

Appendix A – General Sales and Delivery Conditions

1) APPLICATION

These conditions shall apply to any orders, offers, quotations and contract entered into by Cygnet Texkimp ("the Seller") for the supply of any goods or services ("Goods") to you ("the Buyer"). No variation to these conditions shall be effective unless set out in the contract and accepted in writing by the Seller. In the event of there being any conflict between these conditions and anything appearing in the contract the latter shall prevail. All orders placed with the Seller require the Seller's written acceptance before any obligation attaches to the Seller. These conditions shall apply to the exclusion of any other terms and conditions of the Buyer.

2) DELIVERY

- a) The specified time for delivery shall be reckoned from the date of receipt by the Seller of all of the following:
 - i) the deposit (if any)
 - ii) all information required from the Buyer to enable the Seller to complete the order
 - iii) any necessary import license
- b) The Seller will obtain, where applicable, an export license for the Goods but if any delay is experienced or such a license is not granted then the Seller may extend the time for delivery or cancel the contract.
- c) The Seller will not be under any liability in respect of delays in delivery or any failure to deliver the Goods due to circumstances outside its control or if within its control outside its reasonable contemplation at the time of acceptance of the order including without prejudice to the generality of the foregoing non-availability of materials or parts, war, riot, fire, explosion, collapse of buildings or breakdowns, or from any strike, lock out or labour dispute (whether occurring as regards the Seller or any of the Seller's suppliers) or from government or local restrictions or force majeure. During any of the foregoing events the Seller shall be entitled to postpone or cancel delivery. In the event of cancellation the Seller shall be paid pro rata for goods delivered to the date of cancellation.
- d) Where the Goods are sold FOB the Seller shall not be under any obligation to give the Buyer notice in accordance with Section 32(3) of the Sale of Goods Act 1979.
- e) Time is not of the essence of this contract unless specifically made so and agreed to by the Seller and subject thereto any time or date specified by the Seller as time at which or date on which goods will be dispatched or delivered is given and intended as an estimate only and the Seller shall not be liable for any loss, damage or expense howsoever arising from delay in delivery.

3) TITLE AND RISK

- a) Notwithstanding delivery and the passing of risk in the Goods, title to the Goods shall not pass to the Buyer until payment in full has been made of all sums due from the Buyer to the Seller under this or any other contract. The Seller shall be entitled at any time to enter on the Buyer's premises for the purposes of inspecting the Goods and in the event of payment not being made on the due date for the purpose of taking possession of the same. Pending payment in full being made the Buyer shall keep the Goods insured in their full replacement value and shall indemnify the Seller against any loss or damage thereto.
- b) Risk of damage to or loss of the Goods shall pass to the Buyer.
 - i) 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:
 - ii) 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 tenders delivery of the Goods. Delivery to a carrier or to any person firm or company on the Buyer's behalf shall constitute delivery to the Buyer.
- c) 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 and protected.

4) PAYMENT

- a) All sums due shall be payable in the UK in the currency in which the price is specified in the contract without any deduction whatsoever and the time specified for payment shall be of the essence of the contract.
- b) Any charges arising in connection with letter of credit, bank guarantees, collections, cashing of documents, stamps etc. shall be borne by the Buyer.
- c) Any deposit paid by the Buyer shall be irrevocable in all circumstances.
- d) Payment of the whole or any balance of the purchase price will become immediately due and payable in the event of:
 - i) Non-payment of any installment on its due date or:
 - ii) the Buyer committing or suffering any of the acts or things mentioned in clause b) or:
 - iii) the Buyer failing to give sufficient instructions to enable the Goods to be delivered or otherwise failing to comply with any reason outside the Seller's control or:
 - iv) the installations and commissioning of the Goods not being completed within 3 months of the date of their delivery for any reason outside the Seller's control or:
 - v) The Buyer indicating howsoever or by whatsoever means that it does not intend to be bound by the terms of the contract or that it is unwilling or unable to accept delivery of or pay for the Goods.
- e) If the Goods are delivered in installments payment shall be due in respect of that part of the Goods actually delivered notwithstanding any delay or failure to deliver the balance of the Goods.
- f) The Seller shall be entitled to charge interest at the rate of 2% (above Royal Bank of Scotland's base lending rate) per month on any overdue payment from the date on which payment was due to the date on which payment is received.
- g) Where there is any delay in payment the Buyer shall indemnify the Seller against all reasonable fees costs and expenses incurred in obtaining payment.

