

TERMS OF SALE

1 Interpretation

1.1 In these Terms –

“Buyer” means the person who accepts the seller’s written quotation for the sale of the Goods or whose Written order for the Goods is accepted by the Seller; “Goods” means the goods which the Seller is to supply in accordance with these Terms; “Seller” means Company, having its registered office at Old Quay D Road, Port Louis;

1.2 The headings in these Terms are for convenience only and shall not affect their interpretation.

2 Basis of the sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with the Seller’s Written quotation (if accepted by the Buyer), or the Buyer’s Written order (if accepted by the Seller), subject in either case to these Terms.

2.2 No variation to these Terms shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

2.3 The Seller’s employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing.

2.4 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.

2.5 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.

3 Orders and specifications

3.1.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller’s authorised representative.

3.1.2 Any order so accepted may, upon confirmation or at any time prior to delivery, be subjected to such other terms and conditions.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform its obligations in accordance with its terms.

3.3 The quantity, quality and description of the Goods and any specification for them shall be as set out in the Seller’s quotation (if accepted by the Buyer) or the Buyer’s order (if accepted by the Seller).

3.4 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with 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. No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

4 Price of the goods

4.1 The price of the Goods shall be the Seller’s quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller’s published price list current at the date of acceptance of the order. All prices quoted are valid for 30 days only (unless otherwise specified and / or agreed) or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

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 any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, 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 value added tax and / or such other tax as may, from time to time, become applicable.

5 Terms of payment

5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, 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.

5.2 The Buyer shall pay the price of the Goods (less any discount to which the Buyer is entitled, but without any other deduction) within 30 days of the date of the Seller’s invoice (unless otherwise specified and / or agreed in writing), and 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.

5.3 If the Buyer fails to make any payment on the due date then, without limiting any other right or remedy available to the Seller, the Seller may –

5.3.1 cancel the sale or suspend any further deliveries to the Buyer;

5.3.2 appropriate any payment made by the Buyer to such of the Goods as the Seller may think fit; and

5.3.3 in case any amount unpaid is recovered through an Attorney, charge the Buyer Attorney’s commission amounting to 10% as well as interest (both before and after any judgment) on the amount unpaid, at the rate of 2% per cent per annum above The Mauritius Commercial Bank Ltd prime lending rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6 Delivery

6.1 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.

6.2 Any dates quoted for delivery of the Goods are approximate only 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 this sale unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date on giving reasonable notice to the Buyer.

The Seller shall not be liable to the Buyer or be deemed to be in breach of the terms 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.

6.3.1 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller’s reasonable control or the Buyer’s fault, and the Seller is accordingly liable to the Buyer, the Seller’s liability shall only be limited to the excess (if any, and up to a maximum of 10% over the quoted price of the Goods) of the cost to the Buyer of similar goods to replace those not delivered.

6.4 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer’s reasonable control or by reason of the Seller’s fault) then, without limiting any other right or remedy available to the Seller, the Seller may –

6.4.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
6.4.2 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 this sale or charge the Buyer for any shortfall below the price under this sale.

6.5 Unless there is 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, all Goods, once delivered, are not returnable.

7 Risk

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer –

7.1.1 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

7.1.2 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 Indemnity

8.1 If the Seller is satisfied that the Buyer has, in respect of any of the Goods, made a valid claim which is based on a defect in the quality or condition of the Goods or their failure to meet specification, the Seller may replace the Goods (or the part in question) 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. The time bar for such claims is one year from time of delivery, unless stated otherwise.

8.2 If a claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of a drawing, design or specification supplied by the Buyer, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that –

8.2.1 the Seller is given full control of any proceedings or negotiations in connection with the claim;

8.2.2 the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;

8.2.3 except pursuant to a final award or judgment, the Buyer shall not pay or accept the claim, or compromise any such proceedings without the consent of the Seller;

9 Insolvency of buyer

9.1 This clause 9 applies if –

9.1.1 the Buyer makes a voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

9.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

9.1.3 the Buyer ceases, or threatens to cease, to carry on business; or

9.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

9.2 If this clause applies then, without limiting any other right or remedy available to the Seller, the Seller may cancel the sale or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary. Alternatively, the Buyer acknowledges that ownership of all unpaid Goods is deemed to be vested in the Seller and shall, if so requested in writing by the latter, surrender the said unpaid goods to the Seller

10 General

10.1 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.

10.2 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.

10.3 If any of the Terms 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.

10.4 Any dispute arising under or in connection with the Terms or the sale of the Goods shall be referred to the Courts of Mauritius or, upon the mutual agreement of the parties, to arbitration by a single arbitrator appointed by agreement.

10.5 The sale shall be governed by the laws of Mauritius and the Buyer agrees to submit to the non-exclusive jurisdiction of the courts of Mauritius.