

GENERAL CONDITIONS OF SALE

1 DEFINITIONS

- 1.1 "Buyer" means the person who buys or agrees to buy the Goods from the Seller.
- 1.2 "Conditions" means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller.
- 1.3 "Contract" means any contract between the Seller and the Buyer for the sale and purchase of Goods, incorporating the Conditions.
- 1.4 "Delivery Date" means the date (if any) specified by the Seller when the Goods are to be supplied.
- 1.5 "Force Majeure Event" means circumstances beyond the reasonable control of the Seller including, without limitation, acts of God, governmental or regulatory actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, loss of utilities, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), failure of sub-contractors or suppliers, restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable raw materials or other supplies.
- 1.6 "Goods" means the goods or articles purchased by the Buyer from the Seller pursuant to a Contract, as identified in any Order Acknowledgement or otherwise by the Seller in writing.
- 1.7 "Intellectual Property Rights" means all patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights in any part of the world, whether registered or not or capable of registration or not and including the right to apply for and all applications for any of the foregoing rights and the right to sue for infringements of any of the foregoing rights.
- 1.8 "Order Acknowledgement" means an acknowledgement in writing (including by email) issued by the Seller to the Buyer setting out the terms on which an order for Goods is accepted in accordance with clause 2.
- 1.9 "Price" means the price for the Goods excluding carriage, packing, insurance and VAT or other applicable sales tax, as more particularly detailed in clause 3.
- 1.10 "Seller" means Kluman and Balter Limited (registered in England under number 02995518), whose registered office is at Alpha House, Lawnswood Business Park, Redvers Close, Leeds LS16 6QY.

2 CONDITIONS OF SALE

- 2.1 These Conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order confirmation of order or similar document, or which otherwise are implied by trade, custom, practice or course of dealing.
- 2.2 All orders for Goods or acceptance of the Seller's quotation shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.
- 2.3 These Conditions apply to all the Seller's sales and any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing by the Seller. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract. Nothing in this clause shall exclude or limit the Seller's liability for fraudulent misrepresentation.
- 2.4 No order placed by the Buyer shall be deemed to be accepted by the Seller until an Order Acknowledgement is issued by the Seller or the Seller delivers or procures delivery of the Goods to the Buyer.
- 2.5 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

- 2.6 Any quotation is valid for a period of 24 hours from its issue date, provided that the Seller has not previously withdrawn it.
- 2.7 The Seller shall be under no obligation to accept any orders which may be submitted to it from time to time and shall be entitled to decline to accept any orders without liability or the need to give reason.

3 THE PRICE AND PAYMENT

- 3.1 Subject to clause 3.2 the Price shall be the price set out in the Order Acknowledgement failing which it shall be the Seller's quoted price. Any VAT or other applicable sales tax shall be due at the applicable rate on the date of the Seller's invoice.
- 3.2 The Seller may by giving notice to the Buyer at any time prior to delivery, increase the Price of Goods to reflect any increase in the cost to the Seller which is due to:
 - 3.2.1 factors occurring after the date of the Order Acknowledgement which are beyond the reasonable control of the Seller (including, without limitation, foreign exchange fluctuations, taxes and duties and the cost of labour, materials and other manufacturing costs);
 - 3.2.2 any request by the Buyer to change the delivery date(s), quantities, specifications or types of Goods ordered; or
 - 3.2.3 any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions.
- 3.3 The Seller will usually invoice the Buyer for the Goods on or after delivery however the Seller reserves the right to invoice the Buyer at any other time. Payment of the Price and VAT or other applicable sales tax shall be due within 30 days of the date of the invoice. Time for payment shall be of the essence.
- 3.4 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment and shall accrue after as well as before any judgement. The Seller reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 3.5 If the Buyer fails to make any payment on the due date then without prejudice to any of the Seller's other rights the Seller may:
 - 3.5.1 suspend or cancel deliveries of any Goods due to the Buyer; and/or
 - 3.5.2 appropriate any payment made by the Buyer to such of the Goods (or Goods supplied under any other contract with the Buyer) as the Seller may in its sole discretion think fit; and/or
 - 3.5.3 treat this Contract as repudiated by the Buyer.
- 3.6 Prices are the Seller's ex works prices and where the Seller agrees to arrange for the Goods to be sent to the Buyer the Buyer shall be responsible for the costs of loading, carriage, insurance and unloading.
- 3.7 The Buyer shall make all payments due under the Contract in full without any deduction by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.
- 3.8 On termination of the Contract all sums payable by the Buyer to the Seller under any Contract (including the Price) shall become immediately due and payable by the Buyer.