5) SPECIFICATION AND PERFORMANCE

- a) Developments in the design of the Goods are continually taking place and the Seller reserves the right to make reasonable alterations to its specifications without notice to the Buyer.
- b) Any specifications relating to performances are given in good faith but shall not form part of any contract or involve the Seller in undertaking to obtain equivalent results in specific cases.
- c) The Seller shall not be responsible for any defects occurring as a result of compliance with the Buyer's instructions, or any defects arising from any specification supplied by the Buyer.

6) PRICE

- a) In default of special agreement, prices are quoted ex works, including loading at the works, but excluding packing delivery and transport charges, insurance, the cost of installation and/or erection on site and the cost of any commissioning or running or installation tests and tests of all materials used therefor. Prices are unless otherwise stated, exclusive of VAT.
- b) Any increase in transport cost tariff rates or import duties or additional cost to the Seller due to variations in exchange rates shall be borne by the Buyer.
- c) Prices quoted in other than English currency are calculated on the basis of the existing relevant currency exchange rate. The Seller reserves the right to increase the price if the relevant currency exchange rate changes before the day of delivery.

7) ACCEPTANCE OF GOODS

- a) Unless otherwise notified to the Seller within 14 days of delivery the Goods shall be deemed to be accepted by the Buyer.

8) STORAGE

- a) If for any reason the Seller is not able to deliver the Goods within 14 days after notification to the Buyer or its agent that the Goods are ready for despatch the Goods shall be deemed to be accepted by the buyer and shall be at the risk of the Buyer who shall be responsible for all storage delivery insurance and other charges in respect thereof.

9) INSTALLATION AND COMMISSIONING

- a) The Buyer shall provide all necessary facilities and assistance as may be required by the Seller to enable the installation and commissioning of the Goods to be completed.
- b) If the installation and commissioning of the Goods is delayed or prolonged due to the Buyer's instructions or lack of instructions or due to any lack of facilities or assistance the Buyer shall reimburse the Seller any additional costs or expenses it may incur.
- c) Unless otherwise agreed in writing the Buyer shall pay the Seller's current rate for any installation, erection or commissioning of Goods carried out by the Seller or Agent or Sub-Contractor of the Seller.

