

Terms and conditions – (7.Oct.2014)

1 Interpretation

1.1 In these Conditions the following definitions apply:

'Business Day' - means a day other than Saturday, Sunday and public holidays;

'Buyer' - means the persons or firm who purchases Goods from the Seller;

'Conditions' - means the terms and conditions set out in this document;

'Confidential Information' - means any commercial, financial or technical information, information relating to products, plans, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by a party in performing its obligations under, or otherwise pursuant to this Contract;

'Contract' - means the agreement between the Seller and the Buyer for the sale and purchase of Goods incorporating these Conditions;

'Delivery Location' - means the address for delivery of the Goods as set out in the Order;

'Force Majeure' - means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under the Contract including (but not limited to) an act of God, fire, flood, lightning, earthquake or other natural disaster; war, riot or civil unrest, strike, lockout or boycott or other industrial action; interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service; or material required by for performance of the Contract, except any party's failure to pay shall not be an event of force majeure in any event;

'Goods' - means the goods and related accessories, spare parts and documentation and other deliverables set out in the Order and to be supplied by the Seller to the Buyer;

'Intellectual Property Rights' - means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, chip topography rights, mask works, utility models, domain names and all similar rights and, in each case:

- (a) whether registered or not;
- (b) including any applications to protect or register such rights;
- (c) including all renewals and extensions of such rights or applications;
- (d) whether vested, contingent or future;
- (e) to which the Seller is or may be entitled; and
- (f) in whichever part of the world existing;

'Order' - means the Buyer's order for the Goods from the Seller as set out in the Buyer's written acceptance of the Seller's quotation for the supply of Goods;

'Seller' - means Sahn Splice Limited (CRN: 03554116) whose registered office is at Unit 1, Lincoln Way - Sherburn-In-Elmet - North Yorkshire, LS25 6PJ.

'Specification' - means the description or specification of the Goods set out in the Order and provided by the Seller.

'Value Added Tax or VAT' - means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Goods.

1.2 Unless the context otherwise requires:

- 1.2.1 each gender includes the others;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 references to the Contract include the Conditions, the Order and its schedule (if any);
- 1.2.4 references to persons include individuals, unincorporated bodies, government entities, companies and corporations;
- 1.2.5 clause headings do not affect their interpretation;
- 1.2.6 general words are not limited by example; and
- 1.2.7 references to any legislation will be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

2 Application of these terms and conditions

2.1 These Conditions apply and form part of the Contract between the Seller and the Buyer. They supersede any previously issued terms and conditions of supply.

2.2 No terms or conditions endorsed on, delivered with, or contained in the Buyer's purchase order, confirmation of order, specification or other document will form part of the Contract.

2.3 No variation of these Conditions or to an Order, or to a quotation from the Seller will be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Seller.

2.4 Each Order by the Buyer to the Seller will be deemed to be an offer to purchase Goods and subject to the Conditions.

2.5 The Seller reserves the right at all times to reject any Order, in whole or in part, at its sole discretion.

2.6 Any quotation by the Seller for the provision of Goods will be deemed to be:

2.6.1 an invitation to treat (and shall not be an offer) by the Seller to supply Goods on and subject to the Conditions; and

2.6.2 will be valid for 28 days only from the date of issue.

2.7 A Contract will be formed upon the earlier to occur of:

2.7.1 written acceptance by the Seller of the Buyer's Order; or

2.7.2 the execution of a specific written agreement by both the Seller and the Buyer.

3 Price

3.1 The price for the Goods will be as set out in the Order or in default of such provision will be calculated in accordance with the Seller's standard scale of charges in force on the date of formation of the Contract.

3.2 The price:

3.2.1 does not include packaging, delivery, handling and carriage, which will be charged in addition, and

3.2.2 does not include Value Added Tax which will be charged in addition at the then applicable rate.