4 THE GOODS

- 4.1 The Seller may vary the specification for any Goods prior to delivery if necessary in order to comply with any applicable statutory or regulatory requirement or for any other reason provided that in that case, the variation in question does not result in any material adverse change to the specification in existence when the Buyer's order for the Goods in question was accepted.
- 4.2 Any samples, drawings, measurements, descriptions, advertising, photographs, catalogues, websites or similar which may be provided by the Seller concerning any Goods are produced and provided solely for the purpose of giving an

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- approximate idea of the Goods described and such information and items shall not form part of any Contract nor have any contractual force.
- 4.3 The specifications and designs of the Goods (including the Intellectual Property Rights therein) shall as between the parties be the property of the Seller. Where any designs, specifications or other information required to complete an order for the Goods have been supplied by the Buyer for manufacture by or to the order of the Seller then the Buyer warrants that the use of those designs, specifications or other information for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party. The Buyer shall indemnify the Seller against all liabilities, costs, expenses, damages and losses suffered or incurred by the Seller in connection with any claim made against the Seller for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Seller's use of the designs, specifications or other information.
- 5 **QUALITY**
- 5.1 The Seller warrants that, subject to the other provisions of these Conditions, on delivery and thereafter until the expiry/best before date stated on the packaging of the Goods, the Goods shall:
- (a) be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
- (b) comply in all material respects with the description of the Goods contained in the Seller's specification.
- 5.2 The Seller shall not be liable for a breach of any of the warranties in clause 5.1 unless the Buyer (acting reasonably) considers the claim to be valid and:
- (a) the Buyer has conducted a thorough visual inspection of any Goods on delivery and gives written notice of the breach to the Seller within 7 days of delivery of the Goods (unless such other time is specified by the Seller in writing);
- (b) the Seller is given a reasonable opportunity after receiving the notice of examining such Goods; and
- (c) the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Buyer's cost.
- 5.3 Without prejudice to clause 5.2 the Seller shall not be liable for a breach of any of the warranties in clause 5.1 if:
- (a) the Buyer makes any further use of such Goods after giving such notice;
- (b) the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, use or maintenance of the Goods or (if there are none) good trade practice;
- (c) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.4 Subject to clause 5.1 and clause 5.2, if any of the Goods do not conform with any of the warranties set out in clause 5.1 the Seller shall at its option replace such Goods (or the defective part) or refund the Price of such Goods at the pro rata Contract rate provided that, if the Seller so requests, the Buyer shall, at the Buyer's expense, return the Goods or the part of such Goods which is defective to the Seller.
- 5.5 If the Seller complies with clause 5.4 it shall have no further liability for a breach of any of the warranties in clause 5.1 in respect of such Goods, and (subject at all times to clause 10.3) such compliance shall represent the Buyer's sole and exclusive remedy in respect of any failure of the Goods to comply with the warranties set out at clause 5.1.
- 5.6 The Buyer shall on request: (a) permit the Seller to access any premises where any Goods which are the subject of a warranty claim are located for the purposes of inspecting and testing those Goods; and/or (b) promptly return to the Seller (at the Buyer's expense) any Goods which are the subject of a warranty claim.
- 5.7 The Buyer shall on demand reimburse the Seller for any reasonable costs and expenses which are incurred by it in investigating any warranty claim made by the Buyer which is subsequently found to be invalid for any reason.
- 6 **DELIVERY OF THE GOODS**
- 6.1 Where pursuant to any Contract: (a) the Seller has agreed to make delivery to the Buyer the Seller shall deliver the Goods to the location as specified in the applicable order on or around any delivery date as detailed in the order or, if no delivery date is detailed in the order, on the date as specified by the Seller (although time of such delivery shall not be of the essence); or (b) the Buyer is to collect the Goods from the Seller then the Buyer shall collect such Goods from the location advised by the Seller during the usual working hours of the Seller within 3 days of the date on which the Seller advises the Buyer that such Goods are ready for collection (and time for collection of such Goods shall be of the essence) and such collection shall constitute "delivery" for the purposes of these Conditions.
- 6.2 In the event that the Buyer fails to: (a) accept delivery of any order when the Seller first attempts to make delivery; or (b) collect any order within the time period required under clause 6.1 then in either case: (c) risk of loss or damage occurring to the relevant Goods shall be deemed to pass to the Buyer at the time when the Seller first attempted to make delivery or upon the expiry of the time period specified in clause 6.1 (as applicable); and (d) the Buyer shall indemnify the Seller in full on demand for all costs and expenses incurred by the Seller in storing the Goods in question and attempting re-delivery.
- 6.3 The Seller may deliver Goods in instalments, the Price of which shall be invoiced and paid for separately. Any such instalment shall constitute a separate Contract and any delay in delivery or defect in one instalment shall not entitle the Buyer to cancel any other instalment.
- 6.4 The Seller may deliver up to more or less than 5% of the volume of Goods comprised within any order and the Buyer shall not be entitled to reject any delivery on the basis of any difference in volume within such tolerances. In such circumstances the Price of the relevant order shall be adjusted on a pro-rata basis to reflect the actual volume of Goods delivered.
7. **NON-DELIVERY**
- 7.1 The quantity of any consignment of Goods as recorded by the Seller on despatch from the Seller's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive written evidence proving the contrary.
- 7.2 Subject at all times to clause 10.3, any liability of the Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a refund or credit note at the pro rata Contract rate against any invoice raised for such Goods.
- 8 **ACCEPTANCE OF THE GOODS**
- 8.1 The Buyer shall, at the time of delivery, inspect the Goods and notify the Seller of any shortage or visual damage immediately, and in any event before completion of delivery.
- 8.2 The Buyer shall be deemed to have accepted the Goods upon completion of delivery in the event that the Seller fails to notify of any shortfall of the Goods or visual defects as required under 8.1.
- 8.3 After acceptance the Buyer shall not be entitled to reject Goods which, in its opinion, do not conform with the Contract.
- 8.4 Goods delivered to the Buyer which are in accordance with the Contract shall not be eligible for return without the prior written approval of the Seller in accordance with the Seller's returns authorisation procedure and on terms determined at the absolute discretion of the Seller.
- 8.5 Goods returned without the prior written approval of the Seller may at the Seller's absolute discretion be returned to the Buyer or stored at the Buyer's cost without prejudice to any other rights or remedies the Seller may have.
- 9 **TITLE AND RISK**
- 9.1 The Goods are at the risk of the Buyer from the time of delivery.

