

ALLEN & HEATH

STANDARD TERMS AND CONDITIONS OF SALE

These Conditions shall apply to each and every Order placed by Buyer and accepted by Seller and each Order, when accepted by Seller, shall constitute a separate Contract

1 DEFINITIONS

In these Conditions, the following definitions apply:

"Conditions" the terms and conditions set out in this document as amended from time to time in accordance with clause 10.6 below.

"Confirmation" is Seller's written acceptance of an Order.

"Price" means all monies payable by Buyer to Seller for the Product, including costs of packaging, transport and insurance; and in the case of part Delivery means the proportion of the Price applicable to the Product delivered.

"Taxes" means all applicable duties, taxes, imports, fees and deposits charged by authority of law upon the importation or sale of Product.

"Order" a written order for Products by a Buyer.

"Notice" means notice in writing, "notify" has a corresponding meaning. A reference to "writing" or "written" includes emails.

"Specification" any specification for a Product that is agreed in writing by Buyer and Seller.

Words and phrases defined in the current edition of *Incoterms* (published by the International Chamber of Commerce in Paris) shall have the same meaning in any sale.

2 FORMATION OF CONTRACT

2.1 An Order constitutes an offer by Buyer to purchase the Product in accordance with these Conditions. An Order shall only be deemed accepted when Seller issues a Confirmation to Buyer, at which point a binding Contract comes into existence.

2.2 An Order and any applicable Specification shall be presumed to contain the correct and entire terms of the contract unless Buyer within ten days of despatch by Seller of a Confirmation notifies Seller in writing of any error in the relevant Order.

2.3 These Conditions apply to the Contract to the exclusion of any other terms that Buyer seeks to impose or incorporate, or which are or may be implied by trade, custom, practice or course of dealing. In particular, the Contract excludes all and any email, telephone and other correspondences between the parties and, further, Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Seller which is not set out in the Contract.

2.4 Catalogues, price lists and other sales literature and information provided by or on behalf of Seller (whether written or oral) ("Marketing Materials") are for general information only and are neither incorporated in the Contract nor to be regarded as representations on the basis of which an Order is made. In particular, variations in the design, specification, performance characteristics and/or appearance of the Product are permitted, provided that the Product supplied shall be of substantially equivalent nature and value to that set out in Marketing Materials.

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3 INTELLECTUAL PROPERTY

All intellectual property rights in and to the Product (including, but not limited to, copyright in any underlying computer software and design of the Product) remain the property of Seller or of Seller's suppliers and may be used by Buyer only in the proper operation of the Product.

4 CONFIDENTIAL INFORMATION

- 4.1 Buyer shall keep in strict confidence all sales and user literature, quotations and prices, technical and commercial know-how, specifications, inventions or processes relating to the Product and/or the business of Seller (the "Confidential Information") and Buyer shall not copy or use such Confidential Information for purposes other than those for which they have been provided to the Buyer or any prospective Buyer. Buyer shall only disclose such Confidential Information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging Buyer's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The Buyer may also disclose such of the Confidential Information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 4.1 shall survive termination of the Contract.
- 4.2 To the extent that the Product is to be manufactured in accordance with a Specification supplied by Buyer, Buyer shall indemnify Seller against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Seller in connection with any claim made against 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 Specification. This clause 4.3 shall survive termination of the Contract.

5 DELIVERY

- 5.1 Unless otherwise expressly stated in the Order and in the corresponding Confirmation, all Products are supplied and delivered on FCA terms under Incoterms® 2010 ex Seller's warehouse in England or, where applicable, Seller's manufacturer's premises in China ("Delivery Location"). Where any variation to the FCA terms is specifically requested by Buyer and agreed and confirmed in writing by Seller, Buyer shall bear the cost of any additional packing, freight, ancillary charges and insurance resulting from such variation. Buyer shall collect the Product within three Business Days of Seller notifying Buyer that the Product is ready.
- 5.2 Seller may make part deliveries of the Product, provided that each part ("Part") shall be capable of use or resale on its own; each such Part may, in Seller's absolute discretion, be invoiced separately, and, as a consequence, constitute a separate Contract. Any delay in delivery or defect in a Part shall not entitle Buyer to cancel any other Part.
- 5.3 Unless otherwise expressly stated in an Order and in the corresponding Confirmation, any delivery dates specified in an Order and in the corresponding Confirmation are indicative only, and the time of delivery is not of the essence. If Seller fails to deliver the Product by the date set out in the relevant Order and corresponding Confirmation ("Delivery Date"), at any time after the Delivery Date, Buyer may serve on Seller such Notice as is reasonable in the circumstances (but in any event of not less than 61 days) ("Delivery Notice") making time to deliver the Product of the essence; Seller may, within 21 days after receiving a Delivery Notice, instead of delivering the relevant Product, by counter Notice to Buyer, rescind the Contract or any severable part thereof and in such case shall have no further liability to Buyer on the rescinded Contract or part thereof, except to return the Price or (where applicable) such proportion thereof as may apply to the undelivered Product.