3.3 The Seller reserves the right to increase the Price for any undelivered Goods:

3.3.1 by giving 45 days' written notice to the Buyer, such increase to take effect in respect of any relevant Goods delivered after the expiry of such notice; or

3.3.2 with immediate effect by written notice to the Buyer, where such increase arises as a consequence of any increase in the direct cost to the Seller of supplying the relevant Goods which is due to any factor beyond the control of the Seller.

3.4 If the Buyer does not agree with any increase in the price notified in accordance with clause 3.3 then the Buyer may terminate the Contract in respect of any undelivered Goods by giving the Seller 30 days notice, such notice to expire no earlier than the date on which the price increase was due to take effect provided always that the Buyer shall accept delivery (and shall, where applicable pay the increased price for) any Goods referred to in clause 3.3.2 in respect of which the Seller had (at or prior to the time of receiving such notice) entered into an irrevocable commitment to purchase or subcontract from any third party).

4 Payment

- 4.1 The Seller shall issue its invoice for the Goods within 7 days of the order being dispatched.
- 4.2 The Buyer will pay all invoices:
 - 4.2.1 in full OR by instalments as set out in the Order, without deduction or set-off other than as required by law, in cleared funds in accordance with the time stipulated on the invoice, and
 - 4.2.2 to the Seller's nominated bank account specified in the Order.
- 4.3 Time of payment is of the essence. Where sums due hereunder are not paid in full by the due date:
 - 4.3.1 the Seller may, without limiting its other rights, charge interest on such sums at two% a year above the base rate of Barclays Bank PLC from time to time in force, and
 - 4.3.2 interest will accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.
- 4.4 VAT will be charged by the Seller and paid by the Buyer at the then applicable rate.

5 Credit limit

- 5.1 The Seller may set and vary credit limits from time to time and withhold all further supplies if the Buyer exceeds such credit limit.

6 Delivery

- 6.1 The Goods will be:
 - 6.1.1 delivered by or for the Seller to the Delivery Location on the dates specified in the Order; or
 - 6.1.2 made available for collection by the Buyer at the Seller's, or carrier's as the case may be, premises set out in the Order. The Buyer will collect the Goods within the period specified in the Order.
- 6.2 The Goods will be deemed delivered:
 - 6.2.1 if delivered by or for the Seller under clause 6.1.1, on arrival of the Goods at the Delivery Location;
 - 6.2.2 if collected by the Buyer under clause 6.1.2, on completion of loading at the Seller's, or carrier's as the case may be, premises.
- 6.3 The Goods may be delivered by instalments if provided in the Order. Any delay in delivery or defect in an instalment will not entitle the Buyer to cancel any other instalment.
- 6.4 Delivery of the Goods, or part thereof, will be accompanied by a delivery note stating:
 - 6.4.1 the date of the Order;
 - 6.4.2 the relevant Buyer and Seller details;
 - 6.4.3 the product numbers and type and quantity of Goods in the consignment;
 - 6.4.4 any special handling and other instructions; and
 - 6.4.5 whether any packaging material is to be returned (in which case the Buyer will, at the Seller's option, return them to the Seller or make them available for collection by the Seller at a time specified by the latter, and in either case at the Buyer's expense).
- 6.4.6 The Seller will use its reasonable endeavours to meet delivery dates but such dates are approximate only, and time of delivery is not of the essence.
- 6.5 The Seller will not be liable for any delay in or failure of delivery caused by:
 - 6.5.1 the Buyer's failure to: (i) make the Delivery Location available, (ii) prepare the Delivery Location in accordance with the Seller's instructions OR as required for delivery and installation of the Goods or (iii) provide the Seller with adequate instructions, for delivery and installation or otherwise relating to the Goods;
 - 6.5.2 the Buyer's failure to collect the Goods from the Seller's premises; or
 - 6.5.3 an event of Force Majeure.
- 6.6 If the Buyer fails to accept delivery of or collect the Goods as provided in clause 6.1.1 or 6.1.2 on the date or within the period set out in the Order:
 - 6.6.1 delivery of the Goods will be deemed to have occurred on the day of the invoice or bill of the loading day; and
 - 6.6.2 the Seller will store and insure the Goods pending delivery, and the Buyer will pay all costs and expenses incurred by the Seller in doing so.
- 6.7 If 10 Business Days following the due date for delivery or collection OR the last day of the period for delivery or collection of the Goods, the Buyer has not taken delivery of or collected them, the Seller may resell or otherwise dispose of the Goods. The Seller will:
 - 6.7.1 deduct reasonable storage charges and costs of resale; and
 - 6.7.2 account to the Buyer for any excess of the resale price over, or invoice the Buyer for any shortfall of the resale price below, the price paid by the Buyer for the Goods.

