

Standard conditions of sale for goods sold by Triflex (UK) Ltd

Terms and conditions

1 General

- 1.1 "Buyer" means the person who buys or agrees to buy goods from the Company.
- 1.2 "Company" means Triflex (UK) Ltd.
- 1.3 "Goods" means the goods which the Buyer buys or agrees to buy from the Company.
- 1.4 "Conditions" means the terms set out in this document which are the Company's standard conditions of sale.
- 1.5 The Conditions and where applicable, the specific terms and conditions mentioned by the Company in the offer or in the order confirmation issued by the Company or otherwise agreed between the parties in writing, constitute the entire sales agreement between the parties ("Sales Agreement") and replace and supersede all prior written or oral declarations, agreements or arrangements between the parties relating to the same subject matter. Notwithstanding clause 4.4, each amendment to the Sales Agreement shall be in writing, duly signed by the Company and the Buyer.
- 1.6 In case of discrepancies between the provisions of these Conditions and the specific terms and conditions mentioned by the Company in the offer or in the order confirmation issued by the Company or otherwise agreed between the parties in writing, the specific terms and conditions shall take precedence over the provisions of these Conditions.
- 1.7 Each Sales Agreement concluded between the Company and the Buyer, shall automatically be governed by these Conditions.
- 1.8 The Conditions shall be deemed to be incorporated into all or any agreements from time to time entered into between the Company and the Buyer which provide in whole or in part for the sale of any Goods by the Company to the Buyer and shall govern relations between the Buyer and the Company to the exclusion of any standard terms and conditions contained in any of the Buyer's documents (whether or not the Buyer's standard terms or conditions purport to prevail over these Conditions).

2 Variations

No variation of the Conditions shall be effective unless agreed in writing by a Director of the Company and (for the avoidance of doubt) no representative of the Company other than a Director shall have authority to agree any such variation on behalf of the Company.

3 Quotations

Quotations by the Company are not offers capable of immediate acceptance by the Buyer but are invitations to treat only. All drawings, technical details and particulars of weights and dimensions submitted with the quotations are approximate only. No property shall pass to the Buyer in the documents forming or accompanying a quotation or in any of the material contained therein. If no order based on the quotation is accepted by the Company, the Buyer shall return to the Company all documents and other materials concerned free of charge to the Company on request. All information in and relating to the quotation shall be confidential and shall not be passed without the written permission of the Company to any third party and shall be disclosed only to those employees of the Buyer to whom such disclosure is reasonably necessary. Unless and until an order based on the quotation is accepted by the Company the Buyer shall make no use in its business of the information contained therein except for purposes of determining whether to place an order. The Company shall be free to accept or refuse an order for any reason whatsoever.

4 Offers and orders

- 4.1 Orders only become binding on the Company by its submitting to the Buyer confirmation of order in writing by the Company's authorised representative or submitting an invoice. Expressions used by the Buyer such as "previously supplied" or expressions to the similar effect shall be understood to refer only to the quality and not the previous price.
- 4.2 The Buyer shall be the sole responsible for the correctness, accuracy and completeness of all specifications provided to the Company in preparation of the offer for sale of goods or mentioned in the order submitted by the Buyer, including, without being limited to the type, the design, the quality and the quantity of the ordered goods. In addition, the Buyer shall be the sole responsible for providing the Company in due time with all other information that may be necessary for the Company to be able to perform the Sales Agreement.
- 4.3 Once a confirmation of order or invoice has been submitted by the Company to the buyer, the Buyer shall not be entitled to bring any amendments to the type, the design, the quality, the quantity, the modalities of packing, sending and delivery, or any other specification relating to the goods covered by the Sales Agreement without the prior written consent of Company.
- 4.4 Notwithstanding clause 1.5 above, at any time the Company has the right to make the changes it deems necessary or appropriate to the following aspects relating to the goods covered by the Sales Agreement, which the Buyer shall accept:
 - 4.4.1 The type, the design, the quality, the modalities of packing, sending and delivery or any other specification;
 - 4.4.2 The supply of raw materials, goods or services used to produce the goods;
 - 4.4.3 The facilities from which Company or any of its suppliers or subcontractors operate;
 - 4.4.4 The price of the goods;
 - 4.4.5 The production method or any other process used in the production of the goods.

