

TERMS AND CONDITIONS OF SALE



1. DEFINITIONS

“Seller” means MPE Limited. “Buyer” means the entity to which Seller’s Offer is made, or the entity purchasing Goods and/or Services from Seller. “Goods” means the products offered or sold by Seller. “Services” means Services offered or rendered by Seller. “Offer” means any quotation, bid, or proposal for Goods and/or Services made by Seller to Buyer. “Order” means Buyer’s purchase order, or similar instrument. All references to “terms and conditions” herein mean and include (a) these “Terms and Conditions of Sale”, (b) Seller’s Special Terms and Conditions, as applicable, and (c) any other terms and conditions mutually agreed upon by the Parties in writing, in accordance with Section 3 herein. Seller and Buyer are sometimes referred to herein individually as a “Party” and collectively as the “Parties”.

2. OFFERS

Unless stated otherwise in writing by Seller, all Offers made by Seller shall be valid for a period of thirty (30) days from the date of such Offer. Unless accepted by Buyer within the Offer validity period, Seller reserves the right to withdraw and/or revise its Offer. The prices offered by Seller apply only to the specific quantities, specifications, delivery schedules, and terms and conditions set forth in Seller’s Offer.

3. ACCEPTANCE

The terms and conditions herein apply to all Offers made by Seller, and all Orders accepted by Seller. Acceptance of Buyer’s Order, and any changes or amendments thereto, is strictly conditioned upon Buyer’s assent to Seller’s terms and conditions. Unless otherwise agreed upon in writing by a duly authorised representative of Seller, Seller objects to, and is not bound by, any terms or conditions that differ from, add to, or modify the terms and conditions herein. Seller’s failure to object to any terms and conditions or any other provisions contained in any communication from Buyer, including, but not limited to, Buyer’s Order and any changes or amendments thereto, does not waive any of the terms and conditions specified herein. Seller’s acceptance of Buyer’s Order or Buyer’s receipt of Goods, whichever occurs first, shall conclusively evidence Buyer’s unconditional acceptance of these terms and conditions. The terms and conditions herein shall be applicable whether or not they are attached to or enclosed with Goods and/or Services sold or to be sold hereunder.

4. PRICES

Unless otherwise agreed in writing by a duly authorised representative of Seller, all prices are stated in British Pounds and all invoices issued by Seller and payments made by Buyer shall be in British Pounds. A minimum order value of one thousand pounds (£1,000) shall apply.

5. PAYMENT TERMS

Subject to Seller approval of Buyer’s credit, payment terms for Orders are thirty (30) days from the date invoice is issued. In all other instances, payment terms shall be either cash in advance by wire transfer, or by an irrevocable letter of credit confirmed with Seller’s bank. Buyer hereby waives any right of setoff against amounts due to Buyer from Seller.

6. TAXES

The amount of any present or future sales, use, excise, import duty, VAT, or other tax applicable to the manufacture, sale, or lease of Goods shall be added to Seller’s invoice and shall be paid by Buyer, unless Buyer provides Seller a valid tax exemption certificate acceptable to the applicable taxing authority.

7. DRAWINGS & SPECIFICATIONS

All specifications, drawings and particulars of weights and dimensions submitted with offer made by the Seller are approximate only, and the descriptions and illustrations contained in the Seller’s catalogues, price list and other marketing material are intended as indicative values only, none of these shall form part of the contract.

8. PERFORMANCE

The Seller shall accept no liability for failure to attain any performance figures quoted, unless the Seller has specifically guaranteed them. If the performance figures obtained on any test provided for in the contract are outside the rejection limits specified therein, the Buyer will be entitled to reject the goods. If the Buyer becomes entitled to reject the goods, the Seller will repay to the Buyer any sum paid by the Buyer to the Seller on account of the contract price thereof or, at the Seller’s option, the Seller will modify or replace the goods. The Buyer assumes responsibility that goods stipulated by the Buyer are sufficient and suitable for the Buyer’s purposes save in so far as the Buyer’s stipulations are in accordance with the Seller’s advice.