7 Title and risk

- 7.1 Risk in the Goods will pass to the Buyer on delivery under clause 6.1.
- 7.2 Title to the Goods will pass to the Buyer once the Seller has received payment in full for the Goods.
- 7.3 Until title to the Goods has passed to the Buyer, the Buyer will:
 - 7.3.1 hold the Goods as bailee for the Seller;
 - 7.3.2 store the Goods separately from all other material in the Buyer's possession;
 - 7.3.3 take all reasonable care of the Goods and keep them in reasonable condition;
 - 7.3.4 insure the Goods: (i) with a reputable insurer (ii) from the date of delivery (iii) against all risks (iv) for an amount at least equal to the price (v) noting the Seller's interest on the policy;
 - 7.3.5 ensure that the Goods are clearly identifiable as belonging to the Seller;
 - 7.3.6 not remove or alter any mark on or packaging of the Goods;
 - 7.3.7 inform the Seller as soon as possible if it becomes subject to any of the events set out in clause 14.1; and
 - 7.3.8 provide the Seller such information concerning the Goods as the Seller may request from time to time.
- 7.4 If, at any time before title to the Goods has passed to the Buyer, the Buyer informs the Seller, or the Seller reasonably believes, that the Buyer has or is likely to become subject to any of the events specified in clause 14.1, the Seller may:
 - 7.4.1 require the Buyer at the Buyer's expense to re-deliver the Goods to the Seller; and
 - 7.4.2 if the Buyer fails to do so promptly, enter any premises where the Goods are stored and repossess them.

8 Warranty

- 8.1 The Seller warrants that, for a period of 7 days from delivery (the Warranty Period), the Goods will:
 - 8.1.1 conform in all material respects to their description;
 - 8.1.2 be free from material defects in design, material and workmanship;

- 8.1.3 be fit for any purpose.
 - 8.2 The Seller will, at its option, repair, replace or refund the price of defective Goods, provided that and subject to clause 8:
 - 8.2.1 the Buyer informs the Seller in writing during the Warranty Period and promptly on discovery that some or all of the Goods do not comply with clause 8.1;
 - 8.2.2 the Buyer gives the Seller a reasonable opportunity to examine the defective Goods;
 - 8.2.3 the Buyer returns the defective Goods to the Seller at the Buyer's expense.
 - 8.3 The Conditions will apply to any Goods repaired or replaced under clause 8.2.
 - 8.4 The Seller will not be liable for any failure of the Goods to comply with clause 8.1:
 - 8.4.1 where such failure arises by reason of fair wear and tear, wilful damage, negligence, abnormal working conditions, or could be expected to arise in the normal course of use of the Goods;
 - 8.4.2 to the extent caused by the Buyer's failure to comply with the Seller's instructions as to: (i) storage, installation, commissioning, use or maintenance of the Goods, or (ii) good practice in relation to the storage, installation, commissioning, use or maintenance of the Goods;
 - 8.4.3 to the extent caused by the Seller following any design or specification or requirement of the Buyer in relation to the Goods;
 - 8.4.4 where the Buyer repairs or alters any Goods without the Seller's prior written agreement; or
 - 8.4.5 where the Buyer uses any of the Goods after notifying the Seller that it does not comply with clause 8.1.
 - 8.5 Except as set out in this clause 8:
 - 8.5.1 the Seller gives no warranty in relation to the Goods; and
 - 8.5.2 will be under no liability for their failure to comply with the warranty in clause 8.1.
- In particular, the conditions implied by ss 13–15 of the Sale of Goods Act 1979 are expressly excluded.

