contract"</b>	means the contract for the sale and purchase of the Goods
<b>"Goods"</b>	means the goods (including any instalment of the goods or any parts for them) which TFS is to supply in accordance with these Conditions.
<b>"Order"</b>	means the Buyer's order for the Goods set out in the Buyer's purchase order form
<b>"TFS"</b>	means TFS DERBY LIMITED REG. NO. 2454157 of Alfreton Road, Derby, DE21 4AQ
<b>"Writing"</b>	includes email, facsimile transmission and any comparable means of communication

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

## 2 Basis of the Sale

2.1 TFS shall sell and the Buyer shall purchase the Goods which are subject to these terms.

2.2 These Conditions shall apply to the Contract to the entire exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. No variation to these Conditions shall be binding, unless agreed in writing between the authorised representatives of the Buyer and TFS. The execution of the Order shall be sufficient to infer acceptance of these Conditions.

2.3 TFS' employees or agents are not authorised to make any representations concerning the Goods, unless confirmed by TFS in writing. The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of TFS which are not so confirmed.

2.4 Any advice or recommendation given by TFS or its employees or agents as to the storage, application or use of the Goods shall be based on the information provided by the Buyer and/or the standard performance criteria given by the manufacturer, or if manufactured by TFS, from tests undertaken by TFS. Those standards are for guidance only of the performance of the Goods under normal conditions. Durability and performance can be affected by a number of factors outside of TFS' control. The standards should not be considered guarantees that the Goods durability will be equal to such timescales.

2.5 TFS cannot be held responsible for any advice where insufficient information has been provided by the Buyer in relation to (including but not limited to) the application of the Goods, the substrate or material that the Goods will be fixing into or the location that the Goods/property that they will be affixed to. The Buyer acknowledges that usage of the Goods within 10 miles of coastal areas will reduce the longevity of them due to corrosive elements

such as salt and sand in the air.

2.6 Any samples, drawings, descriptive matter, or advertising produced by TFS and any descriptions or illustrations contained in TFS' catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2.7 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 TFS shall be subject to correction without any liability on the part of TFS.

## 3 Orders and Specifications

3.1 The Buyer shall be responsible to TFS for ensuring the accuracy and completeness of the terms of any Order.

3.2 The Order constitutes an offer by Buyer to purchase the Goods in accordance with these Conditions. The Order shall only be deemed to be accepted when the Buyer issues a written acceptance of the Order and/or begins to fulfil the Order, at which point the Contract shall come into existence.

3.3 The quantity, description of and any specification for the Goods shall be those set out in the Buyer's Order.

3.4 TFS reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EU requirements or where the Goods are to be supplied to the Buyer's specification which do not materially affect their quality or performance.

3.5 No order may be cancelled by the Buyer except with the agreement in writing of TFS and on terms that the Buyer shall indemnify TFS 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 TFS as a result of cancellation.

3.6 Unless agreed in writing by TFS, all drawings, designs, specifications and particulars submitted by TFS are approximate and only for information purposes so the Buyer cannot rely on the accuracy of the same.

3.7 All intellectual property rights and, without prejudice to the generality of the foregoing to include copyright, design right, patents, trade marks and know-how, whether registered or not, in drawing designs, specifications, samples, of the Goods remain the absolute property of TFS.

## 4 Price of the Goods

4.1 The price of the Goods shall be TFS' current price list. All prices quoted are valid for 30 days only or until earlier issue of an Order by the Buyer after which time they may be altered by TFS without giving notice to the Buyer.

4.2 TFS reserves the right by giving notice to the Buyer at any time before delivery to increase the price of the Goods to reflect any increase in the cost to TFS which is due to any factor beyond the control of TFS (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 any delay caused by any instructions of the Buyer or failure of the

Buyer to give TFS adequate information or instructions.

- 4.3 Except as otherwise stated under the terms of any quotation of TFS and unless otherwise agreed in writing between the Buyer and TFS, all prices are given by TFS on an ex works basis and where TFS agrees to deliver the Goods otherwise than at TFS' premises the Buyer shall be liable to pay TFS' charges for transport packaging and insurance.
- 4.4 TFS reserves the right in such circumstances as it may from time to time decide to waive the cost of transport or packaging on an order per order basis and any such waiver does not create a course of dealing.
- 4.5 The price is exclusive of value added tax.
- 4.6 The Buyer shall meet the cost of any special packaging which it may request or which may be necessitated by delivery by any means other than TFS' normal means of delivery. The Buyer shall, unless otherwise agreed, be solely responsible for the disposal of all packaging in accordance with all regulations whether statutory or otherwise, relating to protection of the environment.

