

## **TERMS AND CONDITIONS**

### **1. Basis of the sale**

- 1.1. The Seller shall sell and the Buyer shall purchase the Goods in accordance with the terms set out overleaf and these terms and conditions ("Terms"), which shall apply to the exclusion of any and all other terms and/or conditions whether contained in the Buyer's order or any other document.
- 1.2. Without limiting the manner in which these Terms may be accepted by the Buyer or incorporated into the contract made between the Seller and the Buyer for the sale and purchase of the Goods ("the Contract"), the Buyer shall be deemed to have accepted these Terms and agreed to the Contract being governed by these Terms if the Buyer:
  - (a) signs this document or a duplicate thereof;
  - (b) performs any of its obligations for the purchase of the Goods;
  - (c) does not reject these Terms in writing within seven (7) days of the Buyer's receipt of this document.
- 1.3. No variation to the Contract or these Terms shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.
- 1.4. The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.
- 1.5. 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 on 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.
- 1.6. 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. Quantity and Specifications**

- 2.1. The Seller shall supply the quantity of Goods stated overleaf subject to a variation of five per cent (5%) plus or minus at Seller's option.
- 2.2. The Goods supplied by the Seller shall conform to the Seller's current specifications for such Goods which shall be available from the Seller upon request and any other additional specifications or descriptions (if any) as set out overleaf. No other specification, descriptive material, written or oral representation, correspondence or statement, promotional or sales literature shall form part of or be incorporated by reference into the Contract.
- 2.3. The Buyer shall be responsible to the Seller for ensuring the accuracy of the quantity, specifications and/or descriptions (if any) of the Goods as set out overleaf and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with these Terms.
- 2.4. If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or as a consequence of the Seller's use of the Buyer's specification, including, without limitation, any amount paid or agreed to be paid by the Seller in settlement of any claim for infringement of any industrial or intellectual property rights of any other person.
- 2.5. The Seller reserves the right to make any changes in the specification of the Goods which are required to conform to any applicable statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

### **3. Inspection**

- 3.1. The quantity and specifications of the Goods delivered under the Contract shall be determined by reference to the results of tests and surveys conducted during an inspection of the Goods by the manufacturer (or a surveyor or inspector in lieu of the manufacturer) at the manufacturer's premises prior to delivery. Following such inspection, any document, report or certificate issued by the manufacturer (or a surveyor or inspector in lieu of the manufacturer) as regards the quantity or specifications of the Goods shall be final and binding on the Seller and Buyer.
- 3.2. If an inspection by the manufacturer (or a surveyor or inspector in lieu of the manufacturer) is not carried out, then the Buyer shall be responsible for arranging for the testing and inspection of the Goods prior to delivery.
- 3.3. The Seller shall have no liability for any claim in respect of any shortage in quantity or defect in the quality or condition of the Goods or any non-conformity with specifications which would be apparent upon testing and inspection and which is made after delivery or in respect of any loss or damage during transit.

### **4. Price of the Goods**

- 4.1. The Buyer shall pay for the Goods at the unit price indicated overleaf multiplied by the quantity of Goods delivered under the Contract plus any commission, interest and other costs and expenses to be borne and paid by the Buyer as indicated overleaf.
- 4.2. The Seller reserves the right, by giving written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to Force Majeure or any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, increased or additional taxes or other governmental charges, increased or additional freight charges and/or surcharges, increased or additional premium for insurance of the Goods, significant increase in the costs of labour, materials or other costs 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 the Seller adequate information or instructions.
- 4.3. The price is exclusive of any applicable tax (including, without limitation, goods and services tax) which the Buyer shall be additionally liable to pay to the Seller.
- 4.4. All taxes, duties, charges, fees, levies and other fiscal impositions which may at any time be charged or payable outside Singapore in respect of the Goods shall be borne and paid by the Buyer.