10) WARRANTY

- a) The Seller shall supply free of charge replacement for or at its option repair any item which fails under proper use within 12 months after delivery provided it is proved to the Seller's reasonable satisfaction that the failure was by reason of faulty workmanship or materials. The Seller shall be under no liability in respect of any defect in the quality or condition of the Goods or their failure to meet specification unless the Buyer's claim is notified to the Seller within 14 days of the date upon which such defect or failure was or should reasonably have been discovered.
- b) Except as expressly provided in these conditions and except in respect of death or personal injury the Seller shall be under no liability whatsoever to the Buyer. All other conditions warranties or obligations whether express or implied by law trade custom or practice or otherwise are hereby excluded.
- c) The Seller does not warrant nor shall it be implied that the Goods or their use do or will not infringe the patent or other intellectual property rights of any third party. Where the Goods are or are capable of becoming subject to any intellectual property right the Seller shall transfer to the buyer only such titles as it may have to the Goods.
- d) The Seller shall indemnify the Buyer against direct damage or injury arising as a result of the Seller's proven negligence or that of its employees agents or sub-contractors provided that the Seller's liability otherwise than for death or personal injury shall not exceed GBP 2,500,000 in total.
- e) The Seller shall not in any event be liable for loss of profit or for any indirect or consequential loss or damage of any kind howsoever arising.
- f) The Buyer warrants that any special requirements or instructions for the goods do not and shall not infringe the patent rights, registered designs, copyright or other industrial property rights of others and the Buyer shall indemnify the Seller against all actions, costs (including the costs of defending any legal proceedings) claims, proceedings, damages, accounts and demands in respect of any infringement or alleged infringement by the Seller of the patent rights, registered design, copyright or other industrial property rights of others arising from or as a result of our compliance with the Buyer's special requirements or instructions for the Goods whether express or implied.
- g) The Buyer warrants that the goods will be operated in accordance with all relevant safety standards and agrees to indemnify the Seller in respect of any breach hereof.
- h) The Buyer warrants that no person other than anyone authorized by the Seller shall dismantle repair or so attempt or otherwise tamper with the Goods or any part or parts thereof in any way that might damage the goods or contribute to their defectiveness or need of repair.
- i) The Goods shall be used, maintained, stored and serviced in accordance with their operating instructions and in a proper and workmanlike manner.
- j) The Goods shall not be used whilst defective, in need of repair or otherwise not in accordance with the specification or order.
- k) The Seller shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions or misuse of the Goods.
- l) Subject as expressly provided in these conditions all warranties, conditions or other terms implied by law are excluded to the fullest extent permitted by law.

11) SUSPENSION

- a) If any payment due prior to, on or after delivery is not paid or if the Buyer shall fail to open any letter of credit or other financial instrument due to be opened in favour of the Seller under this or any other contract made between the Seller and the Buyer or if the Buyer commits any act of bankruptcy or takes or suffers any step leading to liquidation or has a receiver or administrator appointed of any of its assets, the Seller may suspend or withhold delivery of the Goods until the full amount of the contract price is received by the Seller or may as its option cancel the contract.

12) TAXES

- a) All prices quoted are exclusive of value added tax or other sales tax as may be applicable.
- b) The Buyer shall keep the Seller indemnified against all taxes duties and/or other impositions of a similar nature arising outside the UK whether levied on the Buyer or the Seller and whether in respect of the contract the Goods or any payment made in accordance with the terms of the contract.

13) GENERAL

- a) The granting of any time or other indulgence by the Seller to the Buyer shall not affect the Seller's right hereunder.
- b) The Buyer will not without the Seller's consent in writing assign or transfer the contract.
- c) In the event any term or provision of the contract shall for any reason be invalid illegal or unenforceable in any respect such invalidity illegality or unenforceability shall not affect any other form or provision hereof and the contract shall be construed and interpreted as if such term to the extent that the same shall have been held invalid illegal or unenforceable had never been incorporated herein.
- d) Any notice given hereunder shall be in writing and given by hand telexed sent by facsimile transmission or forwarded by first class prepaid post (air mail in the case of non-UK deliveries) to the receiving party at its registered office or (in the case of the Buyer) place of business and shall be deemed to have been given on the date of delivery by hand telex or facsimile transmission or seven days after that on which the notice was posted.
- e) Terms that are defined in Incoterms 1990 shall bear the same meaning in these conditions and in the contract.
- f) The legal construction of these conditions shall not be affected by their titles.
- g) These conditions and the contract between the Seller and the Buyer shall be governed by and construed in accordance with English law and the English courts shall have exclusive jurisdiction in respect of any dispute provided that the Seller may commence proceedings in any court having jurisdiction over the Buyer and provided that in relation to any contract for the international sale of goods having a value greater than GBP 1,000,000 any dispute shall be finely settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce in Paris by one or more arbitrators appointed in accordance with the said Rules.
- h) The Seller reserves all proprietary and patent rights in machinery and products and copyright in all estimates, drawings and other specifications, which must not be made available to any third parties by the Buyer.