

TERMS & CONDITIONS

1 Definitions

1.1 In these conditions (unless the context otherwise requires):

- a) "Buyer" means the person, firm or company with whom the Contract is made;
- b) "Company" means Starmount Limited and also (where the context so permits) its assigns and any sub-contractor for the said company;
- c) "Company's Premises" means the premises mentioned in the Company's quotation or other contractual document in respect of the Goods or if not so mentioned means the Company's premises at 25-27 Churchill Way, Lomeshaye Industrial Estate, Nelson, Lancashire, BB9 6RT;
- d) "Contract" means the contract between the Buyer and the Company for the sale and purchase of Goods.
- e) "Goods" means the goods (or any instalment or part of them) to be the supplied pursuant to the Contract;

1.2 Words in the singular shall include the plural and vice versa, references to any gender shall include the others and references to legal persons shall include natural persons and vice versa.

1.3 The headings in these conditions are intended for reference only and shall not affect their construction.

2 General

2.1 These conditions shall apply to the Contract to the exclusion of any other terms and conditions contained or referred to in any order, letter, form of contract or other communication sent by the Buyer to the Company and the provisions of these conditions shall prevail unless expressly varied in writing and signed by a director on the Company's behalf.

2.2 Any concession made or latitude allowed by the Company to the Buyer shall not affect the strict rights of the Company under the Contract.

2.3 If in any particular case any of these conditions shall be or be held invalid or shall not apply to the Contract the other conditions shall continue in full force and effect.

3 Orders

3.1 Notwithstanding that the Company may have given a detailed quotation no order shall be binding on the Company unless and until it has been accepted in writing by the Company.

3.2 No liability for errors made by the Buyer in pursuance of the Contract will attach to the Company.

4 Prices

4.1 Unless otherwise agreed by the Company in writing :

- a) The price payable for Goods (or an installment thereof) shall be the list price of the Company current at the date the Goods (or an installment thereof) are made available for collection, or are despatched (as appropriate);
- b) the Company's prices are subject to adjustment to take account of any variation in the Company's costs including (but not limited to) variations in wages, the cost of materials, exchange rate fluctuations, alteration of duties and other costs since the date of the Company's quotation or (if no quotation is issued) the Buyer's order. The Company accordingly reserves the right to adjust the invoice price by the amount of any increase or decrease in such costs after the price is quoted and the invoice so adjusted shall be payable as if the price set therein were the original contract price.

4.2 All prices are exclusive of value added tax and any credit charge surcharges (calculated in accordance with condition 7.2 below) and these

will be charged by the Company and will be payable by the Buyer at the appropriate rate.

5 Additional costs

5.1 The Buyer shall indemnify the Company in respect of any loss, cost or expense incurred by the Company as a result, directly or indirectly, of the Buyer's instructions or lack of instructions or through any failure or delay whatsoever in taking delivery or through any other act, neglect or default on the part of the Buyer, its servants, agents or employees.

5.2 The buyer shall be liable to pay a restocking fee of a minimum £20 or 20% of the value of the goods (whichever is the greater) against any unauthorized returns.

6 Intellectual property

6.1 The Buyer shall indemnify the Company against all costs, claims, losses, expenses and damages incurred by the Company or for which it may be liable due to or arising directly or indirectly out of any infringement or alleged infringement of patents, trade marks, copyright, design right or other intellectual property right occasioned by the importation, manufacture or sale of the Goods if made to the specification or special requirements of the Buyer.

7 Terms of payment

7.1 Unless the Company otherwise agrees in writing, the Buyer shall pay for the Goods including, where the Company agrees to arrange the delivery of the Goods, the cost of carriage in cash cleared funds either in advance upon placing an order or at any other time specified by the Company in its absolute discretion save that payment shall become due in any event forthwith upon the occurrence of any of the events referred to in condition 15 below.

7.2 If the Company accepts payment by credit card or a cheque which requires guarantee by a third party, an additional surcharge at a rate displayed on the premises and in relevant advertisements shall be payable by the buyer. The buyer is liable for and shall pay any charges involved in the transfer of funds (i.e. BACS, T/T etc.).