### **5. Containers**

- 5.1. If the Goods are delivered in or on or together with any drum, tank, storage unit, container, isotainer, package, item, article, device or the like (hereafter collectively referred to as "Containers"), the Buyer shall assume sole liability and responsibility for such Containers, including, without limitation, the loss, damage, contamination, soiling or detention of such Containers and/or any demurrage incurred in respect of such Containers, from the time of delivery of such Containers to the Buyer until such time as the Containers are returned to the Seller or their rightful owners.
- 5.2. The Buyer shall defend, indemnify and hold the Seller harmless from and against all suits, demands, claims, liabilities, losses, damages, expenses and costs of whatsoever nature arising out of or in connection with or resulting from the carriage, transportation, stowage, loading, unloading, use and/or storage of the Containers including, without any limitation any loss of or damage to the Containers, any abandonment or neglect of the Containers and any delay incurred in relation to the Containers.

## **6. Terms of payment**

- 6.1. Subject to any payment terms stated overleaf, the Seller may invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 6.2. The Buyer shall pay the price of the Goods within the time period stated overleaf. Where no time period for payment is stated overleaf, the Buyer shall pay the price of the Goods within fourteen (14) days of the date of the Seller's invoice. 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. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only on request.
- 6.3. Payment of the price shall be made by the Buyer without any discount or deduction whatsoever or on account of any taxes, levies, duties, charges, fees, withholdings, discounts, set-offs, counterclaims, restrictions or conditions of any nature and notwithstanding any claims of whatsoever nature and howsoever arising.
- 6.4. Where the payment terms overleaf provide for payment by letter of credit, then unless otherwise agreed or indicated overleaf, the Buyer shall open an irrevocable letter of credit in favour of the Seller in a form acceptable to the Seller within 14 days of the date of conclusion of the Contract. The letter of credit shall be confirmed by a bank in Singapore acceptable to the Seller. If the Buyer fails to open the letter of credit within the time prescribed, the Seller shall be entitled to cancel the Contract without incurring any liability whatsoever to the Buyer and the Buyer shall indemnify the Seller in full against all losses (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses suffered or incurred by the Seller as a result of the cancellation.
- 6.5. If the Buyer fails to make any payment on the due date or defaults on any of its obligations then, without limiting any other right or remedy available to the Seller, the Seller may:
  - (a) cancel the Contract or suspend any further deliveries to the Buyer;
  - (b) appropriate any payment made by the Buyer to such of the 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/or
  - (c) charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate per annum as indicated overleaf, from the date payment is due to the date full payment is received. If no rate of interest is indicated overleaf, the Singapore Interbank Offered Rate or its successor ("SIBOR"), for three months for the currency in which payment is due as quoted by the Seller's nominated bank for the day when payment is due, increased by five percent (5%), shall apply. If payment falls due on a day in which SIBOR is not quoted by the Seller's nominated bank, then the SIBOR last quoted by the Seller's nominated bank prior to the day payment is due shall apply. If SIBOR is not quoted for the currency in which payment is due, then SIBOR as quoted for US Dollars or Singapore Dollars, whichever is higher, shall apply.

## **7. Delivery**

- 7.1. The Goods shall be delivered in accordance with the terms stated overleaf. Where the terms of delivery are not stated overleaf, then delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.

- 7.2. The date for delivery as stated overleaf is only an estimate and the Seller shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in writing. The Goods may be delivered or shipped by the Seller in advance of the date of delivery stated overleaf on giving reasonable notice to the Buyer.
- 7.3. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Terms 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.
- 7.4. If the Seller fails to deliver the Goods (or any instalment) for any reason other than any cause due to Force Majeure 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.
- 7.5. If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions prior to delivery (otherwise than by reason of the Seller's fault) then, without limiting any other right or remedy available to the Seller, the Seller may:
  - (a) store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
  - (b) 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.

## **8. Risk and property**

- 8.1. If the Contract provides for the Goods to be delivered to the Buyer pursuant to a delivery term which is defined in or given a particular meaning by the provisions of the INCOTERMS in force as at the date of conclusion of the Contract ("INCOTERMS") then risk shall pass according to the provisions of the INCOTERMS for such delivery term.
- 8.2. Where Clause 8.1 is inapplicable, risk of damage to or loss of the Goods shall pass to the Buyer:
  - (a) in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
  - (b) in the case of Goods to be delivered otherwise than at the Seller's premises, 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.
- 8.3. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, the property in the Goods shall not pass to the Buyer until the Seller 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 the Seller to the Buyer for which payment is then due.
- 8.4. Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property, but the Buyer may resell or use the Goods in the ordinary course of its business.
- 8.5. 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), the Seller may at any time require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 8.6. 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 the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without limiting any other right or remedy of the Seller) forthwith become due and payable.

