

HELLA LIMITED: STANDARD CONDITIONS OF SALE

1 BASIS OF THE SALE

- 1.1 Hella Limited (company no. 619585 whose registered office is at Unit 6, Appletree Industrial Estate, Chipping Warden, Oxon, OX17 1LL ("the Seller")) shall sell and the person whose order for the goods which the Seller is to supply in accordance with these conditions ("the Goods") is accepted by the Seller ("the Buyer") shall purchase the Goods in accordance with the sales order ("the Order") subject to these standard terms and conditions of sale set out in this document and (unless the context otherwise requires) any special terms and conditions agreed in writing between the Buyer and the Seller ("the Conditions"), which shall govern the contract ("the Contract") for the purchase and sale of the Goods to the exclusion of any other terms and conditions.
- 1.2 No variation to these Conditions shall be binding unless agreed in writing including facsimile transmission and e-mail and comparable means of communication ("Writing") between the authorised representatives of the Buyer and the Seller. Any Goods ordered by telephone or other media shall be subject to these Conditions.
- 1.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. The Buyer acknowledges that it does not rely on any such representations which are not so confirmed.
- 1.4 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, 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.
- 1.5 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.

2 ORDERS AND SPECIFICATION

- 2.1 The quantity, quality and description of and any specification for the Goods shall be those set out in the Order.
- 2.2 The Seller 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 Seller's specification, which do not materially affect their quality or performance.
- 2.3 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.
- 2.4 Where no formal acceptance is given such acceptance shall be deemed to have taken place if delivery of the Goods has commenced or been effected.

3 PRICE OF THE GOODS

- 3.1 The price of the Goods shall be the price notified by the Seller to the Buyer.
- 3.2 The Buyer shall be liable to pay in addition the Seller's charges for transport, packaging and insurance.
- 3.3 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

4 TERMS OF PAYMENT

- 4.1 The Buyer shall pay the price of the Goods within 30 days following the end of the month of the invoice date, and the Seller 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.
- 4.2 The time of payment of the price shall be of the essence of the Contract.
- 4.3 If the Buyer fails to make any payment on the due date or commits any other breach of these Conditions then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- 4.3.1 cancel the Contract or suspend any further deliveries to the Buyer;
- 4.3.2 demand payment of all outstanding balances whether or not due and/or cancel any outstanding orders from the Buyer;
- 4.3.3 appropriate any payment made by the Buyer to such of 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
- 4.3.4 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of four (4) per cent per annum above Barclays Bank plc base rate from time to time, until payment in full is made.
- 4.4 The Buyer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Buyer shall not be entitled to assert any credit, set-off or counterclaim against the Seller in order to justify withholding payment of any such amount in whole or in part. The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.
- 4.5 In the case of export orders, payment shall be in pounds sterling unless otherwise agreed in Writing signed by one of the Seller's directors.

5 DELIVERY

- 5.1 Delivery of the Goods shall be made by the Seller using such carrier or carriers as the Seller may from time to time determine to the address and on the date stated in the Order ("the Delivery Address", "the Delivery Date"). Damage in transit or shortage must be reported within 7 days of receipt of Goods or, in the case of an undelivered consignment, within 7 days of the invoice date. Should no such notification be made the Buyer shall be deemed to have accepted the Goods and shall pay the price of the Goods.
- 5.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods beyond the Seller's reasonable control.
- 5.3 If the Seller fails or delays to deliver the Goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 5.4 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 (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
- 5.4.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 5.4.2 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 or charge the Buyer for any shortfall below the price under the Contract.

6 RISK AND PROPERTY

- 6.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 6.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, until the purchase price of the goods comprised in this or any other contract between the Buyer and the Seller and all other indebtedness of the Buyer to the Seller shall have been paid or satisfied in full (if by cheque then only upon clearance):
- 6.2.1 The property in the Goods remains vested in the Seller (notwithstanding the delivery of the same and the passing of the risk therein).
- 6.2.2 The Buyer shall store the Goods in such a way that they can be readily identified as being the Seller's property.
- 6.2.3 The Buyer shall on request inform the Seller of the precise location of each item of the Goods identified where applicable by its serial number, by supplying the Seller at the Buyer's expense within seven days of the Seller's request with a written schedule of the said locations.
- 6.2.4 The Buyer may sell the Goods in the normal course of its business and may pass good title to its customer being a bona fide purchaser for value without notice of the Seller's rights on condition that the Seller may at any time revoke the Buyer's said power of sale in the circumstances set out in Condition 4.2.
- 6.2.5 Upon determination of the Buyer's power of sale the Seller shall be entitled by itself its servants or agents to enter upon any of the Buyer's premises for the purpose of removing and repossessing such Goods or their proceeds of sale and the Seller shall be entitled to claim from the Buyer the costs and expenses incurred by the Seller in and ancillary to the process of such removal and repossession.

7 WARRANTIES AND LIABILITIES

- 7.1 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 12 months from delivery ("the Warranty Period").