5 Price

The prices or charges specified in any quotation are related to the Company's cost of manufacturing, obtaining and paying for Goods, parts or materials prevailing at the date thereof. In the event of there being an increase in such costs caused by any reason, including increases attributable to alterations in tax or duty or in the exchange rates of any currency, or the costs of raw materials, the Company shall be entitled to vary its prices or charges from those quoted whether or not such increase was or should have been foreseen by the Company at the date of the quotation and whether or not the quotation or price is stated as valid to a specific future date. All prices quoted exclude VAT and any costs of freight and insurance for deliveries outside UK mainland unless otherwise specified. The VAT rate applicable shall be the rate prevailing on the date of invoicing.

6 Packing

Delivery is made only in the product containers held in stock at the time the order is processed. All prices quoted include packing material unless otherwise specified. Where packing is expressly stated to be in returnable containers or the cost of packaging materials is separately invoiced, the Buyer shall be credited with the full value of those materials as invoiced to him, provided that they are returned carriage free or without any charges to the Company and, in the opinion of the Company, in a satisfactory condition to the despatch points from which they were supplied unless otherwise specified in the Company's price list, quotation, delivery note or invoice. For packaging materials on loan, the conditions as mentioned in the Company's prevailing price list and or quotation shall apply.

7 Time of delivery

The Company shall be entitled to deliver Goods supplied pursuant to any order by the Buyer on any week day during normal working hours after the period for delivery has commenced. The Buyer acknowledges that delivery of the Goods is outside the control of the Company and that the Company cannot be held liable for any delays or failures in the delivery of the Goods.

8 Period for delivery

Where a quotation indicates a specific delivery period for any Goods, the period shall be understood to run from the date of confirmation of the relevant Order. Any such periods as may be contained in a quotation are nevertheless estimates only which shall not be of the essence of the Contract. In the event of the Company, for

any reason whatsoever, not being ready to make delivery within the period specified it shall not be liable for any loss or damage whatsoever sustained by the Buyer as a result of such delay. Without prejudice to the foregoing, in the event of the Company not being ready to make delivery at the time specified (or if none be specified within a reasonable time) the Buyer shall thereupon be entitled to give one month's notice in writing calling for delivery and in the event of the Company remaining unable to make delivery within such a period, the Buyer may, at the expiry thereof, by a further notice in writing cancel the Contract in relation to all undelivered Goods. The Buyer shall have no other rights whatsoever in relation to any failure by the Company as aforesaid and it will be a condition precedent to the Buyer's right to cancel that he shall first have paid all sums due in respect of Goods already delivered under the Contract.

9 Storage

If the Buyer gives the Company not less than seven days notice, the Company is prepared to store Goods. The Company reserves the right to make storage charges for such Goods. If the Buyer has not arranged for removal of the Goods after six months storage the Company shall be entitled to give one month's notice to the Buyer that it intends to dispose of the Goods and unless, within that one month, the Buyer removes the Goods from storage the Company shall be entitled to sell all or any portion of such Goods and without prejudice to the provisions of Paragraph 19 to set off against the proceeds of sale, the costs of sale, storage charges incurred by the Buyer and any other monies due from the Buyer to the Company. The provision of this paragraph shall apply irrespective of whether the property in the Goods shall have passed to the Buyer. Removal of Goods to storage on behalf of the Buyer under this paragraph shall be deemed to be a delivery to the Buyer. The Buyer shall be liable to pay the full price pursuant to paragraph 4 for any Goods so stored by the Company.

10 Despatch

The method of transport of the Goods shall be at the sole discretion of the Company. All necessary unloading facilities shall be provided by the Buyer at his expense at the time the Company is ready to make delivery.