9 Obligations of the Buyer

- 9.1 The Buyer will:
 - 9.1.1 place all Orders on these Conditions and ensure that the contents of any Order are complete and accurate;
 - 9.1.2 ensure that any part of the Specification which it provides is complete and accurate and contains all information the Seller may require;
 - 9.1.3 co-operate fully with the Seller in relation to delivery or collection of the Goods.

10 Liability

- 10.1 The Seller does not exclude its liability:
 - 10.1.1 for death or personal injury caused by its negligence; or
 - 10.1.2 for breach of the terms implied by s 12 of the Sale of Goods Act 1979 and by s 2 of the Supply of Goods and Services Act 1982; or
 - 10.1.3 for defective products under the Consumer Protection Act 1987; or
 - 10.1.4 for fraud or fraudulent misrepresentation.
- 10.2 Neither party will be liable for:
 - 10.2.1 loss of data or use;
 - 10.2.2 any form of indirect, consequential or special loss; or
 - 10.2.3 any loss of or failure to realise expected profit, revenue or savings or any other form of pure economic loss, whether any such loss is direct or indirect;
 and, in each case, however arising.
- 10.3 Other than as set out above, the Seller limits its liability (however arising) in respect of or in connection with the Goods, and otherwise in connection with the Contract, to 100 per cent of the total price of Goods.

11 Third party Intellectual Property Rights infringement

- 11.1 The Seller will defend or, at its option, settle any action brought against the Buyer arising from any claim that the use of the Goods by the Buyer in accordance with the Contract infringes any third party Intellectual Property Right, and indemnify the Buyer against all reasonable costs incurred by the Buyer in connection with such claim.
- 11.2 The Seller's obligations under clause 11.1 will not apply to Goods modified or used by the Buyer other than in accordance with the Conditions. The Buyer will indemnify the Seller against all reasonable costs and expenses incurred by the Seller in connection with any claim arising from such modification or use.
- 11.3 The Seller's obligations under clause 11.1 are conditional on the Buyer:
 - 11.3.1 promptly advising the Seller in writing of any claim or action;
 - 11.3.2 making no admission as to, or settlement or compromise of any claim or action without the Seller's prior written consent;
 - 11.3.3 giving the Seller sole conduct of any defence and any settlement negotiations; and
 - 11.3.4 co-operating fully with the Seller and providing the Seller with all reasonable assistance in the defence or settlement of such claim or action.
- 11.4 The Buyer's reasonable costs of compliance with clauses 11.3.3 and 11.3.4 will be paid by the Seller.
- 11.5 The provisions of this clause 11 set out the Seller's entire liability and the Buyer's sole right in respect of third party Intellectual Property Rights infringement claims or actions.

12 Confidentiality

- 12.1 Each party shall keep confidential all Confidential Information of the other party and will only use the other's Confidential Information as required to perform the Contract. The provisions of this clause will not apply to:
 - 12.1.1 any information which was in the public domain at the date of this Contract;
 - 12.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
 - 12.1.3 any information which is independently developed by the other party without using information supplied by the first party; or
 - 12.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- 12.2 This clause 12 will remain in force for a period of five years from the date of the Contract.

13 Force Majeure

- 13.1 A party will not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:
 - 13.1.1 promptly notifies the other of the Force Majeure event and its expected duration; and

- 13.1.2 uses reasonable endeavours to minimise the effects of that event.
- 13.2 If, due to Force Majeure, a party:
- 13.2.1 is or will be unable to perform a material obligation; or
- 13.2.2 is delayed in or prevented from performing its obligations for a continuous period exceeding 60 days then the other party may terminate the Contract on immediate written notice OR the parties will, within 30 days, renegotiate the Contract to achieve, as nearly as possible, the original commercial intent.