## **9. Warranties**

- 9.1. The Seller makes no warranties whatsoever in respect of the Goods including, without limitation, the fitness for purpose, performance, use, quality or merchantability of the Goods, whether express or implied, by statute at common law or otherwise notwithstanding that the purpose or intended use of the Goods may be known or made known to the Seller.
- 9.2. All conditions, warranties, stipulations or other statements whatsoever relating to the Goods including, without limitation, the fitness for purpose, performance, use, quality or merchantability of the Goods, whether express or implied, by statute at common law or otherwise, are hereby excluded.

## **10. Liability**

- 10.1. A claim by the Buyer which is based on any shortage in the quantity of the Goods or defect in the quality or condition of the Goods or their failure to correspond with specification shall, whether or not delivery is refused by the Buyer, be notified in writing to the Seller within seven (7) days from the date of delivery or where the shortage, defect or failure was not apparent on reasonable inspection, within a reasonable time after discovery of the shortage defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such shortage, defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 10.2. Where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Terms, the Seller may replace the Goods free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), in which case the Seller shall have no further liability to the Buyer. In the event the price of the Goods is refunded, the Goods, if in the possession of the Buyer, shall be returned to the Seller at the Buyer's cost and expense.
- 10.3. Where there is a shortage in the quantity of the Goods, the Seller shall be under no liability whatsoever to the Buyer except to refund to the Buyer within a reasonable time that portion of the price received from the Buyer which relates to the quantity of Goods not delivered.
- 10.4. 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 loss of profit, business, contracts, revenues, or anticipated savings; or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its servants or agents or employees or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) 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 Terms.
- 10.5. 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 ("Force Majeure"). Without limiting the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:
  - (a) Act of God, explosion, flood, lightning, tempest, fire, earthquake and other acts or elements;
  - (b) war or threat of war (whether war be declared or not), invasion, act of foreign enemies, act of terrorists, sabotage, invasion, insurrection, rebellion, revolution, military or usurped power or civil war, riot, civil disturbance, disorder or requisition;

- (c) acts, restrictions, regulations, bye-laws, refusal to grant any licenses or permissions, prohibitions or measures of any kind on the part of any local, state, national, governmental, supra-governmental parliamentary or local authority;
- (d) import or export regulations or embargoes;
- (e) strikes, lock-outs or other industrial actions or trade disputes of whatever nature (whether involving employees of the Seller or of a third party);
- (f) default of suppliers (where such default is itself caused by Force Majeure);
- (g) difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- (h) power failure or breakdown in machinery.

## **11. Indemnity**

- 11.1. The Buyer agrees to defend, indemnify and hold the Seller, its holding, subsidiaries and affiliated companies and its and their officers, employees and agents, harmless from and against all suits, demands, claims, liabilities, losses, damages, expenses and costs of whatsoever nature arising out of or in connection with or resulting from:
- (a) the Buyer's non-performance or breach of the Contract and/or these Terms;
  - (b) the act, neglect, omission or default of the Buyer or its servant, agent, employee, subcontractor or service provider.

## **12. INCOTERMS**

- 12.1. All trade and delivery terms used in the Contract and these Terms shall be interpreted in accordance with the provisions of INCOTERMS which provisions are hereby incorporated by reference into these Terms for the purposes of giving effect to this Clause. In the event of any conflict between the provisions of INCOTERMS and these Terms, the latter shall prevail.
- 12.2. The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.

## **13. General**

- 13.1. The Seller may perform any of its obligations or exercise any of its rights under the Contract by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Seller.
- 13.2. A notice required or permitted to be given by either party to the other under these Terms 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.
- 13.3. 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.
- 13.4. If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
- 13.5. A person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act (Cap. 53B) to enforce any term of the Contract or these Terms.
- 13.6. The Contract and these Terms shall be subject to and construed in accordance with the laws of the Republic of Singapore.
- 13.7. Both Seller and Buyer agree to submit to the non-exclusive jurisdiction of the Singapore courts.