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- 9.2 Ownership of the Goods shall not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of:
- 9.2.1 the Goods; and
- 9.2.2 all other sums which are or which become due to the Seller from the Buyer on any account.
- 9.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
- 9.3.1 hold the Goods on a fiduciary basis as the Seller's bailee;
- 9.3.2 store the Goods (at no cost to the Seller) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;
- 9.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 9.3.4 maintain the Goods in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller.
- 9.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
- 9.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
- 9.4.2 any such sale shall be a sale of the Seller's property on the Buyer's behalf and the Buyer shall deal as principal when making such a sale.
- 9.5 The Buyer's right to possession of the Goods shall terminate immediately if:
- 9.5.1 the Buyer makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
- 9.5.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between the Seller and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade;
- 9.5.3 the Buyer encumbers or in any way charges any of the Goods; or
- 9.5.4 the Buyer undergoes a change of control (as defined in section 1124 of the Corporation Tax Act 2010).
- 9.6 The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.
- 9.7 The Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 9.8 Where the Seller is unable to determine whether any Goods are the Goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all Goods of the kind sold by the Seller to the Buyer in the order in which they were invoiced to the Buyer.
- 9.9 On termination of the Contract, howsoever caused, the Seller's rights contained in this clause 9 shall remain in effect.
- 10. LIMITATION OF LIABILITY**
- 10.1 The following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- 10.1.1 any breach of any Contract;
- 10.1.2 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
- 10.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law (save as set out in these Conditions) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these Conditions excludes or limits the liability of the Seller:
- 10.3.1 for death or personal injury caused by the Seller's negligence;
- 10.3.2 for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability;
- 10.3.3 for any breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- 10.3.4 for fraud or fraudulent misrepresentation; or
- 10.3.5 for defective products under the Consumer Protection Act 1987.
- 10.4 Subject to clause 10.2 and clause 10.3:
- 10.4.1 the Seller shall under no circumstances be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for loss of business; loss of use; loss of profit; loss of anticipated profit; loss of contracts; loss of revenues; loss or damage to goodwill or brand; loss of anticipated savings; loss of data or use of data; product recall costs; damage to reputation; and/or any consequential, special or indirect loss or damage in any case, regardless of whether or not the Seller was aware or had been made aware (or ought reasonably to have been aware) at the time of the relevant Contract being formed of the risk that such loss or damage might occur;
- 10.4.2 the Seller's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise howsoever arising under or in connection with the Contract, shall be limited to the Contract Price; and
- 10.4.3 The Seller shall not be liable for any failure or delay in complying with any of its obligations under any Contract in the event that the failure or delay in question is attributable to any Force Majeure Event.
- 10.5 Each provision of these Conditions and any Contract shall be read as subject to clause 10.3 and no such provision is intended to nor shall be interpreted as seeking to limit or exclude any type of liability set out therein.
- 11. NOTICES**
- Any notices to be served on either party by the other shall be in writing and sent by pre-paid registered post to the registered office address of the other party or such other address as is notified in writing by that party from time to time. Such notice shall be deemed to have been received by the addressee 72 hours after posting provided applicable evidence of posting is retained and produced on request.
- 12. INSOLVENCY OR OTHER DEFAULT OF BUYER**
- 12.1 If the Buyer commits a breach of these Conditions or any Contract or suffers any of the events set out in clause 9.5 all sums outstanding in respect of the Goods shall become payable immediately and the Seller may in its absolute discretion, without liability and without prejudice to any other rights which it may have:
- 12.1.1 suspend all future deliveries of Goods to the Buyer and/or
- 12.1.2 terminate the Contract without liability.
- 13. BACK ORDERS**
- The Seller shall be entitled to a general lien on all Goods of the Buyer in the Seller's possession (including Goods of the Buyer which have been paid for) for the unpaid price of all Goods sold to the Buyer by the Seller under this or any other Contract.

