

## **F. C. FROST LIMITED STANDARD CONDITIONS OF SALE**

### **1.0 GENERAL**

In these Conditions of Sale:

- 1.1 The "Seller" means F.C. Frost Limited and the "Buyer" means the person, firm or company with whom the Seller contracts to sell the Goods.
- 1.2 The "Goods" means the goods (including any instalment of the goods or any part(s) of them or services) that the Seller is to supply to the Buyer (or at the Buyer's direction) in accordance with these Conditions pursuant to the Contract.
- 1.3 The "Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed between the Seller and the Buyer.
- 1.4 "Writing" includes telex, cable, facsimile transmission, electronic mail and comparable means of Communication.
- 1.5 "Contract" means the contract for the purchase by the Buyer and sale by the Seller of the Goods and comprising the offer in the Buyer's Order accepted by the Seller's Acknowledgment and subject to these Conditions.
- 1.6 "Order" means whether or not in response to a quotation from the Seller the offer by the Buyer to purchase the Goods from the Seller and which is accepted by the Seller's Acknowledgment.
- 1.7 "Acknowledgment" means the Seller's acknowledgment in writing of the Order subject to these Conditions and signed by the Seller's authorised representative.
- 1.8 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.9 The headings in these Conditions are for convenience only and shall not affect their interpretation.
- 1.10 These Conditions of sale shall prevail over any other terms and conditions contained or referred to in, or on, the Buyer's order, receipt, correspondence or any similar document or any other form or in any other medium emanating from the Buyer or implied by trade, custom, or course of dealing unless such other terms or conditions are expressly agreed in Writing by the Seller.
- 1.11 The Seller's employees, agents or distributors shall not have authority to extend, vary or exclude any of these Conditions. Any purported extension, variation or exclusion thereof shall be without effect unless expressly agreed in Writing by the authorised representatives of the Seller and the Buyer.
- 1.12 The Seller's employees, agents or distributors 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.
- 1.13 Any advice or recommendation given by the Seller or its employees, agents or distributors 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 upon 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.

### **2.0 QUOTATIONS**

A quotation by the Seller shall constitute an invitation to treat and not an offer. The Seller may withdraw or amend any quotation at any time prior to the Seller's written acceptance of the Buyer's order.

### **3.0 ORDERS AND SPECIFICATIONS**

- 3.1 No Order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed by the Seller's Acknowledgment.
- 3.2 The Buyer shall be responsible to the Seller for the accuracy of the terms of any Order (including any applicable specification, plans or drawings) submitted or approved 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 the Contract in accordance with its terms. Where the Goods are to be used as part of a process or together with other goods not supplied by the Seller the Seller's Acknowledgment shall not constitute any acknowledgment or agreement on the part of the Seller that any specification for the Goods or the Goods themselves will meet their intended purpose or complete the intended process.
- 3.3 Subject to any other terms agreed in Writing by the Seller and the Buyer the quantity, quality and description of and any specification for the Goods shall be those set out in the Contract.
- 3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with any specification, plans or drawings submitted by the Buyer, the Buyer will indemnify the Seller against all claims,

proceedings, loss, damages, costs and expenses (including legal expenses on a full indemnity basis) awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement or alleged infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, firm or company arising directly or indirectly from the Seller's use of the Buyer's specification, plans or drawings.

- 3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or, where the Goods are to be supplied to the Seller's specification, plans or drawings, which do not materially affect their quality or performance.

#### **4.0 DIMENSIONS**

All weights and dimensions quoted are subject to normal commercial tolerances.

#### **5.0 DATA AND TECHNICAL INFORMATION**

- 5.1 Any information contained in sales literature, publicity material or other publications by the Seller is provided for general guidance only and forms no part of the Contract nor does it constitute any representation on the part of the Seller for the purposes of the Contract.