11 Return of goods

- 11.1 Where the Goods have been supplied in accordance with the Agreement of Sale and are not defective then the acceptance of applications to return Goods is at the sole discretion of the Company.
- 11.2 The following conditions must be met before the Company will consider an application to return Goods:
 - 11.2.1 A fully completed prescribed application form must be received by the Company within 3 months of the original delivery date of the goods.
 - 11.2.2 The original delivery date of the Goods to be returned must be less than 3 months prior to the application to return Goods.
 - 11.2.3 The Goods must at the sole discretion of the Company be deemed of fully merchantable quality and suitable for resale, i.e. the Goods must have been stored appropriately, be unopened, intact with all packaging and labels in good, clean, dry condition.
 - 11.2.4 The Company reserves the right not to accept any returned Goods should these conditions not be met or where the Company deems it unlikely that it will resell the Goods within their shelf life.
- 11.3 Where the Company has agreed to the return of the Goods and all conditions have been met, an offer will be made by the Company to the Buyer to restock the Goods for the original sales value of the Goods returned less a minimum 25% or such other percentage as deemed appropriate by the Company restocking charge, less any carriage or other costs incurred by the Company.

12 Quantities

The Company shall be entitled to deliver the Goods in a single delivery or by instalments as it sees fit. The Buyer shall not be entitled to reject any consignment of Goods delivered by the Company on the grounds that the quantity of Goods delivered is too small or too large. In the event of short delivery then, subject to the Buyer giving written notification of short delivery within three working days of delivery, the Company shall deliver the balance of undelivered goods or give the Buyer credit for the shortfall. Where the Goods are delivered in instalments and the Buyer shall for any reason have the right to reject any instalment which has been delivered, he shall not by reason thereof have the right to treat the whole agreement of sale as repudiated. All weights or volumes are ascertained at the time of the filling of the containers used and all invoices are calculated thereon.

13 Insurance and Risk

- 13.1 Unless otherwise agreed in writing between the parties but subject as hereinafter provided, the risk of loss or damage to the Goods shall pass to the Buyer upon delivery or deemed delivery to the Buyer and the Company will insure accordingly.
- 13.2 Notwithstanding 13.1 above, in the case of the Goods to be collected by the Buyer or by a carrier engaged by the Buyer, all risk of loss or damage howsoever caused shall pass to the Buyer on whichever of the following events occurs earlier:
 - 13.2.1 collection of the Goods by or on behalf of the Buyer or
 - 13.2.2 seven days from the date of the Company's written notice that the Goods are ready for collection.
- 13.3 The Company shall be entitled to charge for storage of the Goods after the expiry of the seven day period referred to in paragraph 13.2.2 above and the provisions of Paragraph 9 above shall apply to the storage of the Goods.
- 13.4 Where the risk of loss or damage to the Goods in transit lies with the Company, the Buyer shall carefully examine the Goods upon receipt and shall notify the Company in writing of any loss or damage:
 - 13.4.1 in the case of loss of the Goods or of part thereof within three working days of receipt by the Buyer of a delivery note issued by the Company in respect of the Goods; and
 - 13.4.2 in the case of damage to the Goods or part thereof within three working days of delivery; and in the case of damage to the Goods shall retain all damaged Goods and packaging for inspection by the Company and the carrier.
- 13.5 The Company shall not be liable in respect of any loss of or damage to the Goods in transit, howsoever caused, other than damage which could not reasonably have been discovered by the Buyer on examination of the Goods in accordance with Paragraph 13.4 unless the requirements of Paragraph 13.4 above have been fully complied with by the Buyer.

14 Payment

- 14.1 All prices and charges are strictly net and payment shall be made without any discount or other reduction unless otherwise agreed in writing by the Company. Save as is provided by Section 53 of the Sale of Goods Act 1979, the Buyer shall not be entitled to set off against the price of the Goods any debt or cross claim or alleged debt or cross claim of whatever nature claimed or made by the Buyer against the Company.
- 14.2 Payments, unless otherwise agreed, shall be made thirty days following the date of the Company's invoice. In the case of delivery by instalments, payment, unless otherwise agreed, shall be made thirty days following the day of the Company's invoice for the relevant instalments. Where payment for Goods is made by instalments, VAT shall be payable within seven days of issue to the Buyer of the relevant tax invoice. This sub-paragraph is subject to and governed by the terms of paragraph 14.5 below.
- 14.3 Cheques, money and postal orders should be crossed and made payable to Triflex (UK) Limited.
- 14.4 The Company may at its discretion require at any time that all or part of the purchase price and other charges be paid in advance or on account and the sums so demanded shall be immediately payable by the Buyer, the balance remaining payable as otherwise provided hereunder and the Company may decline to make delivery of the Goods except upon such payment or upon receipt of other security satisfactory to the Company.
- 14.5 Should the Buyer default in payment for whatever reason on the due date of any sum, without prejudice to any other right which the Company may have, the Company shall be entitled to claim interest at the rate of 4 percent