## 5 Terms of Payment

- 5.1 Subject to any special terms agreed in writing between the Buyer and TFS, TFS shall be entitled to invoice the Buyer for the price of the Goods immediately following receipt of the Buyer's order and in any event before delivery.
- 5.2 The Buyer shall pay the price of the Goods within thirty (30) days of TFS' invoice and TFS shall be entitled to recover the price notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.3 If the Buyer fails to make any payment on the due date, then without prejudice to any other right or remedy available to TFS, TFS shall be entitled to:
- 5.3.1 cancel the contract or suspend any further deliveries to the Buyer;
- 5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and TFS) as TFS may think fit (notwithstanding any purported appropriation by the Buyer);
- 5.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid at the rate of 4% per cent per annum above the base rate from time to time of HSBC Bank Plc, until payment in full is made; and/or
- 5.3.4 be paid an administration charge of £100 plus V.A.T.

## 6 Delivery

- 6.1 Any dates quoted for delivery of the Goods are approximate only and TFS shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence. The Goods may be delivered by TFS in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.2 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by TFS 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.

- 6.3 If TFS fails to deliver the Goods for any reason other than any cause beyond TFS' reasonable control or the Buyer's fault, and TFS is accordingly liable to the Buyer, TFS' liability shall be limited to the cost to the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods subject always to the limitations set out in clause 8.
- 6.4 If the Buyer fails to take delivery of the Goods or fails to give TFS adequate delivery instructions (for example no postcode) at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of TFS' fault), then without prejudice to any other right or remedy, TFS may:
- 6.4.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 6.4.2 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 provided the price has been paid in cleared funds in full or charge the Buyer for any shortfall below the price under the Contract.

- 6.5 Proof of delivery is available only if requested by the Buyer in writing within 42 days.
- 6.6 Goods delivered should be checked as soon as possible. Any discrepancy in relation to the Goods ordered and the Goods actually delivered must be notified to TFS within 7 days after which time it shall be deemed that all Goods were delivered in full and the Buyer shall be liable to pay the full amount.

## 7 Risk and Property

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer.
- 7.1.1 in the case of Goods to be delivered at TFS' premises at the time when TFS notifies the Buyer that the Goods are available for collection; or
- 7.1.2 in the case of Goods to be delivered otherwise than at TFS' premises at the time of delivery or if the Buyer wrongfully fails to take delivery of the Goods, the time when TFS has tendered delivery of the Goods.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until TFS has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by TFS to the Buyer for which payment is then due.
- 7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall
- 7.3.1 hold the Goods as TFS' fiduciary agent and bailee;
- 7.3.2 keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as TFS' property.
- 7.4 The Buyer shall be entitled to resell or use the Goods in the ordinary course of its business but shall account to TFS 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.

- 7.5 The Buyer agrees with TFS that the Buyer shall immediately notify TFS of any matter from time to time affecting TFS' title to the Goods and the Buyer shall provide TFS with any information relating to the Goods as TFS may require from time to time.
- 7.6 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), TFS shall be entitled at any time to require the Buyer to deliver up the Goods to TFS and if the Buyer fails to do so forthwith to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.7 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 the property of TFS, but if the Buyer does so, all moneys owing by the Buyer to TFS shall (without prejudice to any other right or remedy of TFS) forthwith become due and payable.
- 7.8 The Buyer herein irrevocably appoints TFS and its servants as its duly authorised agent for the purpose of entering upon any premises where the Goods are stored for the purpose of examination and/or recovery of the same at any time without notice.

**THE BUYER'S ATTENTION IS, IN PARTICULAR, DRAWN TO THE PROVISIONS OF THIS CLAUSE 8.**

**8 Warranties and Liability**

- 8.1 Subject to the conditions set out below, TFS warrants that the Goods will correspond with their specifications at the time of delivery.
- 8.2 Subject to clause 8.3, if:
- 8.2.1 the Buyer gives notice in writing to TFS that the Goods do not comply with the warranty in clause 8.1 above within 5 days of delivery or where the defect or failure was not apparent on reasonable inspection, within a reasonable time after discovery of the defect;
- 8.2.2 TFS is given a reasonable opportunity of examining such Goods; and
- 8.2.3 The Buyer (if asked to do so by TFS) returns such Goods to TFS' place of business at the Buyer's cost,  
TFS shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 8.3 TFS shall not be liable for Goods' failure to comply with the warranty set out in clause 8.1 in any of the following events:
- 8.3.1 The Buyer makes any further use of such Goods after giving notice in accordance with clause 8.2;
- 8.3.2 the defect arises because the Buyer failed to follow TFS' oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- 8.3.3 the defect arises as a result of TFS following any drawing, design or specification supplied by the Buyer;

