

TEX TECH INDUSTRIES (UK) LTD

TERMS AND CONDITIONS OF PURCHASE

DEFINITIONS

1. In these terms and conditions (Conditions) the following expressions shall have the following meanings:
 - (1) "the Buyer" shall mean Tex Tech Industries (UK) Ltd;
 - (2) "the Seller" shall mean the person, firm or company to whom the Order is addressed;
 - (3) "the Goods" shall mean any articles, objects or things or any of them or any instalment or part of them to be supplied pursuant to the Contract;
 - (4) "the Services" shall mean the services (if any) described in the Order to be undertaken by the Seller and whether on or in respect of the Goods or not;
 - (5) "the Specifications" shall mean the technical or other requirements (if any) for the Goods or the Services contained or referred to in the Order;
 - (6) "the Order" shall mean the order placed by the Buyer with the Seller for the supply of the Goods or/and the performance of the Services;
 - (7) "the Contract" shall mean the contract between the Buyer and the Seller for the sale and purchase of the goods and/or the supply and acquisition of the Services consisting of the Order these Conditions and any other documents (or parts thereof) specified in the Order by the Buyer. Should there be any inconsistency between the documents comprising the Contract, they shall have precedence in the order herein listed;
 - (8) "Supply" shall include where the context so permits a sale lease hiring or loan of the Goods.
 - (9) In these Conditions (unless the context otherwise requires) 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.

GENERAL

2. These Conditions shall be deemed to be incorporated in the Contract and in the case of any inconsistency with any document or communication incorporating or referring to these Conditions or any document, communication or form of contract from the Seller to the Buyer whatever may be their respective dates the provisions of these Conditions shall prevail unless expressly varied in writing and signed by a duly authorised officer of the Buyer. Any concession made or latitude allowed by the Buyer to the Seller shall not affect the strict rights of the Buyer under the Contract. If in any particular case any of these Conditions shall be held to be invalid or shall not apply to the Contract the other Conditions shall continue in full force and effect.

ACKNOWLEDGEMENT

3. The Buyer shall be bound by its Order only if:-
 - (1) it is placed on the Buyer's official order form signed by an authorized representative of the Buyer; and
 - (2) the Seller accepts it in writing by completing and returning the Buyer's acceptance form within seven days of the date of the Order. Any such acceptance shall become effective only upon actual receipt thereof by the Buyer and not upon posting.

QUALITY AND DESCRIPTION

4. Without prejudice to any other rights or remedies available to the Buyer or any term implied by law, the Seller warrants to the Buyer that:-
 - (a) the Goods will:
 - (1) conform as to quantity quality and description with the particulars stated in the Contract;
 - (2) be of sound materials and workmanship;
 - (3) comply in all respects to the Specifications (if any) and any samples or patterns provided by either party and accepted by the other;
 - (4) be capable of any standard of performance specified in the Contract;
 - (5) if the purpose for which they are required is indicated in the Contract either expressly or by implication, be fit for that purpose.
 - (b) the Services will be performed by appropriately qualified and trained personnel with all due care and diligence and to the highest standard of quality prevailing in the industry at the time of performance.

INSPECTION TESTING AND SAMPLES

5. (1) If so required by the Buyer the Seller shall submit samples of the Goods for the Buyer's approval before Goods are delivered or before the Services are performed (as the case may be). Such samples of Goods should be marked by the Seller clearly and appropriately for identification and will be retained by the Buyer until the Services are completed or the Goods have been delivered.
 - (2) The Buyer shall be entitled to inspect and test the Goods during manufacture, processing or storage. If the Buyer exercises this right the Seller shall at its own cost provide or shall procure the provision of all such facilities as may reasonably be required by the Buyer therefor.
 - (3) If as a result of any inspection or test under clause (2) of this Condition 5 the Buyer's representative is of the reasonable opinion that the Goods or the Services do not comply with the Contract or are unlikely on completion of manufacture or processing so to comply he shall inform the Seller accordingly in writing and the Seller shall promptly take such steps as may be necessary to ensure such compliance.

