

## **I. Interpretation and Basis of Sale**

1.1 In these Condition:

“Customer” means the person who has ordered Goods from the Supplier;

“Good” means the goods (including any instalment of the goods or any part of them) which the Supplier is to supply in accordance with these conditions;

“Supplier” means Harting Ltd, a company registered in England and Wales (company number 05540444) whose registered address is 12 Plumtree Court, London, EC4A 4HT;

“Conditions” the standard terms and condition for sale and delivery as set out in this document;

1.2 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.

1.3 The headings in these conditions are for convenience only and shall not affect their interpretation.

1.4 The Supplier shall sell and the Customer shall purchase the Goods in accordance with any written quotation of the Supplier which is accepted by the Customer, or any written order of the Customer which is accepted by the Supplier, subject in either case to the terms and condition set out below, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted or any such order is made or purported to be made by the Customer.

## **II. General Terms and Conditions**

1. These Conditions shall apply to all contracts concluded between the Customer and the Supplier and obligations resulting from them. They shall also apply to all future transactions even though they may not have been explicitly agreed again. Any and all terms and conditions of the Customer are herewith explicitly objected to and shall not be binding on the Supplier.

2. These Conditions shall also apply to Goods delivered on the basis of a trade term, in particular the Incoterms. Where deliveries are made on the basis of one of the Incoterms, those Incoterms in force shall apply. In the event of a conflicting provision between the trade terms and these Conditions, the term in these Conditions shall prevail.

3. Each order for Goods by the Customer shall be deemed to be an offer by the Customer to purchase Goods subject to the Conditions and no order submitted by the Customer shall be deemed to be accepted by the Supplier unless and until confirmed in writing by the Supplier.

4. No order which has been accepted by the Supplier may be cancelled by the Customer except with the agreement in writing of the Supplier and on terms that the Customer shall indemnify the Supplier in full against at loss (including loss of profit) costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of cancellation.

## **III. Extent of Delivery Obligations**

1. The Supplier shall retain all rights as to title and copyright in regard to all documents such as calculations, pictures or drawings which have been provided to the Customer in connection with the negotiation or the performance of a Contract. This shall also apply to such written documents which are labeled “confidential” or which, evidently to the Customer, have confidential content. Offers and relating documentation shall not be made accessible to third parties unless the Supplier has given its prior written consent. Documents, drawings and samples etc. relating to the Goods, an offer a Contract or the Supplier shall be returned upon demand.

2. The Supplier shall be entitled to deliver the Goods by instalments and each instalment shall constitute a separate Contract and failure by the Supplier to deliver any one or more instalment in accordance with these Conditions shall not entitle the customer to treat the Contract as a whole as repudiated. Where small amounts are ordered, the Supplier shall have the right to increase the delivery amount to the smallest packaging unit whenever this is reasonably acceptable to the Customer.

**IV. Delivery Periods, Default in Delivery, Force Majeure, Default in Acceptance**

1. Delivery dates or periods quoted are approximate only and the Supplier shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence. The Goods may be delivered by the Supplier in advance of the quoted delivery date upon giving reasonable notice to the Customer. Delivery periods given by the Supplier shall only commence once technical questions have been solved.
2. The Supplier shall not be liable to the Customer 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 Supplier's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Supplier's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Supplier's reasonable control:
  - a) Act of God, explosion, flood, tempest, fire or accident;
  - b) war or threat of war, sabotage, insurrection, civil disturbance or requisition;
  - c) acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
  - d) import or export regulations or embargoes;
  - e) strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Supplier or of third party);
  - f) difficulties in obtaining raw materials, labour, fuel, parts or machinery;
  - g) power failure or breakdown in machinery.
3. The delivery period shall automatically be extended for the duration of the delay mentioned in Clause IV Sub-Clause 2 above.

**V. Receipt and Performance**

1. Ordered items, especially products specific to the Customer, shall be received or accepted by the Customer even in cases where they have minor discrepancies unless these discrepancies affect the functionality of the item.
2. The Goods shall be deemed to have been delivered on the sooner of:
  - a) actual delivery to the delivery location;
  - b) notice to the Customer that the Goods are ready for delivery;
  - c) tender of the Goods for delivery.