#### **6.0 PRICE**

- 6.1 The price of the Goods shall be the price specified in the Contract or if not so specified, the price listed in the Seller's price list current at the date of despatch of the Goods. Prices are quoted for delivery in the United Kingdom. Where the Goods are supplied for export from the United Kingdom, the Seller's current export price list shall apply. The Seller reserves the right to make such alterations to its price lists as it thinks fit at any time prior to despatch of the Seller's Acknowledgment. All prices quoted are valid for 30 days only or such other period, if any, agreed in Writing by the Seller.
- 6.2 The Seller reserves the right, by giving notice to the Buyer at any time after the Contract has been made but before delivery, to increase the price of the Goods to reflect:
- 6.2.1 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 currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture)
- 6.2.2 Any change in delivery address, dates, quantities or specifications for the Goods which is requested by the Buyer.
- 6.2.3 Any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 6.3 Unless otherwise agreed by the Seller in Writing all prices shall be deemed to be exclusive of Value Added Tax which shall be payable by the Buyer at the rate prevailing at the tax point.
- 6.4 Except as otherwise stated under the terms of any quotation and unless otherwise agreed in Writing between the Seller and the Buyer, all prices are given by the Seller on an ex works basis and where the Seller agrees to deliver the Goods other than at the Seller's premises or outside of the United Kingdom, the Seller reserves the right to charge the Buyer the cost of transportation and insurance of the Goods to deliver to the destination requested by the Buyer.

#### **7.0 TERMS OF PAYMENT**

- 7.1 Unless the Seller has at its sole discretion agreed to grant credit terms, all Goods must be paid for on the Seller's pro-forma invoice on the Seller's acceptance of the Buyer's order
- 7.2 Credit accounts may be opened, subject to satisfactory credit references being obtained at the Buyer's cost. The grant of credit terms is at the sole discretion of the Seller which may impose conditions for the same including in the case of a limited company a Director's personal guarantee. Credit may be withdrawn at any time.
- 7.3 Subject to clauses 7.1 and 7.2 and to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall invoice the Buyer for the price of the Goods on or at any time after despatch of the Goods, unless the Goods are to be collected by the Buyer, 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.
- 7.4 Payment for goods supplied on a credit account shall become due and payable not later than the last day of the month following the month of delivery of the Goods. 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 upon request.
- 7.5 If the Buyer fails to make any payment in cleared funds by the due date then the entire balance of the Buyer's account shall be payable forthwith and without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- 7.5.1 cancel any contract or suspend any further deliveries to the Buyer by notice in Writing.
  - 7.5.2 allocate 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 allocation by the Buyer); and
  - 7.5.3 charge the Buyer interest on the entire balance of the Buyer's account at the rate of eight per cent above the base lending rate of Barclays Bank Plc 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) both before and after judgment.
- 7.6 The Buyer shall not be entitled to withhold or set off payment of any amount due to the Seller under the terms hereof whether in respect of any claim by the Buyer in respect of Goods supplied by the Seller or for any other reason which is contested or for which the Seller does not admit liability.
- 7.7 Interest shall become due and payable pursuant to the foregoing clauses notwithstanding the fact that any part of the account is subject to any dispute or query.

## **8.0 DELIVERY**

- 8.1 Delivery of the Goods shall be made by the Buyer or its agent collecting the Goods at the Seller's premises 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.
- 8.2 Any dates quoted for delivery of the Goods in any quotation or acceptance form or elsewhere are approximate only and shall not form part of the Contract and the Seller shall not be under any liability to the Buyer in respect of any failure to deliver on any particular date or dates. For the avoidance of doubt and without prejudice to the generality of the foregoing the time for delivery of the Goods shall not be of the essence.
- 8.3 If the Seller fails to deliver the Goods (or any instalment) 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 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.
- 8.4 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 Conditions 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.
- 8.5 Where delivery to site is undertaken by the Seller, it is on the basis that there is a suitable road to the point on site where delivery is requested. If no such road exists delivery will be made to the nearest point to which in the opinion of the carrier his vehicle can safely proceed and unload and the Seller shall be deemed to have performed its obligations hereunder in respect of delivery.
- 8.6 All necessary labour and equipment required to unload the Goods promptly and safely will be supplied by the Buyer and neither the carrier nor the Seller shall be responsible for unloading or any damage to the Goods after they leave the Seller's premises (Clause 9 refers).
- 8.7 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, or in the case of deemed delivery pursuant to Clause 8.5, then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- 8.7.1 immediate payment in full for Goods so tendered; and
  - 8.7.2 upon notice in Writing to the Buyer store the Goods at the risk of the Buyer until actual delivery and charge the Buyer for the costs of storage (including insurance) together with any additional cost or carriage incurred directly or indirectly as a result of the Buyer's default; and/or
- 8.7.3 In the event that payment of the sums referred to in Clauses 8.7.1 and 8.7.2 above are not paid within seven days of the Seller giving to the Buyer notice in Writing to do so, to sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Buyer for any shortfall as against the price under the Contract.