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5.4 Seller shall not be liable for any delay in delivery of the Product that is caused by a Force Majeure Event (as defined in clause 6.2 below) or Buyer's failure to provide Seller with adequate delivery instructions or any instructions that are relevant to the supply of the Product.

5.5 Unless otherwise stated in an Order and in the corresponding Confirmation, all Products are sold with the benefit of a manufacturer's guarantee in the manufacturer's standard form; a print of the applicable form is available upon written request. The guarantee shall be in substitution for, and in exoneration of, all other liability of Seller and manufacturer for defective goods. Seller, when not the manufacturer, contracts as an agent for the manufacturer for the purpose of this paragraph. Where repairs or replacements are undertaken with the benefit of a guarantee, the terms of this paragraph shall apply to the repair or replacement as they apply to goods sold.

6 LIMITATION OF LIABILITY

6.1 Except where otherwise provided by a provision of law which can not be excluded by contract, Product is sold subject to the condition that in relation to any claim properly made by Buyer, where in contract or otherwise (except any claim for death or personal injury caused by negligence for which the Person against whom the claim is made is responsible) the liability of Seller arising under or in connection with the Contract, whether in contract, tort, breach of statutory duty or otherwise, shall in no circumstances exceed the Price of the Product which is the subject of the claim; and in any event Seller shall not be liable for any economic loss, loss of profit or indirect or consequential losses arising out of or in connection with the Contract. Seller shall not be responsible for, or for the consequences of, any repairs undertaken by Buyer, any sub-purchaser or any other third parties.

6.2 It is a condition of the Contract that Seller shall not be in breach of these Conditions nor liable for delay in performing, or failure to perform, any of its obligations under these Conditions if such delay or failure result from events, circumstances or causes beyond its reasonable control ("Force Majeure Event"), including (but not limited to) any delay, defect or omission resulting from acts of God, acts of any national, supranational or public authority, industrial disputes, unavailability or delay in supply of material or labour on normal commercial terms, or Buyer's failure to provide Seller with adequate delivery or any other instructions that are relevant to the supply of Products or any other matter, whether or not of like nature, which is wholly or partly outside the control of Seller.

7 TITLE

7.1 Title in the Product shall not pass to Buyer until Seller receives payment in full for the Product.

7.2 Risk passes to Buyer on completion of delivery. Buyer will at its own expense insure the Product in their full value against all usual risks from the date of delivery. So long as the title in the Property remains vested in Seller, Buyer will have no insurable interest therein (save as to any surplus over Buyer's liability to Seller) and any proceeds of insurance shall be held by Buyer on trust for Seller.

7.3 Immediately upon receipt by Buyer or Buyer's designated recipient of the Product, Buyer shall examine and test the Product and, as a condition precedent to any claim that may be brought by Buyer, shall give timely Notice to Seller, and to the carrier if applicable, of any missing or defective Product. Buyer shall be deemed to have accepted the Product unconditionally unless Notice of a claim is given by Buyer to Seller within 14 days after delivery of the Product to which the claim relates.

7.4 If Buyer fails to accept delivery of the Product within five Business Days of Seller notifying Buyer that the Product is ready then, except where such failure to deliver is caused by a force majeure event or Seller's failure to comply with its obligations under the Contract, (i) delivery of the Product

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shall be deemed to have been completed at 9.00 a.m. on the fifth Business Day after the day on which Seller notifies Buyer that the Product is ready; and (ii) Seller shall store the Product until delivery takes place and charge Buyer for all related costs and expenses (including insurance).

