

**TERMS AND CONDITIONS OF SALE (UK AGENT ONLY)**

**1. INTERPRETATION**

In these Conditions: the "Seller" means TenCell Limited; the "Buyer" means the person firm or company to whom this form is addressed.

**2. GENERAL**

All quotations are made and all orders are accepted subject to these Terms and Conditions of Sale ("the Conditions") which supersede any earlier sets of conditions of the Seller wherever appearing and which override any terms or conditions stipulated incorporated or referred to by the Buyer. No modification or addition to these Conditions shall be binding on the Seller unless made in writing and signed by an authorised officer of the Seller.

**3. ACCEPTANCE**

a) A tender by the Seller shall be open for acceptance within the period stated therein or if no period is stated within 30 days of the date of tender unless previously withdrawn. A tender is limited to such goods as are specified therein. b) If the Buyer wishes to make an order on the basis of the tender such order must be accompanied by sufficient information to enable the Seller to proceed with the order forthwith. Delay in supplying such information may lead to the need to revise the tender prices. c) The contract incorporating these Conditions is created when the Seller confirms acceptance of the order in writing ("the Contract").

**4. CANCELLATION AND VARIATION**

No order which has been accepted by the Seller may be altered or withdrawn by the Buyer except with the agreement in writing of the Seller on terms that the Buyer shall indemnify the Seller in full against all losses (including loss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 such alteration or withdrawal. The Buyer shall indemnify the Seller against all additional costs incurred by the Seller resulting from any alteration or withdrawal of an order by the Buyer made without the written consent of the Seller. Such additional costs shall be paid forthwith upon the Seller's demand.

**5. PRICES**

a) The price of the goods shall be the price quoted by the Seller and confirmed in the Seller's order acknowledgement (E&OE). b) The Seller reserves the right by giving notice to the Buyer at any time before delivery to increase the price of goods to reflect any increase in cost to the Seller which is due to any factor beyond the reasonable control of the Seller. c) Prices quoted are calculated based on the exchange rate valid at the date of quotation. The Seller would reserve the right to recalculate its quoted and acknowledged prices in the event that there was a deviation of more than 5% in this rate. The rate ruling at the date of invoicing would apply and the exchange rate appearing in the Financial Times of that day would be used. d) Prices quoted apply to a single order for call off at a rate to be agreed over a period not exceeding 12 months from date of order. e) Unless otherwise stated the price is exclusive of any applicable value added tax. f) Unless stated to the contrary all prices are import freight and duty paid (if applicable).

**6. TERMS OF PAYMENT**

a) Unless otherwise agreed in writing with the Seller payments shall be made net without any deduction within 30 days from the date of invoice. b) The Seller reserves the right to charge interest on any amounts unpaid at the end of this period of 30 days at 3% above the Base Rate for the time being in force of Lloyds TSB and the Buyer shall be liable for any costs incurred by the Seller in recovering such amounts.

**7. STORAGE**

If the Seller has not received full forwarding instructions to enable the despatch of goods within 14 days after notification to the Buyer that goods are ready for despatch or if the Buyer fails to take delivery of the goods on the date specified for delivery (without prejudice to any other right or remedy of the Seller) the Seller shall be entitled to arrange storage and charge costs (including insurance) thereby incurred to the Buyer.

**8. PACKING**

All goods unless stated otherwise shall be despatched in packaging suitable for road, rail, sea and air transportation. The Seller reserves the right to charge for any special packaging requirements of the Buyer.

**9. RISK**

All risk including that of damage to or loss of the goods shall pass to the Buyer: a) within 3 days after the time when the Seller notifies the Buyer that the goods are available for collection in the case of goods to be supplied at the Seller's premises; or b) at the time the goods are despatched from the premises of the Seller or if the Buyer wrongfully fails to take delivery of the goods at the time when the Seller has tendered delivery of the goods in the case of goods to be supplied otherwise than from the Seller's premises; or c) at the time of delivery of the goods to a carrier for delivery to the Buyer in the case of goods to be supplied in a manner otherwise than as set out in a) and b) above.

**10. RETENTION OF TITLE**

10(1) It is hereby agreed and declared that until full payment has been received from the Buyer for goods the subject of this contract and any other contract for the time being outstanding between the Seller and the Buyer: a) the goods shall remain the property of the Seller and the Buyer shall hold the goods as the Seller's fiduciary agent and bailee; b) the Buyer shall store and label the goods in such manner that they shall at all times remain separate from other goods in the Buyer's possession and identifiable as the Seller's goods insured for their full replacement value against all risks; and c) the Seller its servants or agents shall be entitled to repossess the goods and to enter upon the land or buildings of the Buyer for the purpose of such repossession unless they have already been resold.