**VI. Shipping/Packaging**

1. Unless otherwise agreed by the Supplier in writing loading and shipping shall be carried out uninsured and at the risk of the Customer ("ex works"). The Supplier shall make efforts to take into consideration the Customer's wishes and interests in regard to the manner of shipment and the delivery route subject to the Customer paying for any and all additional costs arising as a result. The notice that Goods are ready for shipment shall be equivalent to the actual shipping of Goods and if the Customer fails to take delivery of the Goods or fails to give the Supplier adequate delivery instructions at the time stated for delivery then without prejudice to any of the right or remedy available to the Supplier, the Supplier may:
  - a) Store the Goods for the Customer at the Customer's risk and cost (including insurance) In this case consideration for the storage shall be 1 % of the invoiced amount for each month having commenced, the payment obligations starting with the month which follows the month in which notice is given that the Goods are ready for shipment; and/or
  - b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for any shortfall below the Contract price.
2. Upon the Customer's request and at the Customer's cost the Supplier shall insure the delivery against loss, breakage, transport- and fire damage.
3. Packaging material for transport and all other packaging pursuant to the regulation on packaging may not be returned to the Supplier unless otherwise agreed by the Supplier in writing. The Customer shall dispose of the packaging material at its own expense.

**VII. Prices**

1. Unless otherwise agreed in writing by the Supplier, prices shall only apply to confirmed orders, shall be ex works and in Pounds Sterling excluding value added tax. The Customer shall pay any value added tax to the Supplier. Invoices are payable without deductions, set-off or counterclaims unless otherwise agreed in writing.
2. The price of the Goods shall be the Supplier's quoted price which will remain valid for 30 days only or until earlier acceptance by the Customer after which they may be altered by the Supplier without giving notice to the Customer.
3. Where no price has been quoted, the price shall be the price shown in the Supplier's published price list current at the date of the order.
4. The Supplier reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Supplier which is due to any factor beyond the control of the Supplier (such as, without limitation, any foreign exchange fluctuation currency regulation, alteration of duties, significant increase in the costs of labour, material or other costs of manufacture), or to any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer or any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions.

**VIII. Payment Conditions/Set-offs/Rights of Retention**

1. The purchase price shall be due within 30 days from the date of the invoice unless agreed otherwise.
2. If the Customer fails to make any payment on the due date under any contract between the Supplier and the Customer then, without prejudice to any other right to remedy available to the Customer, the Supplier shall be entitled to:
  - a) cancel the contract or suspend any further deliveries to the Customer;
  - b) appropriate any payment made by the Customer to such of the Goods (or the Goods supplied under any other contract between the Customer and the Supplier) as the Supplier may think fit (notwithstanding any purported appropriation by the Customer); and
  - c) charge the Customer interest (both before and after any judgment on the amount unpaid, at the rate of 4% of HSBC plc. Interest charges shall commence on the date of the invoice ( a part month being treated as a full month for the purpose of calculating interest.
3. Bills of exchange shall only be accepted if explicitly agreed, subject to them being discountable. All charges relating to the presentation of the bill of exchange shall be paid by the Customer without deduction within 8 days after notification of their amount. Any and all bills of exchange and cheques are only accepted on condition that payment can be obtained from them.
4. The Customer shall only have rights to set-offs and retention where its counterclaims have been confirmed by a court decision that is not appealable or where its counterclaims are either not disputed and where the Supplier has agreed to the set-off or retention in writing. Moreover, any right of retention may only be asserted where the counterclaim and the original liability arise out of the same Contract.

**IX. Passing of Risk**

1. The risk of damage to or loss of the Goods shall pass to the Customer at the time of delivery or when delivery is tendered.
2. In cases of delay in shipping or receipt which are caused by a Customer request or are the Customer's fault, the risk of damage to or loss of the Goods shall pass to the Customer on the day of the order being ready for shipment and shall remain with the Customer for the duration of the delay.

