

Terms & Conditions (Customers)
CONDITIONS OF SALE

1. Interpretation

1.1 In these Conditions:

"Buyer" means the person who accepts a quotation of the Company for the sale of the Goods or whose order for the Goods is accepted by the Company

"Company" means Colt Material Solutions Ltd (registered in England)

"Conditions" means the standard terms and conditions 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 Company

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

"Goods" means the goods (including any instalment of the goods or any parts for them) which the Company is to supply in accordance with these Conditions

"Input Material" means any specification documents data designs or other information provided by or on behalf of the Buyer to the Company

"Writing" includes telex, cable, facsimile transmission, electronic transmission and comparable means of communication.

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.

2. Basis of the sale

2.1 The Company shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Company which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Company, subject in either case to these Conditions, 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 Buyer.

2.2 No variation to these Conditions shall be binding unless agreed in Writing between the Buyer and the Company.

2.3 The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

2.4 Any advice or recommendation given by the Company or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Company is followed or acted upon entirely at the Buyer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 Any typographical, clerical or other error or omission in any sales literature¹ quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

3. Orders and specifications

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Company unless and until confirmed in Writing by the Company.

3.2 The Buyer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Company's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Company).

3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company 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 Company's use of the Buyer's specification.

3.5 The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or, where the Goods are to be supplied to the Company's specification, which do not materially affect their quality or performance.

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

3.7 All descriptions, illustrations, drawings and estimates of performance, weights and measures provided by the Company are, unless otherwise stipulated, approximate only. The Buyer shall be responsible to the Company for ensuring the accuracy of the terms of the order (including any applicable specification whether provided by the Company or the Buyer and any other Input Material) submitted by the Buyer and to giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

3.8 Any drawings, specifications or other documents supplied by the Buyer shall become the property of the Company.

4. Price of the goods

4.1 The price of the Goods shall be the Company's quoted price. 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 Company without giving notice to the Buyer.

4.2 The Company reserves the right, by giving 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 Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other 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 Company adequate information or instructions.

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

4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Company.

4.5 The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Company before the due payment date.

5. Tooling and dies

5.1 If the Company has agreed to create, manufacture or produce any dies or other tooling ("Tooling") for the Buyer then unless agreed otherwise the Company shall produce such Tooling upon receipt of an appropriate drawing or sample from the Buyer. The price (if any) of producing such Tooling and the terms of payment for it will (unless otherwise agreed in writing) be as stated on or in the quotation. A die print shall be supplied by the Company and approved by the Buyer (such approval not to be unreasonably withheld) prior to the manufacture of any goods by the Company using the Tooling.

5.2 The supply by the Company of a sample from any Tooling or any other dies or tooling does not deem the Contract to be one of sale by sample for the purposes of Section 15 of the Sale of Goods Act 1979 (as amended) and the Company hereby excludes Section 15 of the Sale of Goods Act 1979 (as amended).

5.3 The legal and beneficial ownership of the Tooling (or any other dies or tooling which the Company has agreed to supply to the Buyer) shall not vest in the Buyer unless and until the price of such Tooling or other dies or tooling has been paid in full by the Buyer.

5.4 For the avoidance of doubt the intellectual property rights in or connected to any:-

5.4.1 Tooling which has been created, manufactured or produced by the Company using its own or a third party's designs, drawings or samples; or

5.4.2 existing dies or tooling owned or used by the Company which are to be used in connection with the Contract shall remain the property of the Company (subject to any applicable third party rights) notwithstanding that the actual die or tooling has passed into the possession of the Buyer.

5.5 The Buyer hereby acknowledges that any intellectual property rights that it may have in any Input Material supplied to the Company for the purposes of the contract and/or any other Contract with the Company shall not prohibit the Company from:-

5.5.1 manufacturing and/or using dies or tooling for the benefit of any third party and/or the Company which are similar to any die or tooling created by the Company using such Input Material; or

5.5.2 using or manufacturing any die or tooling for the benefit of any third party and/or the Company which is similar or identical to any die or tooling which is or may be created using any design or specification in the Input Material where the Buyer's intellectual property in such Input Material does not prohibit the production by persons other than the Buyer of dies or tooling using such design or specification.

5.6 The Company reserves the right to dispose of any Tooling and shall give notice of its intention to do so and a time period within which the Buyer may collect such Tooling from the Company subject to payment in full of the price of such Tooling by the Buyer. Should the Buyer fail to collect such Tooling from the Company within such period the Company shall be free to dispose of such Tooling as it deems appropriate and shall not be liable to the Buyer for any damages, claims and/or costs of any kind whatsoever in respect of such disposal.

5.7 For the avoid of doubt the Company shall have the right to dispose of any Tooling referred to in Condition 5.4.1 or any dies or tooling referred to in Condition 5.4.2 without reference or liability to the Buyer.

5.8 Any die or tooling that is manufactured by the Company is manufactured for use on the Company's own machinery and as such, the Company gives no warranty as to the compatibility of any such die or tooling with another's machinery.