10(2) In the event that the goods have already been resold the Seller shall be entitled to the proceeds of the resale in the hands of the Buyer or any liquidator or Trustee in Bankruptcy of the Buyer and if the Buyer has not received payment for a resale the Buyer shall upon notice in writing by the Seller assign to the Seller all its rights against its customer in respect of that resale and notify its customer in writing that the proceeds of the resale shall be paid to the Seller.

10(3) Notwithstanding sub-condition 10(1) above the Buyer shall be entitled to dispose of the goods supplied under these Conditions in the course of its business and to pass good title in the goods to a purchaser provided that such purchaser shall buy or agree to buy the goods in good faith for valuable consideration and shall have no notice of the Seller's rights herein. In the event of a disposal of the goods the Buyer shall account in a fiduciary capacity to the Seller for the proceeds of sale but may retain for itself any excess therein over the Buyer's total indebtedness to the Seller whether in respect of this or any other contract and all such proceeds of sale must be credited to a separate interest bearing fiduciary account which is not overdrawn and must not be combined with any other monies. The Buyer's bankers must be informed in writing that such monies are held by the Buyer on trust for the Seller and that until payment of any sums due under this Agreement the Buyer shall not be entitled to transfer or withdraw any monies from the account except on the Seller's instructions.

**11. DELIVERY**

a) Prices exclude delivery which shall be charged at cost. b) The Seller shall be free to affect delivery by any method of transport of its choice. All deliveries shall be to the entrance of the Buyer's premises only and the Seller shall have no liability whatsoever (including liability for negligence) for any loss or damage howsoever arising from any delivery beyond such point. The Buyer shall be responsible for off-loading all goods delivered.

**12. LIABILITY FOR DELAY**

12(1) Unless the Seller has accepted in writing a firm delivery date with time expressed to be of the essence of the Contract delivery dates are approximate. Any times quoted for despatch and delivery are to be calculated from the receipt by the Seller of a written order. The Seller shall incur no liability whatsoever for failure to deliver on dates quoted and delay in delivery shall not give the Buyer the right to cancel an order.

12(2) The Seller shall have no liability whatsoever (other than to return any deposit paid by the Buyer) for non-fulfilment of the Contract or for any failure to deliver by agreed dates where the same arises from any instructions or lack of instructions from the Buyer or from any industrial dispute or from any cause whatsoever beyond the Seller's reasonable control.

12(3) In any other case the Seller's liability for any non-fulfilment or failure to deliver shall not exceed the amount of the cost or damage actually suffered by the Buyer as a direct result there from (excluding any consequential loss or damage whatsoever) or the Contract Price whichever is the lesser.

### **13. DEFECTS AFTER DELIVERY**

13(1) Notice of complaints as to the quantity of goods supplied or the delivery of incorrect goods must be made in writing to the Seller within 14 days of the date of delivery at the end of which period any liability of the Seller for delivery of the incorrect quantity or the wrong goods shall cease.

13(2) The Seller shall at its option repair or replace goods or allow the Buyer a credit in respect of the goods where a defect is notified to the Seller in writing within 12 months of the date of delivery provided that the Seller shall have no liability for any defect arising from fair wear and tear misuse wilful damage or alteration of the goods without the Seller's written approval or for the replacement of consumables. A complaint or claim of any kind on the part of the Buyer shall not preclude the liability of the Buyer to make payment for goods. The repaired or replacement goods shall be supplied by the Seller free of charge.

### **14. INSPECTION AND TESTS**

Seller reserves the right to make an additional charge if tests other than those normally performed are required by the Buyer.

### **15. SPECIFICATIONS AND ADVERTISING MATTER**

All specifications and drawings and particulars of weights and dimensions submitted by the Seller are approximate only and the description and illustrations contained in price lists and catalogues and other advertising matter of the Seller are intended merely to represent a general idea of the goods portrayed therein and none of these shall form part of the Contract.

### **16. PERFORMANCE**

The Seller shall accept no liability for failure of goods to attain any quoted performance figures unless specifically guaranteed by the Seller in writing. If the performance figures are outside the acceptable limits specified in such guarantee the Buyer shall be entitled to reject the goods provided that the Seller shall have been given reasonable time and opportunity to rectify their performance.