8 PAYMENT

- 8.1 The Price is exclusive of Taxes including (but not limited to) value added tax (VAT). Buyer shall, on receipt of a VAT invoice from Seller, pay to Seller such additional amounts in respect of VAT as are chargeable on the supply of the Product.
- 8.2 Payment is deemed to have been made when the whole Price, together with all and any applicable Taxes, have been received by Seller in cash or by unconditional credit to Seller's account at a bank and branch designated by Seller. Seller may exercise its statutory right to claim interest and compensation for debt recovery costs if Buyer fails to pay the Price in accordance with the terms of the Contract. Seller will charge interest on all overdue debts at a rate of 8% above the current HSBC Base Rate.
- 8.3 Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by Buyer against any amount payable by Seller to Buyer.
- 8.4 Seller shall invoice Buyer for the Product on or at any time before completion of delivery. Buyer shall pay each invoice in full and cleared funds within twenty Business Days of the date of the relevant invoice ("Due Date"). Time for payment of each invoice is of the essence. Products are sold upon the condition that full payment of the Price and Taxes will be made by the Buyer on or before delivery. If it appears to Seller, in Seller's unfettered discretion, that there is doubt for any reason (whether or not as a result of the financial circumstances of Buyer) that Buyer will not be in a position to pay the Price and Taxes for all or any part of an Order in full by the Due Dates, Seller may, notwithstanding any terms for payment otherwise agreed in the Contract, by Notice to Buyer, require that immediate payment is made by Buyer of the relevant sum. If payment is not so made by the Buyer within seven days of the date of such Notice, Seller may in its discretion and without prejudice to Seller's claim for damages for breach of contract:
- 8.4.1 suspend work on the whole or any part of the Contract; and/or
 - 8.4.2 then, or at any subsequent time thereafter, terminate the Contract with immediate effect.
- 8.5 Seller may accept as security for payment an unconditional guarantee by, or a transferable and divisible letter of credit drawn on or confirmed by, a London bank.
- 8.6 If the Seller grants credit to the Buyer, Seller may at any time reduce, suspend or withdraw credit facilities to Buyer without stating any reason for such reduction, suspension or withdrawal. In particular, Seller may withdraw credit facilities to Buyer if Buyer, or any member of the Buyer's group or other Person with whom Buyer is associated, has committed or threatens to commit any breach of contract with the Seller or any associate of the Seller, or is or, in Seller's sole opinion, appears likely to become insolvent. For the avoidance of doubt, if the Seller grants credit to the Buyer, the provisions of this clause 8.6 shall take precedence over clause 8.4 above.
- 8.7 If at the Due Date, there are any monies owed by Buyer to Seller and unpaid (whether or not then payable) ("Outstanding Sums"), and such Outstanding Sums are not fully covered by a letter of credit or bank guarantee, then title in all and any Products supplied by Seller to Buyer under the Contract shall nevertheless remain vested in Seller until all such Outstanding Sums are discharged by Buyer in full. Buyer shall have the right to use the Products, but not to affix them to

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land or premises or incorporate them in other products. If Buyer is a distributor or dealer of Seller, then Buyer may sub-sell the Products, retaining title on trust for Seller until payment of the Outstanding Sums. Buyer authorises Seller to recover such Products in Buyer's name from any sub-purchaser. Buyer authorises Seller to collect the proceeds of any subsale as if the subsale had been made by Buyer as agent for Seller, to give a good receipt and to retain for Seller's own account all monies payable by Buyer. Buyer will give or procure for Seller and its agents free access to premises and equipment in which Products and all accounts and records relating the subsales of the Product, are stored, and will without charge to Seller procure that its servants and agents render such assistance as Seller may reasonably require to give effect to these provisions. Seller will account to Buyer for any surplus collected from sub-purchasers, less costs of collection, above the monies owed by Buyer to Seller.

9 COMPLIANCE WITH LAWS AND POLICIES

9.1 General

The Buyer shall at its own expense comply with all laws and regulations relating to its activities under this Contract, as they may change from time to time, and with any conditions binding on it in any applicable licences, registrations, permits and approvals.

9.2 Economic Sanctions Policy

The Buyer shall, with respect to the Goods, comply with the Seller's Economic Sanctions Policy (a copy of which is available on the Seller's website, as updated by notification to the Buyer from time to time).