6. Terms of payment

6.1 Subject to any special terms agreed in Writing between the Buyer and the Company, the Company shall be entitled to invoice the Buyer for the price of the Goods on or at any time after 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 Company shall be entitled to invoice the Buyer for the price at any time after the Company has notified the Buyer that the Goods are ready for collection or (as the case may be) the Company has tendered delivery of the Goods.

6.2 The Buyer shall pay the price of the Goods without any other deduction within 30 days of the date of the Company's invoice, and the Company shall be entitled to recover the price, 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 only upon request.

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

6.3.1 cancel the contract or suspend any further deliveries to the Buyer;

6.3.2 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 Company) as the Company may think fit (notwithstanding any purported appropriation by the Buyer); and

6.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 3 per cent per annum above Bank 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).

7. Delivery

7.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Company's premises at any time after the Company has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Company in Writing, by the Company delivering the Goods to that place where the Buyer warrants that any necessary unloading facilities will be available.

7.2 Any dates quoted for delivery of the Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

7.3 Where delivery of the Goods is to be made by the Company in bulk, the Company reserves the right to deliver up to five (5) per cent more or five (5) per cent less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered.

7.4 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of anyone or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

7.5 If the Company fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Company's reasonable control or the Buyer's fault, and the Company is accordingly liable to the Buyer, the Company's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

7.6 If the Buyer fails to take delivery of the Goods or fails to give the Company 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 Company's fault) then, without prejudice to any other right or remedy available to the Company) the Company may:

7.6.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

7.6.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

7.7 Without prejudice to the Conditions 9.5 and 9.6 the Buyer shall notify the Company and if the carrier is an independent contractor also the carrier in writing of any damage in transit to or mis-delivery or shortfall in the quantity of the Goods as soon as is practicable and in any event within 7 days from the date of delivery or (where the damage, mis-delivery or shortfall was not apparent on reasonable inspection) within a reasonable time after discovery of the defect, failure or shortage. The Buyer shall similarly notify the Company and, if applicable the carrier, if the Goods are not received at all by the Company within 5 days where delivery is effected by the Company's own vehicles six days where delivery is effected through the post or 10 days where delivery is effected by road or rail transport (other than by the Company's vehicles) the time in each case running from the date of despatch as notified in writing by the Company to the Buyer.

8. Risk and property

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

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

8.1.2 in the case of Goods to be delivered otherwise than at the Company's premises, at the time of delivery or if either the Buyer wrongfully fails to take delivery of the Goods or fails to provide adequate unloading facilities in accordance with Condition 7.1, the time when the Company has tendered delivery of the Goods.

8.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Company has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Company to the Buyer for which payment is then due.

8.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Company'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 Company's property, but the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business.

8.4 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 Company shall be entitled at any time to require the Buyer to deliver up the Goods to the Company 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.

8.5 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 Company, but if the Buyer does so all moneys owing by the Buyer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

9 Warranties and liability

9.1 Subject to the conditions set out below the Company warrants that the Goods will correspond with their specification at the time of delivery.

9.2 The above warranty is given by the Company subject to the following conditions:

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

9.2.2 the Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Company's approval;

9.2.3 the Company 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;

9.2.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Company, 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 Company.

9.3 Subject as expressly provided in these Conditions, 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.

9.4 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.

9.5 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Company within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Company accordingly, the Buyer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

9.6 Any claim by the Buyer which is based on a complete failure to deliver the Goods to the Buyer on the agreed or notified delivery date shall be notified to the Company within the time limits specified in Condition 7.7. If the Buyer does not notify the Company accordingly the Company shall have no liability for failure to deliver and the Buyer shall be bound to pay the price as if the Goods had been delivered.

9.7 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 Company in accordance with these Conditions, the Company shall be entitled to replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Company shall have no further liability to the Buyer.

9.8 Except in respect of death or personal injury caused by the Company's negligence, the Company 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 indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, and the entire liability of the Company under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions.

9.9 The Company 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 Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:

9.9.1 Act of God, explosion, flood, tempest, fire or accident;

9.9.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

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

9.9.4 import or export regulations or embargoes;

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

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

9.9.7 power failure or breakdown in machinery.

10 Insolvency of Buyer

10.1 This clause applies if:

10.1.1 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

10.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

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

10.1.4 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly

10.2 If this clause applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and 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.

11 General

11.1 The Company may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group provided that any act or omission by any such member shall be deemed to be the act or omission of the Company.

11.2 Any notice 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.

11.3 No waiver by the Company 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.

11.4 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 affected.

11.5 Any dispute arising under or in connection with these Conditions or the sale of the Goods shall be referred to arbitration by a single Arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Chartered Institute of Arbitrators.

11.6 The parties to this Contract do not intend that any term of this agreement should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999

11.7 To the extent that any personal data is supplied by the Buyer to the Company for the purposes of the Data Protection Act 1998 the Buyer consents to the Company and any member of its group processing such personal data and disclosing such personal data to third parties, some of which may be located in countries which may not have an adequate level of protection, to the extent that it is necessary for the purposes of the performance of the Contract.

11.8 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.