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per annum above National Westminster Bank base rate from time to time (both before and after any judgement) until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

- 14.6 All payments made by the Buyer shall be credited towards the oldest invoice due and its ancillary charges. Prepayments by cheque or Giro shall be deemed to have been made when the amount is at the Company's disposal unconditionally, payment by bill of exchange when the bill has been cashed. Any bank charges incurred are to be paid by the Buyer. The Company reserves the right to refuse bills of exchange.
- 14.7 The Buyer shall forthwith pay to the Company by way of agreed damages a sum equal to the aggregate of all costs and expenses including (without limitation) all legal costs on a full indemnity basis incurred by the Company as a result of the Buyer's default hereunder.

15 Reservation of Title

- 15.1 Notwithstanding that risk in the Goods has already passed (in accordance with Paragraph 13) the ownership of the Goods shall not pass to the Buyer until full payment for those Goods and for all other goods supplied by the Company to the Buyer has been received by the Company.
- 15.2 The Buyer shall hold the Goods as bailee for the Company until title has passed to the Buyer and:
- 15.2.1 Shall refrain from encumbering them in any way
- 15.2.2 Shall store them separately from any other goods on the Buyer's premises
- 15.2.3 Shall clearly mark the Goods as the Company's property
- 15.2.4 Shall insure the Goods.
- 15.3 The Company may at any time after a default has been made by the Buyer of any payment by the due date and without prejudice to any other rights or remedies available to it, require the Buyer by written notice to place at the Company's disposal any Goods to which title has been reserved. For the purpose of the Company taking re-possession, the Company may enter upon any premises where the Buyer has stored the Company's Goods or the Company reasonably believes the Goods to be stored in order to repossess the Goods. The Buyer shall pay to the Company the cost of removal and transport of the Goods or any part thereof.
- 15.4 The Buyer will be at liberty to incorporate the Goods or part thereof into another product or chattel but if, immediately prior to such incorporation, property in the Goods has not passed to the Buyer, then subject to the rights of any third party, the product or chattel into which the Goods or part thereof is incorporated shall be and remain the absolute property of the Company unless and until full payment for the Goods and for all other Goods supplied by the Company to the Buyer has been received by the Company whereupon property in the said product or chattel shall pass from the Company to the Buyer. The rights and obligations of the Company and the Buyer in relation to the Goods under Paragraph 15 of these Conditions shall apply to the said product or chattel, mutatis mutandis.
- 15.5 Subject to Paragraphs 15.7 and 15.8 below, the Buyer may, notwithstanding that property in the Goods has not passed to the Buyer under Paragraph 15.1, sell the goods in the ordinary course of its business to a sub-buyer, and upon such sale property in the Goods shall pass from the Company to the sub-buyer.
- 15.6 The Buyer shall not attempt or purport to pledge or transfer the Goods in any way as security to any third party until property therein has passed to the Buyer in accordance with the conditions hereof.
- 15.7 If the Buyer has a Receiver or Administrator appointed over all or any of its assets or if a petition is presented or a resolution is passed to wind it up then and in any such event the Buyer shall be deemed to have repudiated the agreement of sale and the Company shall be deemed to have accepted such repudiation and the Company's permission to the Buyer to sell the Goods shall thereupon terminate automatically.
- 15.8 Any sale by the Buyer permitted by sub paragraph 15.5 shall as between the Buyer and the sub-buyer be made by the Buyer as principal and not as agent but as between the Company and the Buyer, the Buyer shall be deemed to sell as the fiduciary agent of the Company and shall account to the Company for the proceeds of sale up to the amount owing to the Company for the Goods and any other Goods supplied by the Company to the Buyer, and pending such accounting, shall hold the proceeds of sale in a separate account unmingled with other monies.