## **9.0 RISKS AND OWNERSHIP**

- 9.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

- 9.1.1 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
- 9.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time the Goods leave the Seller's premises.
- 9.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, 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 (including any interest and charges hereon) and all other goods (including all interest and charges) agreed to be sold by the Seller to the Buyer for which payment is then due.
- 9.3 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 and the Buyer further hereby undertakes to deliver up the Goods to the Seller and its agents or distributors upon request.
- 9.4 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 Buyer irrevocably authorises the Seller and its agents or distributors at any time and from time to time (whether or not payment is due) to repossess the Goods and for such purpose to enter any premises (with or without vehicles) occupied by the Buyer or any other premises whatsoever.
- 9.5 In the exercise of its rights in this clause the Seller may sever the Goods from anything to which they are attached (provided the Goods remain readily identifiable and removable) without being liable for any damage caused (save damage arising through the Seller's negligence)
- 9.6 The Buyer shall notify the Seller immediately upon demand of the place or places where the Goods are situated.
- 9.7 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 monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 9.8 The Seller shall be entitled to a general lien over all goods and materials of the Buyer which are in the Seller's possession or control from time to time for any sums due at anytime whatsoever to the Seller.
- 9.9 The Seller may maintain an action for monies payable under the Contract notwithstanding that title in them has not passed to the Buyer.

#### **10.0 WARRANTIES AND LIABILITIES**

- 10.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of the Seller's invoice or such longer period, if any, stated by the Seller in the Seller's acceptance of the Buyer's order.
- 10.2 The above warranty is given by the Seller subject to the following conditions:
  - 10.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied or approved by the Buyer.
  - 10.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear (including any parts which require periodic replacement), wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;
  - 10.2.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.
  - 10.2.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or the manufacturer gives guarantee as to the Seller.
- 10.3 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to 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), but the Seller shall have no further liability to the Buyer.
- 10.4 Subject as expressly provided in these Conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 10.5 Except in respect of death or personal injury caused by the Seller's negligence, 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 any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods 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 Conditions.

- 10.6 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.

#### **11.0 SHORTAGES AND DEFECTS APPARENT ON INSPECTION**

The Buyer shall have no claim for any shortage or defect in the quality or condition of the Goods or their failure to correspond with specification where it is or ought reasonably to be apparent on visual inspection unless:

- 11.1 the Buyer inspects the Goods within 7 days of delivery (whether or not delivery is refused by the Buyer) and
- 11.2 full details of the complaint are made in Writing to the Seller within 7 days from the date of delivery or deemed delivery and
- 11.3 the Seller is given reasonable opportunity to inspect and test the Goods and investigate any complaint before any resale, incorporation, alteration or any other use is made of the Goods and the Buyer shall if so requested in Writing promptly return the Goods securely packed and paid to the Seller for examination
- 11.4 in the case of assertions of total non-delivery of any consignment of the Goods the Buyer must give notice in Writing to the carrier and to the Seller within 7 days of the Seller's advice note or date of notification of despatch.
- If a complaint is not made to the Seller as provided in this clause and sub-clauses hereof then the Buyer shall not be entitled to reject the Goods and the Goods shall be deemed in all respects to be in accordance with the Contract and the Buyer shall be bound to pay for the same in accordance with the Contract.

#### **12.0 DEFECTS NOT APPARENT ON INSPECTION**

In the event of any defects in the Goods or failure to correspond with specification which is not apparent on visual inspection at the time of delivery the Buyer shall only be entitled to make a claim against the Seller if:

- 12.1 Full details of the complaint are made in Writing to the Seller within 7 days from the date when the defect or failure is discovered or ought reasonably to have been discovered and
- 12.2 The Seller is given reasonable opportunity to inspect and test the Goods and investigate any complaint before any resale, incorporation, alteration or any other use is made of the Goods.

#### **13.0 CANCELLATION OF ORDERS**

- 13.1 The Seller may in its sole discretion accept or reject the cancellation by the Buyer of any Order for Goods (or services as the case may be) once such Order has been accepted by the Seller's Acknowledgment. The Seller will not accept the cancellation of an Order for Goods which are to be specially made or obtained once such an Order has been accepted by the Seller's Acknowledgment nor will any allowance be made in respect of such Goods where they are subsequently returned.
- 13.2 In the event that the Seller decides to accept the cancellation of any Goods or services under clause 13.1 hereof, agreement of the Seller is required in Writing and shall be upon such terms as the Seller may determine, including, if the Seller thinks fit, 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 (including legal costs on a full indemnity basis) incurred by the Seller and arising directly or indirectly as a result of cancellation.