9. INSPECTION AND TESTS

All Goods manufactured by Seller are subject to Seller's standard inspection and quality assurance processes and, if applicable, acceptance testing at Seller's facility. Any additional requirements mutually agreed by the Parties, including, without limitation, Buyer's source inspection or additional testing, are at Buyer's sole expense. If Buyer requires inspection by Buyer at Seller's place of manufacture, such inspection shall not unreasonably interfere with Seller's operations. Seller shall give Buyer at least two (2) business days advance notice of availability of Goods for Buyer's inspection. If Buyer fails to perform such inspection within three (3) business days after said notice is received, or such other period as agreed by Seller, inspection by Buyer shall be deemed to have been waived by Buyer.

10. SAMPLES

Notwithstanding that a sample of the goods has been exhibited to and inspected by the Buyer, it is hereby declared that such a sample was so exhibited and inspected solely to enable the Buyer to judge for himself the quality of the bulk and not so as to constitute a sale by sample under this contract. The Buyer shall take the goods at his own risk as to their corresponding with the said sample or as to their quality condition or sufficiency for any purpose.

11. PACKING AND PACKAGING

All Goods shall be packed and packaged in accordance with Seller's standard commercial packing and packaging methods. Any nonstandard or special packing or packaging requested by Buyer shall be at Buyer's sole expense.

12. DELIVERY CHARGE

Prices quoted are not inclusive of delivery charge. Freight/postage (and packing) will be charged at 3.5% unless otherwise stated.

13. SHIPPING, DELIVERY & TITLE

Except as specified in the applicable quotation and/or order confirmation, all Products will be shipped pursuant to Incoterms 2010 Ex-Works, with the delivery site for all shipments MPE Ltd. Hammond Road, Liverpool L33 7UL, unless otherwise identified at the time of order. Except as specified, herein this section, title and risk of loss including payment of all transportation and insurance cost pass to Buyer at MPE's door. Buyer will choose the freight forwarder, customs broker, carrier and means of delivery; provided, however that MPE, in its sole discretion, maintains the ability to reject Buyer's selection of freight forwarder, customs broker, carrier and means of delivery. If MPE rejects Buyer's selection of any of the above, Buyer will designate an alternative carrier, broker or means of delivery that is acceptable to MPE. Buyer is responsible for filing any claims with freight forwarders, customs brokers or carriers. If the Products are to be exported, Buyer will be responsible for all export charges, consular and customs declarations and will be responsible for penalties resulting from errors or omissions thereon. Buyer shall not re-export the Product or any goods or items, which incorporate the Product if the re-export would violate United Kingdom export laws or the similar corresponding law (s) the United States or of any other country, as applicable. Any specifications, drawings, plans, notes, instructions, engineering notices, or technical data of MPE furnished to Buyer shall be deemed to be incorporated herein by reference the same as if fully set forth. MPE shall at all times retain title to all such documents, and Buyer shall not disclose such to any party other than MPE or a party duly authorized by MPE. If there is any situation where the parties desire to ship using any term different from or additional to Incoterms Ex-Works, such agreement must be explicitly set forth in a separate writing and signed by an officer or other authorized representative of MPE. MPE reserves the right to enter or have its agent enter upon a Buyer's site to recover any Products not currently purchased or licensed by Buyer but currently located on Buyer's site. Buyer must expressly declare the final destination of the Products on the applicable purchase order.

14. DELIVERY SCHEDULES AND FORCE MAJEURE

MPE will not be liable for delays in shipment or default in delivery or any failure to perform due to any cause beyond MPE's reasonable control including, but not limited to, government action, shortage or labor, raw material, production or transportation facilities, strike or labor difficulty involving employees of MPE or others, fire, flood, act of God, terrorism, civil unrest, war, riot, embargo, fuel or energy shortage, car shortage, wrecks or delay in transportation, or inability to obtain necessary labor, materials or manufacturing facilities from usual sources. In addition, MPE shall not be liable or responsible to the extent MPE's performance under these terms and conditions is prevented, delayed or hindered by any pandemic, epidemic or outbreak of widespread illness on a local, national or international scale, or any new or escalated circumstances related thereto outside of MPE's reasonable control, including without limitation quarantines, transportation disruptions, government imposed restrictions, labor shortages or delays or failures of performance by MPE's suppliers or carriers. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be extended by a period of time reasonably necessary to overcome the effect of such delay.