- 7.2 The above warranty is given by the Seller subject to the Seller having 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 (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval. The Seller reserves the right to make a handling charge if the Goods are found not to be in breach of warranty.
- 7.3 IF THE GOODS ARE SOLD AS A CONSUMER TRANSACTION (AS DEFINED BY THE CONSUMER TRANSACTIONS (RESTRICTIONS ON STATEMENTS) ORDER 1976) THE STATUTORY RIGHTS OF THE BUYER ARE NOT AFFECTED BY THESE CONDITIONS.
- 7.4 Any warranty claim by the Buyer must be notified to the Seller in Writing (including a description of the fault), the Seller must be allowed to inspect the Product and (should the Seller request) the Goods must be returned to the Seller's service department (carriage paid) within the Warranty Period.
- 7.5 Where any valid warranty claim is made in accordance with these Conditions:
- 7.5.1 the Seller at the Seller's sole discretion shall replace the Goods (or the part in question) free of charge or refund to the Buyer the price of the Goods and postage and packing (or a proportionate part of the price in respect of the part in question); and
- 7.5.2 the Seller will accept responsibility for damage to other mechanical parts of any vehicle or other equipment to which the Goods have been properly fitted to the extent that it is caused by a manufacturing defect in the Goods, and will restore such mechanical parts to a condition equivalent to the existing condition prior to failure,
- 7.5.3 but the Seller shall have no further liability to the Buyer.
- 7.6 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions.
- 7.7 UNLESS STATED EXPLICITLY IN WRITING THE SELLER HAS PRICED THIS CONTRACT ON THE BASIS THAT THE SELLER'S LIABILITY FOR CONSEQUENTIAL LOSS HAS BEEN EXCLUDED AND ITS LIABILITY FOR OTHER LOSS HAS BEEN EXCLUDED OR LIMITED BY THESE TERMS. IF THE BUYER WISHES THE SELLER TO BEAR LIABILITY FOR ADDITIONAL LOSS THE SELLER MAY CONSIDER DOING SO BUT ON THE BASIS THAT THE CONTRACT PRICE WILL HAVE TO BE INCREASED TO COVER THE INCREASED RISK.
- 7.8 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.

8 INDEMNITY

- 8.1 If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of any drawing, design or specification supplied by the Buyer, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:
- 8.1.1 the Seller is given full control of any proceedings or negotiations in connection with any such claim;
- 8.1.2 the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;
- 8.1.3 except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);
- 8.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);
- 8.1.5 the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and
- 8.1.6 without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonable require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

9 MERCHANDISING AIDS

- 9.1 The free-of-charge loan to the Buyer by the Seller of display stands and other merchandising aids is undertaken only upon the following Conditions:
- 9.1.1 The aforesaid items remain at all times the property of and may only be used for the display products supplied by the Seller.
- 9.1.2 The Seller reserves the right re-possess such aids in the event of misuse as defined in Condition 9.1.1 above.

10 CONFIDENTIALITY

- 10.1 The Seller shall use all reasonable endeavours to keep confidential all information relating to the Buyer's business to the extent that the Seller safeguards information relating to its own business for so long as and to the extent that such information is and remains unpublished and is not known to the Seller at the time of disclosure by the Buyer or is not thereafter lawfully obtained by the Seller from a third party.

11 PROTECTION OF THE SELLER'S "KNOW HOW"

- 11.1 The Buyer, subject as hereinafter provided, shall be responsible for keeping and procuring to be kept secret and confidential all information (hereinafter referred to as "the Know-How") supplied by the Seller of a secret or confidential nature provided that the Seller shall first have given notice in writing to the Buyer of the secret or confidential nature of such information before so supplying it.
- 11.2 The obligations under this Paragraph shall cease within six months of the publication by the Seller or any third party of information comprising or being part of the Know-How to the extent of such publication, or of agreement by the Seller that such information or part thereof is in the public domain.

12 INTELLECTUAL PROPERTY

- 12.1 The copyright subsisting or which subsequently subsists in all documents, drawings, specifications, designs, programmes or any other material prepared by the Seller whether readable by humans or by machines shall belong to the Seller absolutely and they shall not be reproduced or disclosed or used in their original or translated form by the Buyer without the Seller's written consent for any purpose other than that for which they were furnished.

- 12.2 The Seller accepts no responsibility for the accuracy or drawings, patterns or specifications supplied by the Buyer. The Buyer shall indemnify the Seller against all claims whatsoever for damages and cost and against all liability in respect of any infringement of patent or other intellectual property rights resulting from compliance with the Buyer's instructions express or implied and the Buyer will indemnify the Seller against any liability in respect thereof and shall pay all costs and expenses which may be incurred by the Seller in reference to any such claim.

- 12.3 The indemnity shall extend to any amount paid on a lawyer's advice in respect of any such claim.

13 GENERAL

- 13.1 Any notice 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.
- 13.2 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts. The parties agree to submit in good faith to a mediation procedure administered by ADR Group of Bristol. Or failing that, such other similar organisation as the President for the time being of the Law Society of England and Wales shall nominate. Unless the Parties agree otherwise, the costs of the mediation shall be borne equally by each of them.
- 13.3 The Seller reserves the right to sub-contract the fulfilment of the Contract (including any installation) or any part thereof.
- 13.4 The Buyer shall not assign any rights under this agreement without the prior consent in writing of one of the Seller's directors.
- 13.5 No waiver by the Seller 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.
- 13.6 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.