

Cooper MEDC Limited

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**TERMS & CONDITIONS OF SALE
OF
COOPER MEDC LTD**

Interpretation

1.1 In these Conditions:

- "Buyer" means the purchaser of the Products under the Contract;
- "Company" means Cooper MEDC Limited;
- "Conditions" means the standard terms and conditions of sale set out in this document and including any special terms and conditions agreed in writing between Buyer and Company;
- "Contract" means any contract between Company and Buyer for the purchase and sale of Products which shall include these Conditions;
- "Products" means all products which are supplied to Buyer by Company under any contract between them.

2. Basis for Sale

- 2.1 Company shall sell and Buyer shall purchase the Products set out on the front page of Buyer's order form. By placing an order for goods pursuant to a quotation issued by Company or upon the acknowledgement from Company in respect of an order placed by Buyer or upon Buyer's acceptance of delivery of the Products, whichever is the earlier, Buyer shall be deemed to have accepted these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions.
- 2.2 No variation to the Contract shall be binding unless agreed in writing by the authorised representatives of Buyer and Company.
- 2.3 Company's employees or agents are not authorised to make any representations concerning the Products unless confirmed by Company in writing. In entering into the Contract, Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representation which is not so confirmed. Buyer acknowledges that the Products are not sold by Company on a "sale or return" basis.

3. Formation of Contract and Specifications

- 3.1 Subject to these Conditions the Contract shall be formed when Buyer places an order pursuant to a quotation issued by Company or Company acknowledges an order placed by Buyer or upon Buyer's acceptance of delivery of the Products, whichever is the earlier.
- 3.2 The quantity and description of the Products shall be as set out or referred to in Company's specification.
- 3.3 Company reserves the right to make any changes in the specification of the Products which are required to conform with any applicable safety or other statutory requirements, or where the Products are to be supplied to Company's specification, which do not materially affect the quality or performance of the Products.
- 3.4 No order which has been accepted by Company may be cancelled by Buyer except with the agreement in writing of Company and on terms that Buyer shall indemnify Company in full against all losses (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Company as a result of cancellation. Company reserves the right to scrap any unauthorised returns or returns of damaged Products, on a no-credit basis.

4. **Price**

- 4.1 Unless otherwise expressly set forth on the face page of the quotation, Company's tender or quotation will lapse if not accepted within thirty (60) days after the date of quotation. Prices are stated in U.K. pounds sterling. Any tax or other governmental charge that Company is required to pay or collect from Buyer shall be paid by Buyer to Company. Export packaging or any other special handling requested by Buyer will be at its expense. Unless otherwise agreed in writing, all prices include packaging suitable to delivery within the U.K. mainland.
- 4.2 Company reserves the right, by giving notice to Buyer at any time before delivery, to increase the price of the Products to reflect any increase in the cost to Company which is due to any factor beyond the control of Company including (without limitation) alterations in taxation, increases in the cost of labour, materials or other costs of manufacture, any change of delivery dates, quantities or specifications of the Products which are requested by Buyer, or any delay caused by any instructions of Buyer, or failure of Buyer to give Company adequate information or instructions. In the event that Company exercises its right to increase the price of the Products in accordance with this Condition, Buyer shall be entitled, by giving written notice to Company within three (3) days of Buyer's receipt of Company's exercise of such right, to cancel the order relating to the Products which are the subject of the price increase.
- 4.3 The price is exclusive of Value Added Tax and all other taxes and duties (apart from corporation taxes referable to income or capital gains of Company), which shall be payable by Buyer.
- 4.4 For Products other than of U.K. origin the price shall be subject to increase in the event of currency fluctuations to be calculated on the average of the rates published in the London edition of The Financial Times on the third working day following receipt of payment from Buyer. No such adjustment shall be made on any payment if the said rate differs by less than 0.3% from the rates on which the prices for such Products were based.