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- 14.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 14.2 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or not.
- 14.3 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 14.4 Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 14.5 Any Seller group companies shall be entitled to rely upon the benefit of any Contract and to enforce any Contract pursuant to the Contracts (Rights of Third Parties) Act 1999. Subject to the foregoing, a person who is not a party to a Contract shall have no right to enforce any term of that Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 14.6 The Seller reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability) if it is prevented from or delayed in the carrying on of its business due to a Force Majeure Event, provided that, if the event in question continues for a continuous period in excess of 6 months the Buyer shall be entitled to give notice in writing to the Seller to terminate the Contract.
- 14.7 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party (or of any member of the group to which the other party belongs) except as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 14.8 The parties are with respect to each other independent contractors and nothing in these Conditions or any Contract and no actions taken by the parties under any these Conditions or any Contract shall be deemed to constitute any agency, partnership, association, joint venture or other co-operative enterprise between the parties.
- 14.9 The Buyer may not assign or transfer any of its rights and/or obligations under any Contract without the prior written consent of the Seller. The Seller may assign or transfer any or all of its rights and/or obligations under any Contract on notice to the Buyer.
- 14.10 In these Conditions and each Contract: headings are inserted for convenience only and shall not affect construction or interpretation; references to clauses are to the clauses of these Conditions; words denoting the singular shall include the plural and vice versa; words denoting any gender shall include all genders; any reference to any law, statute, statutory provision, statutory instrument, directive, subordinate legislation, code of practice or guideline shall be construed as a reference to the same as may be amended, consolidated, modified, extended, re-enacted or replaced from time to time; and use of words such as "include", "including" and "in particular" shall not limit the generality of any preceding or following words which are not intended to be exhaustive.

15. LAW OF ENGLAND AND WALES

These Conditions and each Contract shall be governed by English law and, save in respect of the enforcement of any judgment, the parties agree to submit to the exclusive jurisdiction of the English courts.