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15. LOSS OR DAMAGE IN TRANSIT

Packing of Goods shall be examined by the Buyer on receipt and notification of damage or breakage shall be sent in writing both to the Seller and the carrier within three (3) days of receipt. In the case of loss in transit or delay in delivery, notification in writing shall be sent to the Seller and the carrier by the Buyer within fourteen (14) days of the date of the invoice. "unexamined" signatures do not relieve the Buyer of his liability and the Seller shall not be responsible for any claim or claims if the Buyer fails to comply with this clause.

16. INSPECTION & ACCEPTANCE OF GOODS

Buyer will promptly inspect a Product upon delivery. No claims for shortages will be allowed unless shortages are reported to MPE, in writing, within ten (10) days after delivery. Acceptance will be deemed to have occurred no later than thirty (30) days after shipment of such Product.

17. CHANGES

Buyer may request changes to the general scope of Buyer's Order by a written notice, of no less than sixty (60) days, provided to Seller, however, such changes shall not be effective until and unless Seller consents to such changes in writing. If any such changes cause an increase or decrease in the cost of, or the time required for, the performance of any part of Buyer's Order, an equitable adjustment shall be made to the price and/or delivery schedule, and Buyer's Order shall be modified to reflect such change and adjustment in writing.

18. TERMINATION

Buyer may request cancellation or termination of Buyer's Order for Buyer's convenience, in whole or in part. Seller agrees to cooperate with Buyer in attempting to effect such cancellation or termination conditioned upon Buyer paying Seller for all Goods delivered and/or Services performed, and for all work in process, including all applicable direct and indirect costs, normal profit on such costs, settlements with suppliers, and related termination expenses. To the extent possible, Seller shall use reasonable commercial efforts to divert materials and work in process from Buyer's Order to other customers' orders.

19. LIMITED WARRANTY

Seller warrants that Goods delivered under Buyer's Order shall be free from defects in material and workmanship, and conform to Seller's specifications for a period of five (5) years from the date of original shipment. This warranty does not apply to any Goods that, upon examination by Seller, are found to have been (a) mishandled, misused, abused, or damaged by Buyer or Buyer's customer, (b) altered from its original state or repaired without Seller's prior written approval, or (c) improperly stored, installed, operated, or maintained in a manner inconsistent with Seller's instructions. This warranty does not apply to defects attributed to normal wear and tear. Seller, at its sole option, shall repair or replace defective Goods, or issue Buyer a credit for the original price of the defective Goods. Such repair, replacement and credit by Seller shall be Buyer's sole remedy for defective Goods and Services. Under no circumstances is Seller liable for retrieval, removal, dismantling, re-installation, redeployment, or re-commissioning of any defective Goods or any costs associated.

20. PATENT, COPYRIGHT AND TRADE MARKS

No representation, warranty or indemnity is given by the Seller that the goods do not infringe any letter's patent, copyright or trade mark, registered designs or other industrial rights.

21. PROPRIETARY RIGHTS

Seller shall retain all right, title, and interest in and to any data, information, software programs, tools, specifications, templates, scripts, ideas, concepts, inventions, works of authorship, products, know-how, processes, techniques, and the like used or developed by Seller, its employees, and its subcontractors in connection with Buyer's Order. Buyer agrees that Seller retains all proprietary rights in and to all products, specifications, designs, discoveries, inventions, patents, copyrights, trademarks, trade secrets, and other proprietary rights relating to Goods or Services. Unless otherwise identified in writing to Seller, no information or knowledge heretofore or hereafter disclosed to Seller in the performance of, or in connection with, the terms hereof, shall be deemed to be confidential or proprietary and any such information or knowledge shall be free from restrictions, other than a claim for patent infringement, as part of the consideration hereof.