5. **Payment**

- 5.1 Payment in full is due promptly upon Company's notification to Buyer that the Products are ready for dispatch or Buyer's receipt of the Products, whichever ever occurs first. Buyer shall not be entitled to make any deduction from such payment or exercise any right of set-off or contribution howsoever arising. The time of payment of the price shall be of the essence of the Contract.
- 5.2 If Buyer fails to comply punctually with the terms of payment, Company shall be entitled to interest on any amount overdue at the rate of 5% per annum or 1% above the base rate of National Westminster Bank plc from time to time in force, whichever ever is greater.
- 5.3 All payments payable under the Contract whether principal, interest or otherwise shall be paid in full, free and clear of any present or future taxes, levies, imposts, duties, charges, fees or withholdings and without set-off or counterclaim or any restriction or condition or deduction whatsoever.

6. **Terms of Shipment and Acceptance**

- 6.1 All shipments are made EX WORKS (INCOTERMS 1990) ("Incoterms"), Company's shipping location. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in this Contract, but if there is any conflict between the provisions of Incoterms and this Contract the latter shall prevail.
- 6.2 Acceptance shall occur, if not before, when Buyer fails to reject within three (3) days after delivery of the Products. Buyer may rightfully reject only where a reasonable inspection shows that the Products fail to substantially conform to the specifications of the Contract. Buyer waives its right to revoke acceptance, it being the intent of the parties that Buyer's remedies for any non-conformity detected after acceptance be limited to those expressly provided herein for breach of warranty.
- 6.3 Buyer shall defend, indemnify and save harmless Company from any claims, demands or causes or action for damage, loss or destruction of Products once the risk of loss has passed to Buyer.

6.4 Shipping dates are approximate and are based upon conditions existing upon Company's receipt of Buyer's firm order and full information. Company will endeavour to ship by the estimated shipping date but shall not be responsible for any delay or any damage arising therefrom.

7. **Title**

Notwithstanding delivery and the passing of risk in the Products, the property in the Products shall not pass to Buyer and shall remain in Company until either such time as Buyer shall have paid to Company the full price for all Products sold by Company to Buyer under any and all contracts between them or Company shall have written to Buyer notifying Buyer that the property in the Products has passed to Buyer. Until such payment Buyer shall carefully store the Products in such a way as to enable them to be identified as the property of Company and keep them insured against all loss or damage howsoever caused at its own expense. Company reserves the immediate right of re-possession of any Products to which Company has retained title as aforesaid exercisable at any time after delivery or collection of the Products and Buyer hereby grants an irrevocable right and licence to Company's servants and agents to enter upon all or any premises where the Products are stored without prior notice for this purpose. Buyer may in the ordinary course of its business sell the Products to any third party as principal but not as agent for Company.

8. **Limited Warranty**

8.1 Company warrants that the Products are, at the time of shipment to Buyer, free of material and workmanship defects provided that no warranty is made with respect to any Products which have, in Company's judgement, been subject to negligence, accident or improper storage or any Products which have not been installed, used or maintained in accordance with normal practice and conformity with recommendations and published specifications of Company.

8.2 Upon discovery of a defect or claim, Buyer shall notify Company in writing within thirty (30) days of discovery of the defect or any claim whatsoever Buyer may have with respect to the Products and the failure to give such notice within the specified time shall constitute an unqualified acceptance and waiver of all claims under Condition 8.1 with respect to the Products. As Buyer's exclusive remedy for any claim hereunder, at Company's option, Company shall repair the Products, provide replacement Products, or refund the purchase price of the Products provided that the claim is made within one year from the date of shipment of the Products.

9. **Limited Liability**

9.1 Subject to the foregoing all conditions, warranties and representations expressed or implied by statute, common law or otherwise in relation to the Products (apart from terms implied as to title under the Sale of Goods Act 1979 or terms implied under the Consumer Protection Act 1987) are hereby excluded.

9.2 Subject to Condition 8.1 and Condition 8.2, Company shall be under no liability to Buyer for any loss (including loss of profits), damage or injury direct or indirect resulting from defective material, faulty workmanship or otherwise howsoever arising and whether or not caused by the negligence of Company its employees or agents save that Company accepts liability for death or personal injury caused by the negligence of Company.