#### **14.0 RETURN OF GOODS**

- 14.1 The Seller may in its sole discretion accept or reject the return of any Goods, which have been incorrectly ordered.
- 14.2 In the event that the Seller decides to accept the return of any Goods, whether pursuant to this clause or arising out of any valid claim of the Buyer, agreement of the Seller is required in Writing and shall be upon such terms as the Seller may determine. In particular the Seller reserves the right to charge for the carriage and handling of such Goods at the Buyer's sole risk.

#### **15.0 INDUSTRIAL PROPERTY RIGHTS: CONFIDENTIALITY**

In so far as the Seller is the proprietor of patents, designs, know how, trademarks and trade names, copyright and other industrial

or intellectual property rights relating to the Goods the Seller reserves all such rights to itself. All drawings, designs, specifications and other documents the Seller supplies in connection with any quotation or order remain the exclusive and confidential property of the Seller. The Buyer must not disclose any information comprised therein to a third party without the prior consent in Writing of the Seller nor use it otherwise than for the purpose it was originally supplied.

#### **16.0 INSOLVENCY OF BUYER**

16.1 This clause applies if:

- 16.1.1 the Buyer makes any 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
- 16.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- 16.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
- 16.1.4 anything analogous to the foregoing occurs in any jurisdiction; or
- 16.1.5 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.

16.2 If this clause 16 applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract without notice or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid or the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

16.3 In any event the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including costs of all labour and materials used), damages, charges and expenses incurred by the Seller prior to or as a result of such cancellation or suspension.

#### **17.0 RIGHTS RESERVED**

17.1 Any forbearance or indulgence by the Seller shown or granted to the Buyer whether in respect of these Conditions or otherwise, shall not affect or prejudice the rights of the Seller against the Buyer or be taken as a waiver of any of these Conditions.

17.2 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.

#### **18.0 SEPARATE TERM 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 and shall remain in full force and effect.

#### **19.0 NOTICES**

19.1 Any notices hereunder shall be in a permanent readable form and shall be deemed properly delivered if addressed to the party concerned at its principal place of business or last known address.

19.2 Service shall be deemed effective if the notice is served by post 48 hours after posting and if by hand, facsimile transmission or electronic mail immediately upon despatch (and in the case of facsimile and electronic mail subject to proven transmission).

#### **20.0 JURISDICTION**

The laws of England shall govern the Contract, and the Buyer agrees to submit to the exclusive jurisdiction of the English courts.

#### **21.0 EXPORT TERMS**

21.1 In these Conditions 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions or in any other document issued by the Seller but if there is any conflict between the provisions of Incoterms and these Conditions or such document the meaning of these Conditions or (as the case may be) such document shall prevail.

- 21.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this Clause 21 shall (subject to any special terms agreed in Writing between the Buyer and the Seller) apply in addition to the remainder of these Conditions. In the event of any variation, modification or conflict between this Clause 21 and the remainder of these Conditions then in the case of export Goods the terms of this Clause 21 shall prevail.
- 21.3 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 or other charges on them.
- 21.4 Unless otherwise agreed in Writing between the Buyer and the Seller all Goods are sold ex-works and delivery of the Goods shall be made by the Buyer or its agent 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. If the Seller agrees in Writing to effect delivery elsewhere the Goods shall be delivered as specified by the Seller's acceptance in Writing of the Buyer's order and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 21.5 Payment of all amounts due to the Seller shall be made by such means and within such timescales as may be specified from time to time by the Seller.
- 21.6 The Buyer undertakes not to offer the Goods for resale in any country notified by the Seller to the Buyer at or before the time the Buyer's Order is placed, or to sell the Goods to any person if the Buyer knows or has reason to believe that that person intends to resell the Goods in any such country.

**22.0 ENTIRE AGREEMENT**

The Contract is the entire agreement between the parties and supersedes all previous arrangements or understandings between the parties.

Duly authorised signatory

Print Name: .....

For and on behalf of: .....

Sign: .....

Dated: .....