16 General Liability

- 16.1 The Buyer relies on his own skill and judgement as to the sufficiency capacity and performance of the Goods and as to the suitability of the Goods for any purposes for which the same are required by the Buyer.
- 16.2 The Buyer shall, before using the Goods or any part thereof and before parting with possession of the same, take all reasonable steps to test and examine the same to satisfy himself that the Goods are of the contractual quality and description and are suitable for the purpose for which they are intended to be used.
- 16.3 Any claim by the Buyer that the Goods are not in accordance with the Agreement of Sale or are otherwise defective must be notified to the Company in writing.
- 16.3.1 in the case of any defect other than a defect within the scope of Paragraph 16.3.2 below within seven days of delivery;
- 16.3.2 in the case of any defect which could not reasonably have been detected by the Buyer by inspection upon delivery, within seven days of the day on which the defect comes to the Buyer's attention; and the Company shall, subject to Paragraph 16.6 below, be under no liability whatever in respect of any such defect unless such written notice has been duly given by the Buyer.
- 16.4 If the Buyer establishes that the Goods are not in accordance with the Agreement of Sale or are defective, the Company's liability in respect of such non-accordance or defects shall, subject to Paragraph 16.6 below, be limited to, at the Company's option:
- 16.4.1 repairing the Goods;
- 16.4.2 replacing the Goods on an exchange basis; or
- 16.4.3 accepting the return of the Goods and allowing the Buyer credit for the price thereof; or
- 16.4.4 making the Buyer an allowance against the price of the Goods in their condition as delivered and the Contract price.
- 16.5 Subject to Paragraph 16.6 below, and without prejudice to Paragraph 16.4 above, the Company's liability to the Buyer for any breach of contract or for any tort connected with the manufacture or supply of the Goods (whether negligent or otherwise) shall be strictly limited to the price of the Goods.
- 16.6 Nothing in these Conditions shall exclude or restrict the Company's liability:
- 16.6.1 for death or personal injury caused by negligence on the part of the Company, its servants or agents;
- 16.6.2 under Section 12 of the Sale of Goods Act 1979;
- 16.6.3 where the Company offers, and the Buyer requests a Guarantee or Warranty from the Company within 12 months of supply of the Goods or 6 months of practical completion of the project where the Buyer installs the Goods whichever is sooner, and the Company issues a Guarantee or Warranty in respect of the Goods.
- 16.7 The Buyer shall indemnify the Company against any third party claim of whatever nature (including a claim for negligence) made against the Company which arises directly or indirectly out of the use or condition of the Goods.

17 Sub-Contracting

- 17.1 The Buyer shall not assign or delegate any of its rights or obligations under the Sales Agreement to a third party without the prior written consent of the Company. The Company shall, at its own discretion, have the right to assign, delegate or subcontract any of its rights or obligations under any agreement with the buyer.
- 17.2 Notwithstanding any assignment or delegation, the Buyer shall remain fully responsible for the performance of its obligations under the Sales Agreement.

18 Force Majeure

Should the performance of the Company of any of its obligations under the Contract be prevented, hindered or delayed whether directly, indirectly or otherwise howsoever by or in consequence of an event of war, an outbreak

of hostilities (whether or not involving the United Kingdom and whether war is declared or not) rebellion, riot, acts of providence, strikes, lock outs, trade disputes or other labour difficulties, breakdown, delays in transport, accident, fire, delay in delivery of raw materials or components or any other cause beyond the reasonable control of the Company, or in the event that despite all reasonable efforts having been made the Company is unable to obtain any necessary licences, consents or authorities for the exportation or importation of or payment for any Goods, or in the event of national emergency, if the Company's works should become either directly or indirectly so engaged on Government contracts or contracts under priority directions so as to prevent, hinder or delay work on other contracts, the Company shall be entitled at any time, on notice to the Buyer, to make partial deliveries only or to determine the Agreement of Sale without liability and without prejudice in any case to rights which have already accrued to the Company and the Buyer in respect of deliveries already made.

19 Lien

Without prejudice to any other right which the Company may have, the Company shall be entitled to exercise a general lien or right of retention of all goods in the Company's possession, which are, or are intended to become, the Buyer's property in regard to all debts, damages or other sums due to the Company under any contract whatsoever between the Company and the Buyer and in the event of the insolvency of the Buyer, and pursuant to such lien or right, the Company shall be entitled without notice to the Buyer to sell all or any portion of such goods and to set off against the proceeds of sale the costs of sale and all debts, damages and other monies due from the Buyer to the Company.