**X. Retention of Title**

1. The Customer shall be entitled to sell the Goods in the ordinary course of business as long as it fulfils its obligations out of the contractual relationship with the Supplier correctly and is in particular not in default in payment. The Customer shall not be entitled to pledge or agree a transfer of ownership by way of security for any indebtedness or any of the Goods which remain the property of the Supplier but if the Customer does so all monies owing by the Customer to the Supplier shall (without prejudice to any right or remedy of the Supplier) forthwith become due and payable.
2. Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as the Supplier's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured (particularly but not solely, in respect of loss as a result of fire, water and theft) and identified as the Supplier's property. Until that time the Customer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Supplier for proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Customer and the third parties and, in the case of tangible proceeds, properly stored, protected and insured.
3. Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold), the Supplier shall be entitled at any time to require the Customer to deliver up the Goods to the Supplier and , if the Customer fails to do so forthwith to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.
4. Any processing or transformation of the Goods shall in each case be carried out for the Supplier. In cases where the Goods are processed or combined with other items not owned by the Supplier, the Supplier shall become the co-owner of the new item in a proportion which corresponds with the value of the respective Good (final amount of the invoice, including applicable value added tax) as compared to the value of the other processed or combined item at the time of the processing or combining. To the new item arising out of the processing or the combination the same shall apply as to the Good.
5. In the case of any Goods being intermixed with other items not owned by the Supplier in such a way that they cannot be separated the Supplier shall become the co-owner of the new item in a proportion which corresponds with the value of the respective Good (final amount of the invoice, including applicable value added tax) as compared to the value of the other intermixed items at the time of the mixing. Where in the event of intermixing or combining the Customer's item shall be considered the principal item, the Customer and the Supplier agree that the Customer shall transfer co-ownership of it proportionately. The Supplier hereby accepts this transfer. The Supplier's sole or co-ownership arising from this shall be kept in safe custody by the Customer for the Supplier free of charge. For the purpose of security the Customer shall also assign such receivables that arise against a third party from the combination of the contract item with real property.
6. The Customer shall promptly inform the Supplier of all enforcement steps by third parties in the Goods, any assigned receivables and any other security, and shall submit all documentation necessary for an intervention. This shall also apply to any other interference with the Goods The costs for out of court actions to achieve the release and repatriation of such Goods shall be borne by the Customer. This shall also apply to the costs for a justified court intervention where such costs cannot be recovered from third parties.
7. In cases where the realisable value of the existing security exceeds the debt to be secured altogether by 15 %, the Supplier shall upon the Customer's demand release security in the Supplier's discretion. The choice of security to be released is the Supplier's.

**XI. Warranties**

1. Subject to the conditions set out below and unless otherwise agreed in writing by the Supplier the Supplier 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 delivery.
2. The above warranty is given by the Supplier subject to the following conditions:
  - a) the Supplier shall be under no liability in respect of any defect arising from fair wear and tear, willful damage negligence, abnormal working conditions, electro-chemical or electrical influences, failure to follow the Supplier's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Supplier's approval;
  - b) the Supplier 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.
3. Subject as expressly provided in these conditions, and except where the Goods are sold under a consumer sale (as defined by the Sale of Goods Act 1979), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
4. Any claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification or order shall be notified to the Supplier with 48 hours from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within 7 days after the date on which the Customer ought reasonably to have been aware of the defect or failure.
5. Any claim by the Customer which is based on incorrect quantity of the Goods or non-receipt of the Goods shall be notified to the Supplier within 48 hours of delivery (in the case of shortages) or within 7 days of the date of the invoice (in the case of non-receipt).
6. 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, the Supplier shall be entitled to replace or repair the Goods (or the part in question) free of charge or, at the Supplier's sole discretion, refund to the Customer the price of the Goods (or a proportionate part of the price), but the Supplier shall have no further liability to the Customer.
7. Where the Supplier chooses to repair the Goods it shall bear all expenses incurred hereby, in particular transport, driving, labour and material costs to the extent these are not being increased by the contract item having been brought to another place than the place of performance. The Supplier shall be entitled to recover all loss and expenses from the Customer where the Supplier's investigations show no defect exists or where the cause of the defect is due to any act or omission by or on behalf of the Customer.
8. There shall be no claims for defects where the discrepancy from the agreed condition is insignificant, where the impairment of use is insignificant, where there is normal wear and tear or where damages arise after the passing of risk as a consequence of incorrect or careless handling, excessive operational demands, unsuitable equipment or as a consequence of special exterior influences which in the agreement were not assumed and also where there are Software defects that cannot be reproduced. Where the Customer or third parties have carried out amendments or repair work in an incorrect manner, no claims for defects may be made for these and their results.
9. Any Goods or parts replaced by the Supplier under Clause X Sub-Clause 6 shall remain the property of the Supplier.