- 8.3.4 the Buyer alters or repairs such Goods without the written consent of TFS. The Buyer shall indemnify TFS against each loss, liability and cost arising out of such claims;
- 8.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- 8.3.6 if the total price for the Goods has not been paid in cleared funds by the due date for payment.
- 8.4 Nothing in these Conditions shall limit or exclude TFS' liability for:
- 8.4.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 8.4.2 fraud or fraudulent misrepresentation;
- 8.4.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- 8.4.4 defective products under the Consumer Protection Act 1987; or
- 8.4.5 any matter in respect of which it would be unlawful for TFS to exclude or restrict liability.
- 8.5 If delivery is not refused or the Buyer does not notify TFS in accordance with clause 8.2, the Buyer shall not be entitled to reject the Goods and TFS shall have no liability for such defect or failure. The Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.6 Except as provided in this clause 8, TFS shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 8.1.
- 8.7 Where the Goods are sold to a consumer as defined in the Consumer Rights Act 2015, the statutory rights of the Buyer are not affected by these Conditions.
- 8.8 In no event shall the Buyer be entitled to reject the Goods on the basis of any defect or failure which is so slight that it would be unreasonable for him to reject them.
- 8.9 The following provisions in this clause 8.9 set out TFS' entire liability (including any liability for acts and omissions of its employees' agents and sub-contractors) to the Buyer in respect of:
- 8.9.1 any breach of its contractual obligations arising under the Contract; and
- 8.9.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 8.9.3 Any act or omission on the part of TFS or its employees' agents or sub-contractors falling within clause 8.9.1 above shall for the purposes of this clause 8.9 be known as an "Event of Default".
- 8.9.4 TFS' entire liability in respect of any Event of Default shall be limited to damages of an amount equal to the Contract price.

8.9.5 TFS shall not be liable to the Buyer in respect of any Event of Default for loss of profit, goodwill or any type of special indirect or consequential loss (including loss or damage suffered by the Buyer as a result of an action brought by a third party) even if such loss were reasonably foreseeable or TFS had been advised of the possibility of the Buyer incurring the same.

8.9.6 If a number of Events of Default give rise substantially to the same loss, they shall be regarded as giving rise to only one claim under these Conditions.

8.9.7 The Buyer hereby agrees to afford TFS not less than 30 days in which to remedy an Event of Default hereunder.

8.9.8 Except in the case of an Event of Default arising under clause 8.9.3 above, TFS shall have no liability to the Buyer in respect of any Event of Default unless the Buyer shall have served notice of the same upon TFS within five days of the date it became aware of the circumstances giving rise to the Event of Default or the date when it ought reasonably to have become aware.

## 9 Force Majeure

9.1 TFS 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 TFS' obligations in relation to the Goods if the delay or failure was due to any cause beyond TFS' reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond TFS' reasonable control; act of God, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, civil disturbance, terrorism or requisition; acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of TFS or of a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery or power failure or breakdown in machinery (a **Force Majeure Event**).

9.2 If upon the happening of a Force Majeure Event, then TFS may, at its option:

9.2.1 suspend deliveries while such event or circumstances continues;

9.2.2 apportion available stock to its customers as it decides; and/or

9.2.3 terminate any contract so affected with immediate effect by written notice to the Buyer and TFS shall not be liable for any loss or damage suffered by the Buyer as a result thereof.

## 10 Insolvency of Buyer

10.1 TFS shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangements to the contrary if:

10.1.1 the Buyer makes any voluntary arrangements with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than

for the purposes of amalgamation or reconstruction); or

10.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

10.1.3 the Buyer ceases, or threatens to cease, to carry on business; or

10.1.4 TFS reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

## 11 Termination

11.1 On or at any time after the occurrence of any of the events in clause 11.2, TFS may stop any Goods in transit, suspend further deliveries to the Buyer exercise its rights under clause 7 and/or terminate the Contract with the Buyer with immediate effect by written notice to the Buyer.

11.2 The events are:-

11.2.1 the Buyer being in breach of an obligation under the Contract;

11.2.2 the Buyer passing a resolution for its winding up or a court of competent jurisdiction making an order for the Buyer's winding up or dissolution;

11.2.3 the making of an administration order in relation to the Buyer or the appointment of a receiver over or an encumbrancer taking possession of or selling any of the Buyer's assets; and

11.2.4 the Buyer making an arrangement or composition with its creditors generally or applying to a Court of competent jurisdiction for protection from its creditors.

## 12 General

12.1 Any act required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

12.2 No waiver by TFS of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

12.3 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 provision in question shall not be affected thereby.

12.4 No person whom is not a party to this Contract (including any employee officer agent representative or sub-contractor of either party) shall have the right to enforce any terms of this Contract.

12.5 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales and each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction.