

## **Terms & Conditions**

**1.1** These terms and conditions (“Conditions”) (together with the commercial terms set out in the document to which these Conditions are appended (the “Sales Contract”) (together the “Contract”)) are the only terms upon which Keeling & Walker Ltd (the “Seller”) is prepared to deal with the recipient set out in the Sales Contract (the “Buyer”) in respect of the goods set out in the Sales Contract (the “Goods”) and they shall govern the sale and purchase of the Goods to the entire exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing. The Buyer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Buyer that is inconsistent with these Conditions, To the extent that there is any inconsistency between the Sales Contract and the Conditions, the Sales Contract shall prevail.

**1.2** These Conditions may only be modified by a variation expressed in writing (which shall include faxes and e-mails), by the Seller, and no other action on the part of the Seller (whether delivery of the Goods or otherwise) shall be construed as an acceptance of any other conditions or of any modification hereto.

**1.3** These Conditions as modified in accordance with Condition 1.2 above and together with the terms of the Sales Contract, embody the entire understanding of the parties and supersede any prior promises, representations, undertakings or implications relating to its subject matter.

**1.4** Any quotation in whatever form given to the Buyer is given subject to these Conditions and does not constitute an offer to sell. All orders placed with the Seller shall constitute an offer by the Buyer to purchase goods in accordance with these Conditions and shall require the Seller’s written acceptance, in the form of the Sales Contract, before any contract arises. The Contract shall come into existence upon the Seller’s written acceptance of the same in accordance with this Condition 1.4. The Buyer is responsible for ensuring that all information provided by it to the Seller is complete and accurate.

### **Price and Payment**

**2.1** The Buyer shall pay the price for the Goods set out and in the manner specified in the Sales Contract, and prices quoted shall be ‘Ex Works’ (as such term is defined in the Incoterms® Rules 2010) (“EXW”) unless stated to the contrary in the Sales Contract. The Seller may, by giving notice to the Buyer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to any factor beyond the Seller’s control, any request by the Buyer to change the delivery date, quantities or types of the Goods ordered or any delay caused by any instructions of the Buyer or by failure of the Buyer to give the Seller adequate or accurate information or instructions.

**2.2** Where the Seller quotes a ‘Costs, Insurance and Freight’ (as such term is defined in the Incoterms® Rules 2010) (“CIF”) price, this shall not include costs of discharge, import or

other duties, dues, taxes and any other costs chargeable in respect of the cargo at ports of discharge.

**2.3** The Seller may invoice the Buyer for the price of the Goods, determined in accordance with Condition 2.1 above, on or at any time after the completion of delivery and the Buyer shall pay such invoice in full and in cleared funds in accordance with the payment terms set out in the Sales Contract (and if no such payment terms are set out in the Sales Contract then payment terms of thirty (30) days shall apply to the Contract). If any payment that is to be made hereunder by the Buyer to the Seller is overdue, without prejudice to any other rights in respect thereof, interest shall accrue each day on the overdue sum from the due date until the date of payment, whether before or after judgment, at an annual rate of 4% above the Bank of England's base rate from time to time applicable, but at 4% a year for any period when that base rate is below 0%. Time for payment shall be of the essence of the Contract.

**2.4** Where any sum owed by the Buyer to the Seller under the Contract or any other contract (including but not limited to any interest) is overdue, or if at any time the credit standing of the Buyer has, in the opinion of the Seller, been impaired for any other reason, the Seller may in its discretion: (1) withhold any deliveries of Goods until arrangements as to payment or credit have been established which are satisfactory to the Seller; or (2) cancel the Contract so far as it remains unperformed, and without prejudice to any other rights the Seller may have in respect thereof at the date of such suspension or cancellation, as the case may be.

**2.5** The Buyer agrees that the Seller may set off all amounts that are due or become due from the Seller to the Buyer against all amounts that are due or become due from the Buyer to the Seller under the Contract and between each and every contract between the parties.

### **Risk and Title**

**3.1** The risk in the Goods shall pass to the Buyer on completion of delivery at the location specified in the Sale Contract or, in the case of an EXW contract, upon collection of the Goods by the Buyer at such location as may be advised by the Seller (in each case, the "Delivery Location"). Delivery is completed on the completion of unloading of the Goods at the Delivery Location or, in the case of an EXW contract, upon loading of the Goods at the Delivery Location.

**3.2** Title to the Goods shall not pass to the Buyer until the earlier of: (1) the Seller receiving payment in full (in cash or cleared funds) for the Goods and any other goods that the Seller has supplied to the Buyer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and (2) the Buyer reselling the Goods, in which case title to the Goods shall pass to the Buyer at the time specified in Condition.

**3.3** The Buyer may resell or use the Goods in the ordinary course of business (but not otherwise) before the Seller receives payment for the Goods. However, if the Buyer resells

the Goods before that time: (1) it does so as principal and not as the Seller's agent; and (2) title to the Goods shall pass from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs.

**3.4** If, before title to the Goods passes to the Buyer pursuant to Condition 3.3 above, the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy, then, without limiting any other right or remedy the Seller may have: (1) the Buyer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and (2) the Seller may at any time: (i) require the Buyer to deliver up all Goods in its possession that have not been resold or irrevocably incorporated into another product; and (ii) if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

### **Shipment and Storage**

**4.1** The Seller reserves the right to amend the specification of the Goods at any time prior to delivery if required by any applicable statutory or regulatory requirements.

**4.2** Any dates agreed for delivery, (or if an EXW contract, the date(s) of availability for collection), are the best estimate of such date and time for delivery shall not be of the essence, but the Seller reserves the right to alter the same without notice. The Seller shall not be liable for any delay in delivery (or, if an EXW Contract, date of availability for collection) that is caused by the Buyer's failure to provide adequate delivery instructions or other instructions that are relevant to the supply of the Goods.

**4.3** The Goods may be shipped in one or more instalments, which shall be invoiced and paid for separately if so requested by the Seller. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

**4.4** Without prejudice to any other rights the Seller may have, the Seller reserves the right to put the Goods or any portion thereof into storage at the Buyer's risk and expense (including insurance) in the following cases until delivery takes place:

**(1)** where the Seller is ready to despatch the Goods and the Buyer notifies the Seller that the Buyer is or will be unable or unwilling to receive the goods or for any other reason will be unable to accept delivery of the Goods at the agreed time for delivery;

**(2)** where the Seller is ready to despatch the Goods but needs delivery instructions and such instructions have not been provided by or on behalf of the Buyer or are inadequate;

**(3)** in an EXW contract where the Buyer fails to collect the Goods when they are ready for collection;

**(4)** in a 'Free on Board' (as such term is defined in the Incoterms® Rules 2010) contract where the Buyer fails to nominate a ship to the Seller; or **(5)** where the Seller suspends delivery of the Goods pursuant to Condition 2.4.

**4.5** Where the Seller stores any Goods in accordance with Condition 4.4 above, if the Buyer has not taken or accepted (as the case may be) actual delivery of the relevant Goods by the

[fourteenth (14 th )] day following the delivery date agreed pursuant to the Contract, the Seller may resell or otherwise dispose of part or all of the Goods.

## **5. Insurance**

Where shipments under the Contract are made CIF the Goods are insured under 'Institute Commodities Clauses'. In the event of loss of, or damage to, the Goods after shipment under the Contract but prior to actual arrival at the discharge port and payment therefor the Buyer will make payment against the documents representing the Goods in accordance with the payment clause therein (and if no such payment clause is stated then payment shall be in accordance with the Seller's standard payment terms set out in Condition 2.3 above), and in the event of the carrying vessel being lost such payment shall be made immediately once loss of the carrying vessel is established.

## **6 Limitations, Exclusions and Warranties**

**6.1** Nothing in these Conditions shall limit or exclude either party's liability for: (1) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); (2) fraud or fraudulent misrepresentation; (3) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or (4) any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.

**6.2** Save as provided expressly in these Conditions or the Sales Contract, all conditions and warranties express or implied as to the quality or fitness for any purpose of the Goods are hereby expressly excluded.

**6.3** The Seller warrants that on delivery the Goods shall: (1) conform in all material respect with their description under the Sales Contract; (2) be free from material defects in design, material and workmanship; and (3) in the case of Goods sold by reference to samples, allowing for reasonable variations in shade and/or quality, comply with such samples.

**6.4** If the Buyer gives notice in writing to the Seller within fourteen (14) days of delivery of the Goods that some or all of the Goods do not comply with the warranty set out in Condition 6.3 above and: (1) the Seller is given a reasonable opportunity of examining such Goods; and (2) the Buyer (if asked to do so by the Seller) returns such Goods to the Seller, the Seller shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full. These Conditions shall apply to any repaired or replaced Goods.

### **6.5 Subject to Condition 6.1:**

(1) the Seller shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), misrepresentation, restitution or otherwise, for any loss of profit, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of or damage to goodwill or any indirect or consequential loss arising under or in connection with the Contract; and (2) the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the purchase price of the Goods to which the relevant claim relates.

**6.6** All drawings, descriptions, illustrations, specifications, performance data, dimensions, weights and the like whether contained in any contract or made by way of representation will have been provided by the Seller on the basis they are as accurate as reasonably possible, but the Seller does not warrant and no warranty shall be implied that the same are accurate.

## **7. Import Licenses and Health & Safety**

**7.1** The Buyer shall indemnify the Seller against any loss or expense to the Seller arising from failure by the Buyer to obtain in due time any import licence or permit or the like which may be required for the importation of the Goods at destination or from the subsequent revocation or non-renewal of such permit.

**7.2** The Goods are sold on condition that: (1) the Buyer carries out such tests and examinations of the Goods as are reasonably practicable to ensure that when used the Goods are safe and without risk to health and comply with all local laws and regulations, and; (2) the Buyer shall, if so requested by the Seller, enter into a written undertaking to take such steps as may be specified by the Seller relating to such tests and examinations.

## **8. Weights**

The Buyer is deemed to accept the Seller's declared weights and the Seller shall have no liability for any claim for short weight unless afforded reasonable opportunity of re-weighing by notification by fax or email of such short weight within twenty-four hours of delivery of the Goods and a detailed written claim in respect of the short weight is made to the Seller within fourteen (14) days of delivery.

## **9. Notice of Claims**

Any claim against the Seller arising under the Contract must be made in writing and delivered to the registered office of the Seller within fourteen (14) days of delivery of the Goods to the Buyer and include the grounds for the claim in reasonable detail. In the event of non-delivery of the Goods, the Buyer shall notify the Seller of such non-delivery by fax or email within twenty-four (24) hours of the date such delivery should have taken place, such fax or email to be confirmed in writing.

## **10. Force Majeure**

**10.1** Subject to Condition 10.6 below, neither the Seller nor the Buyer shall be liable for any loss or damage caused by delay in the performance or non-performance of any of their respective obligations hereunder where the same is occasioned by any cause whatsoever that is beyond their respective control including, but not limited to Acts of God, war, riots, civil disturbance, requisitioning; fire, explosion, sabotage, storm, flood, earthquake, fog, subsidence, adverse climatic conditions, pestilence, or epidemics; governmental or parliamentary restrictions or regulations; non-availability or interruption or deviation in shipping or other transport; strikes, shortage of labour, lock-outs or trade disputes (whether involving their own employees or those of any

person); collapse of structures, cessation or interruption of operation of any plant or process, failure of supply of raw material or components or other operating requirement; breakdown of machinery. Should any such event occur the Seller or the Buyer may suspend the Contract without incurring any liability for any loss or damage thereby occasioned and the duration of such period of suspension shall be added to any delivery date or period herein specified, but the party affected by such cause shall give immediate notice to the other of such cause in writing. The Seller shall be regarded as affected by such cause if such cause affects the producer of the Goods and this occasions delay in the performance of the Seller's obligations hereunder.

**10.2** Upon the Buyer giving or receiving notice in accordance with Condition 10.1 above, pricing of unshipped Goods so affected by the cause shall cease and shall not be resumed until the cause of such notice ceases to affect the performance of the Contract.

**10.3** To the extent that any such cause affects the production or shipment of material to be supplied hereunder, the quantity to be supplied hereunder may be reduced rateably to the proportionate loss in production or shipments.

**10.4** After termination of any such cause there shall be no obligation upon the Seller to make good to the Buyer any quantities of goods which the Seller has been unable to supply or which the Buyer has been unable to accept as a result of such cause provided that no reduction shall be made in quantities of goods previously priced.

**10.5** In the event of the cause of suspension lasting more than three (3) months the Seller shall upon written notice given to the Buyer, be entitled to treat the Contract as terminated without liability to the Buyer at the date of such notice. Termination shall be without prejudice to the rights and obligations of the parties up to and including the date of such notice and shall not affect the Buyer's obligation to accept, in due course, goods already priced.

**10.6** For the avoidance of doubt, nothing in this Condition 10 shall release, suspend or permit any delay in the performance of any payment obligation of the Buyer pursuant to this contract in relation to goods already shipped or for which freight has been engaged for shipment prior to receipt or giving of any notice pursuant to Condition 10.1 above.

## **11. General**

**11.1** The Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract, whereas the Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Seller.

**11.2** The Buyer shall keep in strict confidence, and use only for the purpose of performing the Contract, all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Buyer by the

Seller or its agents or sub-contractors and any other confidential information concerning the Seller's business or its products which the Buyer may obtain and the Buyer shall restrict disclosure of such confidential information to such of its employees, agents or sub-contractors as need to know the same for the purpose of performing the Contract and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality and restrictions of use as bind the Buyer.

**11.3** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

**11.4** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**11.5** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**11.6** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this Condition 11.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**11.7** Any notice given by the Buyer shall be in writing and made to the relevant contact details specified by the Seller (either in the Sales Contract, any invoice issued by the Seller or otherwise). All notices given by the Buyer shall be deemed delivered when actually received by the Seller. Any notices received by the Seller outside of business hours (being 9.00 am to 5.00 pm Monday to Friday on a day that is not a public holiday) will be deemed delivered when business hours resume. The giving of notice by email is permitted. This Condition 11.7 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **12. Governing Law and Jurisdiction**

The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the laws of England and Wales. Each of the parties irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.