22. INDEMNIFICATION

Each Party (the "Indemnifying Party") agrees to indemnify, defend, and hold harmless the other Party, its officers, directors, and employees (the "Indemnified Parties") from and against any and all liabilities, losses, expenses, liens, claims, demands, and causes of action ("Claims") for death, personal injury, or property damage arising out of any negligent act or omission of the Indemnifying Parties in the performance of Buyer's Order, except to the extent such Losses are contributed to by (a) the negligence or wilful misconduct of the Indemnified Party, (b) the negligence or wilful misconduct of any third parties, or (c) equipment, information, or materials furnished by Buyer to Seller. Seller's indemnification of Buyer does not apply unless Buyer (a) notifies Seller in writing of any such Claim as soon as reasonably practicable, and (b) allows Seller to control, and reasonably cooperates with Seller, in the defence of any such Claim and related settlement negotiations.

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23. LIMITATION OF LIABILITY

Notwithstanding any other provision herein, under no circumstances shall either Party be liable for any consequential, special, incidental, indirect, multiple, administrative, or punitive damages, or any damage of an indirect or consequential nature arising out of or related to its performance under Buyer's Order, including, without limitation, loss of use, loss of revenues, loss of anticipated profits, and cost of capital, whether based upon breach of Buyer's Order, warranty, negligence, or any other type of Claim, and whether grounded in tort, contract, civil law, or other theories of liability, including strict liability, even if advised in advance of the possibility of such damages. Seller's total liability arising from or related to Buyer's Order, including, but not limited to, its liability for indemnity, defence, and hold harmless obligations under Buyer's Order, is limited to no more than the amount paid by Buyer to Seller under Buyer's Order, and Buyer agrees to indemnify Seller for any excess amounts. To the extent that this limitation of liability conflicts with any other Section or provision herein, such provision shall be regarded as amended to whatever extent required to make such provision consistent with this clause.

24. ORDER OF PRECEDENCE

The following order of precedence shall apply in the event of an inconsistency within Buyer's Order and its related documents, as applicable:

Seller's Special Terms and Conditions

Seller's Terms and Conditions of Sale

Specification

Statement of Work or Scope of Services

25. GOVERNING LAW AND VENUE

The performance of the Parties, and any judicial or arbitration proceedings, shall be construed and governed in accordance with the laws of England.

26. DISPUTES AND ARBITRATION

The Parties shall attempt to resolve any dispute, controversy, or claim arising under or relating to Seller's Offer or Buyer's Order, or to a material breach, including its interpretation, performance, or termination. If the Parties are unable to resolve such dispute, either Party may refer the dispute to arbitration. The arbitration shall be conducted in English and in accordance with the Rules of Arbitration of the International Chamber of Commerce, by a person or authority to be mutually agreed upon. The arbitration, including the rendering of the decision and/or award, shall be the exclusive forum for resolving the dispute, controversy, or claim. The arbitrator shall make the final determination as to any discovery disputes between the Parties. Examination of witnesses by the Parties and by the arbitrator shall be permitted. A written transcript shall be made and furnished to the Parties. The cost of this transcript shall be borne equally by the Parties. The award or decision of the arbitrator shall state the reasons upon which the award or decision is based, and shall be final and binding upon the Parties. The prevailing Party shall be entitled to compensation for the expense of the arbitration, including, but not limited to, the award of attorneys' fees, at the discretion of the arbitrator. Both Parties waive their right to any appeal under any system of law. The award shall be enforceable before any court of competent jurisdiction upon the application to such court by either Party. The arbitrator shall have no authority to award any of the types of damages excluded by hereunder, and shall be so instructed by the Parties.

27. HEADINGS

The headings used herein are for reference purposes only and shall not affect the meaning or interpretation of any term, condition, or provision herein.

28. ENTIRE AGREEMENT

These terms and conditions (including Seller's Special Terms and Conditions, as applicable) and Buyer's Order (as accepted by Seller in accordance with the terms herein), including any applicable specifications, statement of work, or other applicable documents constitute the entire agreement between the Parties and supersede any prior oral or written agreements, commitments, understandings, or communications with respect to the subject matter of Buyer's Order.