9.3 Anti-money laundering

9.4 The Buyer warrants, represents and undertakes that the operations of the Buyer and its subsidiaries have been and will be, at all times and in all material respects, conducted in compliance with all applicable financial recordkeeping and reporting requirements, including applicable anti-money laundering statutes of jurisdictions where the Buyer and its subsidiaries conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "Anti-Money Laundering Laws"), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Buyer or any of its subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the Buyer's best knowledge, threatened.

10 ANTI-BRIBERY COMPLIANCE

10.1 Buyer shall:

10.1.1 at its own expense comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption as they may change from time to time, including but not limited to the UK Bribery Act 2010;

10.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

10.1.3 comply with the Seller's Anti-bribery Policy (available on the Seller's website) and which may be updated from time to time ("Relevant Policy");

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- 10.1.4 maintain in place throughout the term of this Contract its own policies and procedures, including but not limited to adequate procedures (as determined in the Bribery Act 2010), to ensure compliance with the Relevant Requirements, the Relevant Policy and Condition 13.1.2, will enforce them where appropriate;
- 10.1.5 promptly report to Seller any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of this Contract;
- 10.1.6 immediately notify the Seller (in writing) if a foreign public official becomes an officer or employee of the Buyer or acquires a direct or indirect interest in the Buyer, and the Buyer warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of this Contract; and
- 10.1.7 ensure that any person associated with it (as determined in the Bribery Act 2010) who is performing services or providing goods in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to this Condition 10.1 ("Relevant Terms"). The Buyer shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Seller for any breach by such persons of any of the Relevant Terms.

10.2 Breach of Condition 10.1 shall be deemed a material breach.

10.3 For the purpose of Condition 10.1, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.

11 TERMINATION

11.1 If Buyer becomes subject to any of the events listed in clause 10.1, Seller may terminate the Contract with immediate effect by giving Notice to Buyer.

11.2 For the purposes of clause 11.1, the relevant events are:

11.2.1 Buyer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

11.2.2 Buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

11.2.3 (a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of Buyer, other than for the sole purpose of a scheme for a solvent amalgamation of Buyer with one or more other companies or the solvent reconstruction of Buyer;

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- 11.2.4 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over Buyer;
 - 11.2.5 the holder of a qualifying floating charge over Buyer's assets has become entitled to appoint or has appointed an administrative receiver;
 - 11.2.6 a Person becomes entitled to appoint a receiver over Buyer's assets or a receiver is appointed over Buyer's assets;
 - 11.2.7 a creditor or encumbrancer of Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 11.2.8 any event occurs, or proceeding is taken, with respect to Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.1 to clause 10.2 (inclusive);
 - 11.2.9 Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
 - 11.2.10 Buyer's financial position deteriorates to such an extent that in the Seller opinion Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy
- 11.3 Without limiting its other rights or remedies, Seller may suspend provision of the Product under the Contract or any other contract between Buyer and Seller if Buyer becomes subject to any of the events listed in clause 10.1 to clause 10.2, or the Seller reasonably believes that Buyer is about to become subject to any of them, or if Buyer fails to pay any amount due under the Contract on the due date for payment.
- 11.4 On termination of the Contract for any reason Buyer shall immediately pay to the Seller all of Seller's outstanding unpaid invoices and interest.
- 11.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 11.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

12 GENERAL

- 12.1 [intentionally deleted].
- 12.2 All and any Products ordered by Buyer are ordered and bought by Buyer for its own account, and nothing in these Conditions is intended to or shall be deemed to:
- 12.2.1 establish any partnership or joint venture between Buyer and Seller;
 - 12.2.2 constitute any party to the Contract the agent of another party; or
 - 12.2.3 authorise any party to the Contract to make or enter into any commitments for or on behalf of any other party.

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- 12.3 Buyer shall not without the prior written consent of Seller assign or encumber its rights under the contract.
- 12.4 [intentionally deleted]
- 12.5 [intentionally deleted]
- 12.6 Except as set out in the Contract, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by Seller.
- 12.7 If any term of the Contract shall under the applicable law be unlawful or unenforceable, the Contract shall be performed in such lawful manner as shall most nearly achieve the like objectives of the Contract.
- 12.8 [intentionally deleted]
- 12.9 These Conditions and, more generally, the Contract shall be deemed to have been made under the laws of England, and any dispute shall be decided by the English courts without prejudice to the right of either party of interlocutory relief in any other court.