7.3 If the Goods are despatched in instalments the Company shall be entitled to invoice each instalment as and when the instalment is made available for collection and payment shall be due in respect of each instalment when such instalment has been made available for collection notwithstanding other instalments are not yet available for collection or other default on the Company's part.

7.4 If upon the terms of the Contract the price for the Goods shall be payable by instalments or if the Buyer has agreed to take specified quantities of Goods at specified times a default by the Buyer in the payment of any due instalment or the failure to collect any quantity of Goods outstanding or to give the Company adequate instruction to allow the Company to arrange the delivery of the Goods shall cause the whole of the balance of the price to become due forthwith.

7.5 The price of the Goods shall be due in full to the Company in accordance with the terms of the Contract and the Buyer shall not be entitled to exercise any set-off, lien or any other similar right or claim.

7.6 The time of payment shall be of the essence of the Contract.

7.7 Without prejudice to any other rights it may have the Company is entitled (both before and after any judgement) to charge interest at a rate equal to the higher of the interest rate payable on court judgements or 2% above the base rate from time to time of Lloyds TSB plc on overdue payments of the price of the Goods or the price of any instalments thereof.

8 Despatch

8.1 Unless otherwise agreed by the Company in writing the Goods will be supplied ex the Company's Premises and the price of the Goods is exclusive of carriage packing and insurance to the Buyer's premises.

8.2 The Company will at the Buyer's request and for the account of the Buyer arrange the carriage of the Goods to a destination in the United Kingdom specified by the Buyer but the Company shall not be liable in negligence or otherwise for any act omission or default of the Company or the carrier of such Goods.

8.3 Where the Goods are supplied for export from the United Kingdom, the Buyer shall be responsible for ensuring the compliance with any legislation or regulations governing the importation of the Goods into the Country of destination, and into any country through which the Goods are transported, and for the payment of any duties on or in respect of importation or transportation of the Goods. The Buyer is responsible for supplying satisfactory proof of export as required by current legislation.

8.4 All times, dates or periods given for delivery or collection of the Goods are given in good faith but without responsibility on the Company's part.

8.5 Any time specified for the delivery or collection of the Goods shall not be of the essence of the Contract.

8.6 Any period for delivery or collection shall be calculated from the time of the Company's acceptance of the Buyer's order or from the Company's receipt of all information necessary to enable the Company to manufacture or procure the manufacture of the Goods (whichever shall be the later).

8.7 Where the Goods are handed to a carrier for carriage to the Buyer or to United Kingdom port for export any such carrier shall be deemed to be an agent of the Company and not of the Buyer for the purposes of sections 44, 45, 46 of the Sale of Goods Act 1979.

8.8 The Buyer agrees that section 32(3) of the Sale of Goods Act 1979 shall not apply to Goods sent by the Company.

8.9 No liability (whether in contract or for negligence or otherwise howsoever) for loss of or damage to the Goods occurring prior to the Goods being available for collection or for any claim that any item delivered pursuant to the Contract is defective or is otherwise not in accordance with the Contract (being a defect or loss, damage or non-compliance which would be obvious upon a reasonable inspection of the Goods) will attach to the Company unless claims to that effect are notified in writing by the Buyer to the Company within three days of delivery or the Goods being made available for collection for loss, damage, defect or non-compliance with the Contract.

8.10 In the event of a valid claim for defect, loss, damage, or non-compliance with the Contract the Company undertakes at its option either to reprocess or replace the items concerned at its expense but shall not be under any further or other liability in connection with such loss, damage or non-compliance.

8.11 If the Buyer shall fail to give notice in accordance with condition 8.9 above the Goods concerned shall be deemed to be in all respects in accordance with the Contract and without prejudice to earlier acceptance by the Buyer it shall be bound to accept and pay for the same accordingly and all claims in respect of loss, damage, defect or non-compliance shall (save as set out in condition 12 below) thereafter be wholly barred.

8.12 If for any reason the Buyer is unable to collect or accept delivery of the Goods at the time when the Goods are due and ready for collection or delivery the Company may at its sole discretion without prejudice to its other rights and for such periods as the Company may determine store the Goods at the Buyer's risk and take all reasonable steps to safeguard and insure them at the Buyer's cost, provided that the Buyer shall be immediately informed thereof. The Company can charge an Administration / Re-Stocking charge for goods not collected or refused delivery by the Buyer or his Agent.