DELIVERY

6. (1) The Goods shall be properly packed and secured in such a manner as to reach their destination in good condition under normal conditions of transport having regard to the nature of the Goods and the other circumstances of the case.
 - (2) The Goods shall be delivered and the Services performed for the Buyer at the time or within the period specified in the Contract. Time for such performance shall be of the essence of the Contract and if the Goods are not delivered or the Services not performed within the time specified in the Contract the Buyer shall be entitled to terminate the Contract forthwith.
 - (3) The Goods shall be delivered to or the Services performed for the Buyer at the address or addresses and in the manner specified in the Contract or as subsequently agreed in writing by the parties. The Seller shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods. Hazardous Goods shall be marked by the Seller with the recognized international danger symbols and shall in addition bear the name of the material in English. All transportation and other documentation shall include such information and such Goods shall at all times be accompanied by emergency information in English. The Seller shall be responsible for ensuring compliance with all applicable laws and regulations in connection with marking and carriage of hazardous goods. The Seller agrees to indemnify the Buyer against any loss or damage caused or suffered and any fines or penalties imposed as a result of any failure to comply with the provisions of this sub-clause.
 - (4) Unless otherwise agreed between the parties in writing before delivery, the Buyer shall have no obligation to pay for or return packing cases, skids, drums or other articles used for packing the Goods whether or not re-usable.
 - (5) In the event that no time for delivery or performance is specified in the Contract, the Goods shall be delivered or the Services performed (as appropriate) within a reasonable time from the date of the Contract.
 - (7) All Goods shall be accompanied by a detailed advice note stating the purchase order number and giving full particulars of the Goods supplied (except when such Goods are sent direct to premises of the Buyer's customer when the advice note sent with the Goods shall not show the Seller's name). A copy of the advice note must be sent to the Buyer on the day upon which the Goods are delivered and an invoice stating the purchase order number must be delivered to the Buyer on or before the first business day following the date of delivery.
 - (8) If the Goods are to be delivered or the Services are to be performed by instalments the Contract shall be treated as a single Contract and not severable.

STORAGE

7. If for any reason the Buyer is unable to accept delivery of the Goods at the time when the Goods are due and ready for delivery the Seller shall if its storage facilities permit store, insure and safeguard the Goods, and take all reasonable steps to prevent their deterioration until their actual delivery to the Buyer, and the Buyer shall be liable to the Seller for the reasonable cost (including insurance) of the Seller so doing.

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BUYER'S MATERIAL AND EQUIPMENT

8. (1) All drawings, specifications (including the Specifications) and information (hereinafter called "the Material") supplied by the Buyer to the Seller in connection with the Contract are confidential. The Seller and its officials and employees shall not at any time disclose the Material to any third party without the prior written consent of the Buyer.
- (2) All jigs, tools, moulds, patterns, raw materials and other material or equipment (hereinafter called "the Equipment") supplied or loaned to the Seller or ordered by the Buyer from the Seller for the execution of the Contract together with the Material shall be maintained in good condition by the Seller and the Seller shall indemnify the Buyer against all loss or damage thereto whilst the same are in the possession or control of the Seller.
- (3) The Material and the Equipment shall only be used for the purpose of manufacturing and supplying the Goods to or performing the Services for the Buyer and shall remain the property of the Buyer at all times.
- (4) All containers, pallets and other packing materials supplied by the Buyer to the Seller shall be maintained in good condition and shall remain the property of the Buyer at all times.
- (5) At the request of the Buyer, the Seller shall promptly return the Material and the Equipment and the said containers, pallets and packing materials or part thereof to the Buyer.
- (6) Without prejudice to the Seller's liability under the foregoing clauses of this condition 8, the Seller shall maintain such insurance as the Buyer may stipulate in respect of the Material and the Equipment and as shall be necessary to cover the said liability of the Seller and the Seller shall produce to the Buyer on demand either:-
- (a) the policies of such insurances and the receipts for all premiums paid thereunder; or
- (b) a current certificate of insurance from the insurers under such policies.
- (7) The Buyer shall be entitled to the following upon reasonable notice and without additional cost:-
- (a) to inspect work in progress at the Seller's premises; and
- (b) to undertake stock counts of Equipment and Materials held by the Seller; and
- (c) to obtain written declarations from the Seller as to the levels of stock of Equipment and Materials.

PASSING OF PROPERTY

9. (1) Subject to the provisions of clause 9.(2) the risk of damage or loss of the Goods shall pass to the Buyer on delivery in accordance with the Contract without prejudice to any right of rejection which may accrue to the Buyer under the Contract.
- (2) If the Seller postpones delivery at the request of the Buyer pursuant to condition 7 the property in the Goods shall pass to the Buyer seven days after the date of receipt of notification from the Seller that the Goods are due and ready for delivery or on such other date as may be agreed but the Goods shall nevertheless remain at the Seller's risk until delivery has been completed.

REJECTION

10. (1) Without prejudice to any other rights or remedies available to it the Buyer may by notice in writing to the Seller reject any or all of the Goods if the Seller fails to comply with its obligations under the Contract.
- (2) The Buyer shall when giving notice of rejection specify the reason therefor and the Seller shall remove such Goods at the Seller's own risk and expense. In such case the Seller shall within a reasonable time replace such rejected Goods with goods which are in all respects in accordance with the Contract.
- (3) Any money paid by the Buyer to the Seller in respect of any rejected Goods not replaced by the Seller within a reasonable time together with any additional expenditure over and above the Contract price reasonably incurred by the Buyer in obtaining other goods in replacement shall be paid by the Seller to the Buyer.