9.3 Company's prices are determined on the basis of the limits of liability set out herein. Buyer may by written notice to Company request Company to agree a higher limit of liability provided insurance cover can be obtained therefor. Company may effect insurance up to such limit and Buyer shall pay upon demand the amount of any and all premiums. Buyer shall disclose such information as the insurers shall require. In no case shall Buyer be entitled to recover from Company more than the amount received from the insurers.

10. **Insolvency of Buyer**

This clause applies if: (a) Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order 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 passes a resolution for its voluntary winding up or has a petition for its compulsory winding up presented against it; (b) an encumbrancer takes possession, or a receiver or administrative receiver is appointed, of any of the property or assets of Buyer; (c) Buyer ceases, or threatens to cease, to carry on business; or (d) company reasonably apprehends that any of the events mentioned above is about to occur in relation to Buyer or any other matter which in the opinion of Company may prejudice its rights against Buyer, then, without prejudice to any other right or remedy available to Company, Company shall be entitled to cancel this Agreement or suspend any further deliveries under this Agreement without any liability to Buyer, and if Products 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. **Force Majeure**

Company shall not be liable to Buyer for any loss or damage which may be suffered by Buyer as a direct or indirect result of the supply of the Products by Company being prevented, hindered, delayed or rendered uneconomic by reason of circumstances or events beyond Company's reasonable control including (but not limited to) Act of God, war, riot, strike, lock-out, trade dispute or labour disturbance, accident, break-down of plant or machinery, fire, flood, storm, difficulty or increased expense in obtaining workmen, materials or transport or other circumstances affecting the supply of the Products or of raw materials therefor by Company's normal source of supply or the manufacture of the Products by Company's normal means or the delivery of the Products by Company's normal route or means of delivery. If due to such circumstances or events Company has insufficient stocks to meet all its commitments Company may apportion available stocks between its customers at its sole discretion.

12. **Indemnity**

Buyer agrees to defend, indemnify and hold Company, its subsidiary and affiliate companies, their agents, employees, directors, officers, servants and insurers, harmless from and against any and all losses, claims, demands, liabilities or causes of action of every kind and character, whether in contract or in tort, including claims of negligence, or strict liability (including any action brought by any employee, agent or subcontractor of Buyer for Buyer's failure to comply with Company's published instructions and specifications concerning the operation, use and maintenance of Products) in favour of any person or party, for injury to or illness or death of any person or party, or for any property damage (including loss of income, profits, sales or "down time") arising out of or incidental to the Products, except any loss, claim, demand or liability proven to be the result of the active negligence of Company and not contributed to by the negligence of Buyer, its agents, employees, officers or directors or other third parties.

13. **General**

14.1 The minimum acceptable order is £400.00 net.

14.2 Performance by Company of this Contract is conditional upon the parties' compliance with all applicable laws of the United States and England (and any applicable political subdivision thereof), and their regulations. Company shall bear no liability to Buyer in damages or otherwise, due to Company's inability to make any sale to Buyer because of the operation of the above laws or the laws of any nation from which Products may be imported, or any treaty affecting such importations.

14.3 Failure by Company to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

14.5 Buyer shall not assign or transfer or purport to assign or transfer the Contract or the benefit of it to any other person without the prior written consent of Company.

14.6 If any provision or part of a provision of these Conditions shall be, or be found by any authority or court of competent jurisdiction to be, invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions or parts of such provisions of these Conditions, all of which shall remain in full force and effect.

- 14.7 These Conditions, and any written agreement signed by Company and Buyer concerning the subject matter hereof, shall constitute the entire agreement between Company and Buyer concerning such subject matter, and any proposals, negotiations or representations made prior to or contemporaneously with the above, whether verbal or written, are excluded.
- 14.8 Buyer shall not market the Products to any person or entity contrary to any regulations established by the US Department of Commerce, Office of Export Administration or other agency as may from time to time discharge this function.
- 14.9 Any reference in this Contract to any provision of a statute or statutory instrument shall be construed as a reference to that provisions as amended, re-enacted or extended at the relevant time.
- 14.10 The Contract shall be governed by and construed in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English Courts provided that Company may sue Buyer in the courts of any country, such proviso being for the sole benefit of Company.