

Terms and Conditions of Sale

1. Interpretation

1.1 The definitions and rules of interpretation below apply in these terms:

"Buyer" the person firm company or organisation whose order for the Goods is accepted by the Seller

"Seller" means ZND (UK) Limited registered in England under number 3447088

"Goods" means the goods (including any instalment of the goods or any part of them, any parts, and or services) which the Seller is to supply in accordance with these Terms

"Contract" means the contract for the purchase and sale of the Goods

"Terms" means the standard terms of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller

1.2 Any reference in these Terms to any statute shall be construed as a reference to that statute as amended re-enacted or extended at the relevant time.

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

2. Basis of the Sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any order of the Buyer which is accepted by the Seller either by the Seller despatching its standard order acknowledgement or if no such acknowledgement is sent, by supplying the Goods, subject in either case to these Terms which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such order is made or purported to be made by the Buyer. Each order is accepted by the Seller entirely at its discretion and shall constitute an individual contract between the Seller and the Buyer.

2.2 No variation to these Terms shall be binding unless signed by a Director of the Seller.

2.3 The Sellers' employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing and signed by a duly authorised representative of the Seller. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not confirmed but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.

2.4 Any typographical clerical or other error or omission in any sales literature quotation price list acceptance of offer invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. Orders and Specifications

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's authorised representative.

3.2 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

3.3 The quantity quality and description of any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller). In the event of a conflict between the two the Seller's quotation will prevail.

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 a specification submitted by the Buyer the Buyer shall indemnify the Seller against all loss damages costs and expenses 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 of any patent copyright design trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

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 safety or other statutory requirements or where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

4. Price of the Goods

4.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price list in the Seller's published price list current at the date of delivery of the Goods. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they

may be altered by the Seller without giving notice to the Buyer.

4.2 The Seller reserves the right, by giving written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as without limitation any foreign exchange fluctuation currency regulation alteration of duties significant increase in the costs of manufacture) any change in delivery dates quantities or specifications for the Goods which is requested by the Buyer or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions. The giving of such notice shall bind both parties to the new price and shall not entitle either party to cancel the Contract.

4.3 Except as otherwise stated in writing by a duly authorised representative of the Seller or under the terms of any quotation or in any price list of the Seller all prices are given by the Seller on an ex-works basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises the Buyer shall be liable to pay the Seller's charges for transport packaging and insurance.

4.4 The price of Goods is exclusive of any applicable value added tax and any other applicable tax or duty which is from time to time in force (whether initially charged on or payable at a later date by the Buyer to the Seller).

5. Terms of Payment

5.1 Subject to any special terms agreed in writing between the Buyer and the Seller the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after the delivery of the Goods unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the goods.

5.2 The Buyer shall pay the price of the Goods within 30 days of the date of the Seller's invoice 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 upon request.

5.3 No payment may be withheld by the Buyer for any reason whatsoever nor may any counterclaim of the Buyer be set-off against any payment due to the Seller without the prior written consent of the Seller.

5.4 The Seller shall have a general and particular lien over any property of the Buyer in its possession in respect of any monies due to the Seller from the Buyer from time to time.

5.5 If the Buyer fails to make any payment on the due date then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to:

5.5.1 cancel the Contract or suspend any further deliveries to the Buyer;

5.5.2 appropriate 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 appropriation by the Buyer); and

5.5.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid at the rate of two per cent per annum above National Westminster Bank plc base rate from time to time until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest). The Seller reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 and sell to third parties Goods ordered but not delivered under this or any other contract between the Seller and the Buyer.

6. Delivery

6.1 Delivery of the Goods shall be deemed to take place either at the time of the Buyer collecting the Goods at the Seller's premises or if some other place for delivery is agreed by the Seller's delivery of the Goods to that place.

6.2 The Seller will use its reasonable endeavours to supply the Goods on the date or dates specified in the Contract, but any dates given for supply of the Goods are approximate only and are not guaranteed by the Seller. The Seller shall not be liable for any delay in delivery of the Goods however caused and any failure of the Seller to supply the Goods by a specified date or dates shall not entitle the Buyer to repudiate or cancel the Contract. Time for supply or delivery shall not be of the essence of the Contract. The Goods may

be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

6.3 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 Terms 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.

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

6.4.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) for storage (storage and insurance of the Goods shall be at the Buyer's risk and expense);

6.4.2 if the Buyer fails to take delivery of the Goods within 14 days of notification that they are ready for delivery the Seller shall have the right to sell, dispose of or otherwise deal with the Goods and the Buyer shall be liable to the Seller for all loss (including loss of profits) or damage which the Seller shall suffer as a consequence of the Buyer's failure to take delivery of the Goods or of such sale.

6.5 Non-delivery of the Goods shall be notified to the Seller within 7 days of the date of delivery indicated by the Seller.

6.6 The Seller and (where relevant) the carriers must be notified within 3 days of delivery of any damage or shortage and the Buyer must retain for inspection any damaged Goods and packaging.

6.7 The Seller shall incur no liability whatsoever in the event of failure by the Buyer to notify the Seller within the time limit specified in clause 6.6 above of non-supply, damage or shortage as above.

6.8 The Buyer shall be deemed to have accepted the Goods if the Buyer supplies them to a third party or seeks or agrees to have any defects repaired. If the Buyer accepts any of the Goods delivered, the Buyer shall be deemed to have accepted them all and shall not be entitled to reject them, unless the Goods are delivered at the same time as Goods of a different description in which instance the Buyer may reject the Goods of one description.