PAYMENT

11. Payment shall be made within the period after delivery of the Goods or performance of the Services specified in the Contract or if delivery is postponed at the request of the Buyer as provided in condition 7 within the same period after the date when the property in the Goods passed to the Buyer under condition 9(2). If no date for payment is specified, payment shall be made at the end of the calendar month

following the month in which the Goods or the Services were invoiced to the Buyer.

STATUTORY REQUIREMENTS

12. The Seller warrants that the design, construction and quality of all the Goods to be supplied under the Contract and the quality of the Services will comply in all respects with all relevant requirements of any statute, statutory rule or order or other instrument having the force of law which may be in force at the time when the same are supplied.

INFRINGEMENT OF PATENTS

13. The Seller shall indemnify the Buyer against any infringement or alleged infringement of any patent, copyright, registered design, design right, trade mark, trade name or other intellectual property right for or relating to the Goods or the Services unless such infringement has occurred directly as a result of any specification supplied by the Buyer.

ASSIGNMENT AND SUB-CONTRACTING

14. The Seller shall not without the prior written consent of the Buyer assign or transfer the Contract or any of its rights or obligations thereunder to any other person, firm or company.

BANKRUPTCY OR LIQUIDATION

15. (1) If the Seller, being an individual (or when the Seller is a firm, any partner in that firm) shall at any time become unable to pay its debts within the definition of section 123 of the Insolvency Act 1986, or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of its creditors or if the Seller being a company shall pass a resolution or the court shall make an order that the company shall be wound up (not being a member's winding up for the purpose of reconstruction or amalgamation) or if a receiver, administrative receiver or administrator shall be appointed of the whole or any part of its assets then the Buyer shall be at liberty:
- (a) to cancel the Contract summarily by notice in writing without compensation to the Seller or
- (b) to give any such receiver, administrative receiver, administrator or liquidator or other person the option to carrying out the Contract.
- (2) The exercise of any of the rights granted to the Buyer under clause 15.(1) hereof shall not prejudice or affect any right of action or remedy which shall have already accrued or may accrue thereafter to the Buyer.

WARRANTY

16. Without prejudice to any other remedies of the Buyer, the Seller shall forthwith upon a request by the Buyer so to do:
- (1) replace or (at the Buyer's option) repair all Goods which are or become defective during the period of twelve months from the date of delivery where such defect occurs under proper usage and are due to faulty design, or inadequate or faulty materials or workmanship, or the Seller's erroneous instructions as to use, or erroneous data or any breach by the Seller of any provision of the Contract. Repairs and replacements shall themselves be subject to the foregoing obligations for a period of twelve months from the date of delivery, reinstallation or passing of tests (if any) whichever is appropriate after repair or replacement.
- (2) re-perform any Services found, in the opinion of the Buyer, to have been performed defectively within twelve months of the date of their performance.

INDEMNITY

17. The Seller shall indemnify the Buyer against:-
- (1) All damage or injury which may be caused to any person or to any property and against all actions, suits, claims, demands, costs, charges, damages, losses, liabilities and expenses arising in connection therewith to the extent that the same shall have been occasioned by the negligent or wilful acts or omissions of the Seller, its servants, agents or contractors during such time as he or they were on, entering onto or departing from the Buyer's premises for any purpose connected with the Contract.
- (2) Loss or damage or injury whatsoever and whensoever arising, caused to the Buyer or for which the Buyer may be liable to third parties, due to any defect in the workmanship, materials, design or quality of the Goods or their packaging or the Services.

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- (3) Consequential costs or damage sustained by the Buyer or for which the Buyer may be liable to third parties as a result of the failure of the Seller to supply the Goods or perform the Services in accordance with the terms of the Contract.

Without prejudice to the generality of this clause 17 the indemnity contained in sub-clauses 17.(1), 17.(2) and 17.(3) above shall extend to any loss or damage resulting from:-

- (1) errors in treatment or handling of the Equipment; and
(2) waste caused in handling the material which exceeds such percentage, if any, as may be agreed between the parties.

FORCE MAJEURE

18. The performance by the Buyer of any of its obligations under the Contract shall be deemed suspended in so far as such performance is prevented or hindered by any circumstances beyond its reasonable control including (but not limited to) strikes, lock-outs, accidents, war, fire, reduction in or unavailability of power, or breakdown of plant or machinery. If the cause of such suspension shall continue for more than six months either party shall have the right to terminate the Contract upon giving not less than seven days' prior written notice to the other and the only liability of the Buyer shall be to pay the Seller for Goods received by the Buyer and Services performed prior to the date of such suspension.

LAW OF THE CONTRACT

19. 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 parties agree to submit to the non-exclusive jurisdiction of the courts of England.

HEADINGS

20. The headings in these Conditions are for reference only and do not form part of the construction of the Contract.