### **17. EXCLUSION AND LIMITATION OF LIABILITY**

17(1) Except as expressly provided in these Conditions: a) all conditions warranties or other terms whether express or implied statutory or otherwise are hereby expressly excluded to the fullest extent permitted by law; b) subject to Condition 17(2), the Seller shall not be liable to the Buyer by reason of any representation (other than a fraudulent representation) or any implied warranty condition or other term or any duty at common law or under the express terms of the Contract for loss of profits business or anticipated savings or for any consequential loss or damage costs expenses or other claims for consequential compensation whatsoever which arise out of or in connection with the supply or failure to supply the goods or their use or resale by the Buyer and c) subject to Condition 17(2), the Seller's aggregate liability under the Contract for any claim or series of claims howsoever such claim or claims arise whether in contract, negligence or otherwise, shall in no circumstances exceed the sum for which the Seller has reasonably insured therefore. Full details of such insurance shall be supplied on the Buyer's written request or, in the event that the relevant claim or claims is not covered by the Seller's insurance, the price of the goods the subject of the claim.

17(2) Nothing in Condition 17(1) shall exclude or restrict any liability of the Seller: a) for death or personal injury resulting from the negligence of the Seller and its servants or agents; b) for breach of its implied undertakings as to title; or c) for fraudulent misrepresentation

### **18. TERMINATION**

Without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without liability to the Buyer and if the goods have been delivered but not paid for the price shall become immediately due and payable in the event that a) the Buyer fails to carry out its obligations under any contract of which these Conditions form part; or b) the Buyer ceases or threatens to cease to carry on its business or any substantial part thereof; or c) distress execution judgement or any order of the Court is levied or enforced or executed upon or against any property of the Buyer; or d) a Receiver is appointed of the undertaking or assets of the Buyer; or e) a Resolution is passed or proceedings are commenced for the winding up of the Buyer; or f) the Buyer enters into any arrangement or composition with its creditors.

### **19. FORCE MAJEURE**

The Seller shall not be liable for any failure to fulfil any obligation under this Contract to the extent that it is prevented from so doing by any cause beyond its reasonable control.

### **20. NO MANUFACTURE OF WEAPONS OF WAR OR DESTRUCTION; OBSERVANCE OF EXPORT LAWS**

20(1) The Buyer shall not use the goods delivered by the Seller for the purpose of development, design, manufacture, use or storage of any weapons of war and destruction, including but not limited to nuclear weapons, biological weapons, chemical weapons and missiles (hereinafter the "Weapons").

20(2) The Buyer shall not sell, lease or otherwise dispose of the goods delivered by the Seller directly or indirectly to any third party engaged in the development, design, manufacture, use or storage of Weapons.

20(3) The Buyer shall not export or re-export directly or indirectly the goods delivered by the Seller without authorisation required under export control laws and/or regulations of any countries claiming jurisdiction over the contracting parties.

20(4) The Buyer shall not export or re-export directly or indirectly the goods delivered by the Seller to any country against which any sanction is imposed under certain resolutions of the Security Council of the United Nations for as long as such resolutions remain valid and effective and as far as the goods delivered by the Seller remain prohibited to be exported to such a country.

20(5) In the event that the Buyer breaches any provision of this Condition 20 the Buyer shall be liable to the Seller for all direct and indirect damage sustained by the Seller due to such a breach; furthermore the Seller shall in such an event have the right to terminate the Contract with the Buyer forthwith without any liability towards the Seller. Furthermore the Seller shall not be obliged to accept or fulfil any orders which might contravene any export control laws, rules and/or regulations of any relevant countries or provisions of this Condition.

### **21. INVALIDITY**

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 thereby affected.

### **22. NOTICES**

Any notice or demand required to be served hereunder shall be sent by ordinary first class letter post shall be deemed to have been received 72 hours after posting.

### **23. WAIVER**

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.

### **24. THIRD PARTIES**

A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract but this does not affect any right or remedy of a third party which exists apart from that Act.

**25. GOVERNING LAW**

Unless otherwise agreed in writing this Contract shall be read and construed to take effect in all respects in accordance with the laws of England and the Buyer hereby submits to the jurisdiction of the English courts.

MAY 2005

Signed

Position

Name (Print)

Date