20 Waiver

No time or other indulgence granted by the Company to the Buyer shall operate or be deemed to operate as a waiver or suspension of the Company's rights under these Conditions.

21 Customs, Duties etc

Without prejudice to paragraph 5 above, all customs or other duties or taxes whatsoever which may be levied on the Goods in any territory shall be borne by the Buyer, provided always that the Company shall be entitled (but shall be under no obligation) to pass to the Buyer the benefit of any arrangements made with Authorities for the release of the Goods under bond in which event the Buyer shall indemnify the Company in respect of its costs and expenses thereof and in regard to all other payments which may fall due including any penalties, fines or forfeiture incurred in connection therewith.

22 Trade Marks

The Buyer undertakes to respect all trade marks of the Company and in particular where there is such a trade mark or trade marks on the Goods it undertakes:

- 22.1 not to alter remove or obliterate such trade marks either partly or wholly;
- 22.2 not to apply any other trade mark to the Goods;
- 22.3 not to apply to the Goods any other matter in writing that is likely to injure the reputation of the trade mark.

23 Intellectual Property

- 23.1 Any idea, invention, concept, discovery, work of authorship, patent, design, copyright, trademark, trade secret, know how or other intellectual property, irrespective of whether it is registered or not, which is owned by the Company or which is developed by the Company within the framework of the Sales Agreement shall remain the sole property of the Company, even where the Sales Agreement is concluded for the ad hoc creation of works that could be considered as works made for hire.
- 23.2 Neither the Buyer, nor any of its subcontractors, customers or third parties, shall have the right to copy, alter, repair, rebuild or reconstruct, or to have copied, altered, repaired, rebuilt or reconstructed, any of the goods delivered under the Sales Agreement, without the prior written consent of the Company.
- 23.3 In all cases where goods are made according to the specifications of the Buyer, the Buyer shall fully indemnify and hold harmless Company from and against any and all claims and damages, losses, costs or expenses incurred by the Company as a result of the infringement of any patent, trademark, design, trade secret or proprietary process in the design, application, processing or use by third parties of such goods.

24 Confidentiality

- 24.1 The Buyer engages to treat all information, documents, samples, drawings, trade secrets, prices and personal data received from Company under the Sales Agreement by any means, as strictly confidential, irrespective of whether this information, documents, samples, drawings, trade secrets, prices or personal data have been explicitly marked as confidential or are covered by any intellectual property right, except if the Buyer can show that the information:
- 24.1.1 Is publicly available at the moment of disclosure, without any confidentiality obligation being breached by the Buyer;
- 24.1.2 Was already rightfully in the possession of or received by the Buyer at the moment Company disclosed it, without any confidentiality obligation being breached by the Buyer;
- 24.1.3 Was developed in an independent manner by the Buyer.
- 24.2 The Buyer shall use the confidential information only for the purpose of execution of the Sales Agreement and shall not communicate it to third parties, unless upon Company's prior written consent. The Buyer will only disclose the confidential information to persons on a need to know basis, and ensure that all these persons are bound by confidentiality obligations not less stringent than those contained in this clause.
- 24.3 The confidentiality obligations mentioned in clauses 24.1 and 24.2 are valid during the entire duration of the Sales Agreement and for a period of five (5) years following the end thereof.
- 24.4 If the Buyer is obliged by law or by the order of any court or regulatory authority to disclose confidential information, the Buyer will inform the Company thereof immediately, will restrict disclosure to the minimum required and will clearly communicate that the disclosed information is of a confidential nature.
- 24.5 Confidential information shall at all times remain the exclusive property of Company.

25 Notices

Any communications or notices under the Contract between the Company and the Buyer must be made or given by sending the same by ordinary paid first class post, in the case of the Buyer to his last known address, and in the case of the Company, to its registered office and if so sent shall be deemed to have been made or given on the second working day after the date on which it was posted.

26 Proper Law and Jurisdiction

These Conditions and all agreements between the Company and the Buyer shall be governed by English Law and subject to the exclusive jurisdiction of the English Courts.

27 Validity

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.