8.13 The Company shall have the right to make the Goods available for collection or deliver them by instalments of such quantities and at such intervals as it may decide, and any express provision as to instalments in the Contract shall be in addition to and not in derogation of this right.

9 Returns

9.1 Goods supplied in accordance with the Contract cannot be returned without the Company's prior written authorisation. Authorisation will be issued upon receipt, from the Buyer of proof of purchase, details of defect and Stock code of defective items. The Company will give the Buyer a return of material authorisation number in relation to authorised returns. Duly authorised returns shall be sent to the Company's Premises at the Buyer's expense and must be clearly marked externally with the Returns Number.

9.2 The Buyer shall be liable to pay an additional payment to cover the Company's administration charges in the event that any Goods returned to the Company pursuant to Condition 9.1 above prove not to be defective.

10 Passing of title and risk

10.1 From the time that the Goods are despatched from or made ready for collection at the Company's Premises the Goods shall be at the Buyer's risk who shall be solely responsible for their custody and maintenance but, unless otherwise expressly agreed in writing, the Goods shall remain the Company's property until all payments to be made by the Buyer under the Contract and any other contract between the Company and the Buyer and on any other account whatsoever have been made in full and unconditionally. Whilst the Company's ownership continues the Buyer shall keep the Goods labelled as belonging to the Company and separate and identifiable from all other goods in its possession as bailee for the Company.

10.2 The Buyer may only re-sell the Goods to the Buyer's customers in the ordinary course of the Buyer's business as a fiduciary and trustee for the Company. In the event of any resale by the Buyer of the Goods the Company's beneficial entitlement shall attach to the proceeds of sale or other disposition thereof so that such proceeds or any claim therefore shall be assigned to the Company and until such assignment shall be held on trust in a separate identified account for the Company by the Buyer and such proceeds shall not be mingled with other moneys or paid into any overdrawn bank account and shall at all times be identifiable as the Company's moneys.

10.3 Without prejudice to the equitable rules as to tracing, in the event of failure to pay the price in accordance with the Contract the Company shall have power to re-sell the Goods, such power being additional to (and not in substitution for) any other power of sale arising by operation of law or implication or otherwise and for such purpose the Company and its servants and agents may forthwith enter upon any premises or land occupied or owned by the Buyer to remove the Goods.

10.4 Pending payment of the full purchase price of the Goods the Buyer shall at all times keep the Goods comprehensively insured against loss or damage by accident, fire, theft and other risks usually covered by insurance in the type of business carried on by the Buyer in an amount at least equal to the balance of the price for the same from time to time remaining outstanding. The policy shall bear an endorsement recording the Company's interest.

11 Condition and Warranties

11.1 The Contract shall not constitute a sale by description or sample.

11.2 Any conditions or warranties (whether express or implied by statute or common law arising from conduct or a previous cause of dealing or trade custom or usage or otherwise howsoever) as to the quality of the Goods or their fitness for any particular purpose (even if that purpose is made known

expressly or by implication to the Company) or as to the correspondence of the Goods with any description or sample are hereby expressly negated.

12 Defective Goods

12.1 Unless the Goods concerned are second-hand, in substitution for all rights which the Buyer would or might have but for these conditions the Company undertakes that if within 7 days from the date of the Company's invoice a defect in materials or workmanship appears in Goods supplied by the Company, and provided that the goods are returned to the Company within 7 days from the date of the Company's invoice, it will at the customer's request replace the defective item free of charge for labour and materials at the Buyers nominated premises (as presented on the Company's invoice) in the United Kingdom or refund the purchase price of the defective item. Thereafter that is within twelve months from the date of the company's invoice if a defect appears in Goods supplied by the Company being a defect which would not be obvious on reasonable inspection thereof (whether such an inspection was carried out or not) the Company will at its discretion repair it or supply a replacement thereof free of charge at the Buyers premises (as presented on the Company's invoice) in the United Kingdom for the original Goods provided that in any case the original Goods have been accepted and paid for and returned in accordance with Condition 12.4 below.