**XII. INDEMNITY AND LIMITS OF LIABILITY**

1. In respect of Goods which the Supplier provides according to the Customer's specification or design, if any claim is made against the Supplier that the Goods infringe or that their use or resale infringes the intellectual property rights of any other person, the Customer shall indemnify the Supplier against all loss, damages, costs and expenses awarded against or incurred by the Customer in connection with the claim and the Customer and the Supplier shall give the Supplier all reasonable assistance for the purpose of any such proceedings or negotiations.
2. Except in respect of death or personal injury caused by the Supplier's negligence, the Supplier shall not be liable to the Customer by reason of any representation, 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 consequential compensation whatsoever which arise out of or in connection with the supply of the Goods their use or resale by the Customer or the performance of a Contract by the Supplier.
3. The limits and exclusion of liability set out in Clause XII Sub-Clause 2 above shall also apply to the personal liability of employees, staff, representatives and that of the persons the Supplier uses to perform its obligations.

**XIV. Samples, Customer documentation and drawings/specifications**

1. Samples shall only be provided against consideration unless otherwise agreed and shall, moreover, only serve as approximate examples.
2. All documents, drawings and specifications issued by the Supplier in connection with the Goods are intended as illustrative only and no warranty is given that the Goods comply strictly with information given in any such material.
3. The copyright and all other intellectual property rights of whatever nature in any such documents, drawings, descriptions or specifications is vested exclusively in the Supplier and the Customer shall not reproduce or publish the same in any form without the Supplier's prior written consent.
4. The Supplier reserves the right to make changes in the design or specification of the Goods without the prior notice to the Customer provided that such changes do not materially affect the quality, performance or functionality of the Goods.

**XV. Orders for non-standard Goods**

1. In the case of any Goods which the Supplier manufactures or applies any process of manufacture to in accordance with instructions issued by the Customer.
  - a) the Customer accepts full responsibility for ensuring that any specification or instruction it may issue is accurate and fulfils its requirements for the Goods in question;
  - b) the Customer warrants that the Goods produced in accordance with its specification or instructions will not infringe the intellectual property rights of any third party and undertakes to indemnify the Supplier against all claims, demands, costs and expenses suffered or incurred by the Supplier as a result of any alleged infringement of such third party rights;
  - c) the Supplier shall be entitled to charge to the Customer the cost of designing and manufacturing or procuring the design and/or manufacture of any special tools or devices required in the manufacture or modification of the Goods. The Supplier may invoice the whole of such charges to the Customer on production of the first prototype of the Goods and shall be entitled to suspend all further work on the production of the Goods unless such invoices is paid in full within 30 days.
  - d) unless expressly agreed to the contrary, all copyright and other intellectual property rights in any Goods manufactured or modified in accordance with this clause, and in any drawings, documents, tools or other matters connected with those Goods, shall vest exclusively in the Supplier which shall in the future, be entitled to exploit the same for whatever purpose it deems fit.

**XVI. Condition, end-use declaration**

1. The conclusion of any Contract and the respective performance of a Contract by the parties shall be subject to the condition that they do not infringe any national or international laws especially export control provisions.
2. Upon request, the Customer is obliged to provide declarations of end-use for the ordered Goods and products in accordance with applicable export control provisions.

**XVII. Transferability of contract**

The Customer may only transfer its contractual rights or obligations to third parties upon the Supplier's prior written consent.

**XVIII. General**

1. Any communication required or permitted to be given by either party to the other under these conditions 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.
2. No waiver by the Supplier of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
3. 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 provisions in question shall not be affected thereby.
4. The Contract shall be governed by the laws of England.

**Date: December 2009**