6.9 The Buyer must check the Goods upon Delivery in order to confirm the Goods have been received in full, in satisfactory condition free from defect and in accordance with the Contract. Signature of the Seller's Delivery Note confirming the Goods have been checked, received in full and in satisfactory condition free from defect constitutes acceptance of the Goods referred to on the Delivery Note and the Buyer shall not be entitled to reject the same. The Buyer warrants that any person signing a Delivery Note has full authority to sign the Delivery Note on its behalf. In the event the Buyer takes delivery of the Goods without undertaking the check required by this clause it does so at its own risk and waives its right to reject the Goods and/or make any claim in respect of any matter that would have been discovered had the check been undertaken.

7. Risk and Property

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

7.1.1 in the case of Goods to be delivered at the Seller's premises at the time when the Seller notifies the Buyer that the Goods are available for collection; or

7.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery as specified in clause 6.1, or if the Buyer wrongfully fails to take delivery of the Goods at the time when the Seller has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, 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 and all other goods and services agreed to be sold or supplied by the Seller to the Buyer for which payment is then due.

7.3 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, but the Buyer may resell or use the Goods in the ordinary course of business.

7.4 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 Seller shall be entitled at any time to require the Buyer to deliver up the goods to the Seller and if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

7.5 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 moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

7.6 In the event of certain Goods having been paid for by the Buyer and other Goods not having been so paid for, the onus of proof shall be on the Buyer to show that any Goods remaining in its possession are Goods for which the Seller has been paid.

8. Warranties and Liability

8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with the specification (if any) at the time of delivery and will be free from defects in material and workmanship for a period of twelve months from the date of their delivery.

8.2 The above warranty is given by the Seller at the time of delivery subject to the following conditions:

8.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

8.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working or storage conditions (including the use or submersion of Goods in water or in salty conditions), failure to follow the Seller's instructions (whether oral or in writing), misuse or inadequate storage or alteration or repair of the Goods without the Seller's approval and the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defects or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract;

8.2.3 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;

8.2.4 the Seller shall be under no liability in respect of any defect in the Goods which is not notified to the Seller within 1 month of the delivery of the Goods to the Buyer, or which is so slight that it would be unreasonable for the Buyer to reject or claim damage in respect of that defect. For the avoidance of doubt any minor tube deformation or indentation of the Goods occurring as a consequence of the packing and transportation of the Goods which does not affect the use of the Goods shall not constitute a breach of the warranty at clause 8.1 and the Buyer shall not be entitled to reject the Goods or claim damage in respect of any such occurrence

8.2.5 The appearance of rusting on Goods with a galvanised finish after delivery constitutes normal wear and tear. The occurrence of any such rusting does not affect the use or performance of the Goods and is a consequence of the use and/or storage of the Goods outdoors. For the avoidance of doubt any such occurrence does not constitute a defect in material or workmanship entitling a Buyer to reject the Goods or claim damage and shall not constitute a breach of the warranty at clause 8.1. Furthermore, it is agreed that and declared that the Seller shall be under no liability to the Buyer in respect of any such occurrence.

8.2.6 the Seller shall be under no liability in respect of the fitness of the Goods for their purpose unless that purpose is one for which the Seller commonly supplies the Goods or is specified in the Contract;

8.2.7 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 guarantee as is given by the manufacturer to the Seller.

8.3 Subject as expressly provided in these Terms and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law. The Statutory Rights of a consumer are not affected by these Terms.

8.4 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 Terms 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 whatsoever.

8.5 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 consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by negligence of the Seller, its employees or agents or otherwise) which

arise out of or in connection with the supply of the Goods, (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) 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 Terms.

8.6 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. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond the Seller's reasonable control:

8.6.1 Act of God explosion flood tempest fire or accident;

8.6.2 war or threat of war sabotage insurrection civil disturbance or requisition;

8.6.3 acts restrictions regulations bye-laws prohibitions or measures of any kind on the part of any governmental parliamentary or local authority;

8.6.4 import or export regulations or embargoes;

8.6.5 strikes lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);

8.6.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;

8.6.7 power failure or breakdown in machinery;

8.6.8 failure by the Buyer to correctly store, protect, handle or otherwise deal with the Goods.

8.7 In the event of a delivery of Goods being delayed for a period of 6 months or more from the said date or dates referred to in clause 6.2 by any of the reasons stated above, either party may terminate the Contract by notice in writing to the other.

9. Default or Insolvency of Buyer

9.1 Clause applies if:

9.1.1 the Buyer takes any step or action in connection with its entering into administration, provisional liquidation or any composition or arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

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

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

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

9.1.5 the Buyer fails to make any payment on the due date.

9.2 If this clause applies then without limiting any other right or remedy available to the Seller, the Seller shall be entitled to:

9.2.1 cancel the Contract or suspend any further deliveries under the Contract;

9.2.2 if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary;

9.2.3 withdraw any credit facility or right to discount from the Buyer;

9.2.4 appropriate 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 appropriation by the Buyer;

9.2.5 charge the Buyer interest as calculated in accordance with clause 5.5

In the event of an order being cancelled by the Seller or being cancelled by the Buyer, the Buyer shall indemnify the Seller against all costs and expenses and damages incurred by the Seller in connection with the order and its cancellation (the Seller giving credit for the value of the materials sold or utilised for other purposes).

10. General

10.1 Any notice required or permitted to be given by either party to the other under these Terms shall be in writing by prepaid special delivery post addressed to that other party at its registered office of principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

10.2 No waiver whether partial or full, by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any

subsequent breach of the same or any other provision.

10.3 If any provision of these Terms is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected thereby.

10.4 The Buyer shall not without the prior written approval of the Seller assign, transfer or sub-contract the benefit or the burden of the Contract or any part of the Contract.

10.5 The Seller may assign, transfer or sub-contract the Contract or any part of the Contract to any other person or company.

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

10.7 The Contract shall be governed by the laws of England and the Buyer agrees to submit to the jurisdiction of the English Courts.