12.2 The warranty provided in condition 12.1 above shall not apply when the Goods or any part of them are second-hand, have not been operated in ordinary use and/or in accordance with the manufacturer's or the Company's instructions, have been repaired, altered or modified without the Company's prior written consent or if any serial number has been removed, defaced or altered in any way or any "Void if Peeled" sticker has been tampered with.

12.3 Damage caused to any returned Goods, which is due to faulty packaging is the responsibility of the Buyer.

12.4 In order to exercise its right under this condition, the Buyer shall inform the Company within 3 days of receipt of the Goods when such defect appeared shall at the Company's written request return the defective Goods carriage paid to the Company's premises.

12.5 Nothing herein shall impose any liability upon the Company in respect of any defect in the Goods arising out of the acts, omissions, negligence or default of the Buyer, its servants or agents including in particular (but without prejudice to the generality of the foregoing) any failure by the Buyer to comply with any recommendations of the Company or manufacturer as to the storage and handling of the Goods.

12.6 A defect in an installment of Goods shall not be a ground for cancellation of the remainder of the installments and the Buyer shall be bound to accept the remaining installments.

12.7 Nothing herein shall have the effect of excluding or restricting the liability of the Company for death or personal injury resulting from its negligence in so far as the same is prohibited by United Kingdom statute.

13 Buyer's specification

13.1 The Company shall not be liable for imperfect work caused by any inaccuracies in any drawing, bill of quantities or specification supplied by the Buyer.

14 Consequential loss

14.1 The Company shall not be liable for any costs, claims, damages or expenses arising out of any tortious act or omission or any breach of contract or statutory duty calculated by reference to profits, income, production or accruals or loss of such profits, income, product or accruals or by reference to accrual of such costs, claims, damages or expenses on a time basis.

15 Default or insolvency of Buyer

15.1 If the Buyer shall be in breach of any of its obligations under the Contract or if any distress or execution shall be levied on the Buyer's property or assets [or if the Buyer shall make or offer to make any arrangement or composition with his creditors or commit any act of bankruptcy or if any bankruptcy petition be presented against him or (if the Buyer is a company) if any resolution or petition to wind up such company shall be passed or presented or if a receiver, administrative receiver or administrator of the whole or any part of such company's undertaking property or assets shall be appointed] the Company in its discretion and without prejudice to any other right or claim may by notice in writing determine wholly or in part any and every contract between the Company and the Buyer or may (without prejudice to the Company's right subsequently to determine the Contract for the same cause should it so decide) by notice in writing suspend delivery or any further deliveries (as the case may be) of Goods until any default by the Buyer be remedied.

16 Limitation of Liability

16.1 The aggregate liability of the Company (whether in contract or for negligence or breach of statutory duty or otherwise howsoever) to the Buyer for any loss or damage of whatsoever nature and howsoever caused shall be limited to and in no circumstances shall exceed the price of the Goods.

17 Representations

17.1 No statement, description, information, warranty, condition or recommendation contained in any catalogue, price list, advertisement or communication or made verbally by any of the Company's agents or employees shall be construed to enlarge, vary or override in any way any of these conditions.

18 Force Majeure

18.1 The Company shall be entitled to delay or cancel the performance of its obligations under the Contract and these conditions if and to the extent that it is prevented from or hindered in or delayed in manufacturing, obtaining, delivering or making available for collection the Goods by normal route or means of delivery through any circumstances beyond its control including (but not limited to) strikes, lock-outs, accidents, war, fire, reduction in or unavailability of power at manufacturing plant, breakdown of plant or machinery or shortage or unavailability of raw materials from normal sources of supply.

19 Cancellation

19.1 Save as provided in conditions 15 and 18 hereof contracts may not be cancelled except by agreement in writing of both parties and upon the payment to the Company of such amount as may be necessary to indemnify the Company against all loss resulting from the said cancellation.

20 Sub-contracting

20.1 The Company may assign the Contract with the Buyer or sub-contract the whole or any part thereof to any person, firm or company.

21 Proper law

21.1 The Contract shall in all respects be governed by and construed in accordance with English law and shall be deemed to have been made in England and the Buyer and the Company agree to submit to the non-exclusive jurisdiction of the English courts.

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