14 Termination

- 14.1 The Contract may be terminated forthwith at any time by the Seller on written notice to the Buyer if:
- 14.1.1 the Buyer commits a material breach, or series of breaches resulting in a material breach, of the Contract and such breach is not remediable or if capable of remedy is not remedied within 15 days of written notice to do so;
- 14.1.2 the Buyer suspends or threatens to suspend payment of its debts, or is unable to pay its debts as they fall due;
- 14.1.3 the Buyer (a) negotiates with its creditors for rescheduling of its debts, (b) makes a proposal to or compounds with its creditors in respect of its debts or (c) makes an application to court for protection from its creditors generally;
- 14.1.4 the Buyer passes a resolution for winding-up or for the appointment of an administrator, or a liquidator or administrator is appointed in relation to the other, or a winding-up order is made in relation to the other;
- 14.1.5 a receiver or administrative receiver may be or is appointed in relation to the Buyer or any of its assets;
- 14.1.6 the Buyer suspends trading, ceases to carry on business, or threatens to do either;
- 14.1.7 the Buyer takes or suffers any action similar to any of the above in any jurisdiction;
- 14.1.8 there is a material change in the management, ownership or control of the Buyer;
- 14.1.9 the Buyer suspends trading, ceases to carry on business, or threatens to do either;
- 14.1.10 the Buyer, (being an individual) dies or ceases to be capable of managing his own affairs; or
- 14.1.11 the Buyer is subject to an event of Force Majeure under clause 13.
- 14.2 In addition to its rights under clause 14.1 the Seller may terminate this Contract at any time immediately on written notice to the Buyer if the Buyer has failed to pay any amount due under the Contract on the due date.
- 14.3 On termination of the Contract for any reason:
- 14.3.1 the Buyer will immediately pay all invoices of the Seller then outstanding and not disputed in good faith;
- 14.3.2 the Seller will, within 7 Business Days, invoice the Buyer for all Goods delivered or provided but not yet invoiced and the Buyer will pay such invoice within a further 7 Business Days (unless the invoice is disputed in good faith);
- 14.3.3 Buyer will forthwith return any materials of the Seller then in its possession or control; if it fails to do so, the Seller may enter onto any premises owned by or under the control of the and take possession of them;
- 14.3.4 the accrued rights and liabilities of the parties will not be affected; and
- 14.3.5 any clause which expressly or by implication are to survive termination will do so.

15 General

- 15.1 Time - Unless stated otherwise, time is not of the essence of any date or period specified in these Conditions, the Order or otherwise in the Contract.
- 15.2 No set-off - All payments by the Buyer will be made without set-off or counterclaim, free and clear of and without deduction for any tax, levy, duty, charge, or withholdings of any kind now or in the future, imposed in any jurisdiction unless a party is compelled by law to deduct or withhold any such amounts, in which case it will pay to the other such additional amount as will ensure that the other is paid the full amount it would have received but for such deduction or withholding.
- 15.3 Relationship - The parties are independent businesses and not principal and agent, partners, or employer and employee.
- 15.4 Severability - If any part of the Contract is found by a court, tribunal or other administrative body of competent jurisdiction to be unenforceable or invalid for any reason, that provision is to be severed from the Contract and the remaining provisions of the Contract will otherwise remain in full force.
- 15.5 Notices - Notices under the Contract will be in writing and sent to the persons and addresses set out in the Order. They may be given, and will be deemed received:
- 15.5.1 by first-class post: two Business Days after posting;
- 15.5.2 by airmail: seven Business Day after posting;
- 15.5.3 by hand: on delivery;
- 15.5.4 by facsimile: on receipt of a successful transmission report from the correct number; and
- 15.5.5 by e-mail: on receipt of a delivery or read receipt mail from the correct address.
- 15.6 Waiver
- No delay, act or omission by either party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.
- 15.7 Rights of Third Parties
- This Contract is not enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 15.8 Priority
- In the event of conflict, the terms of these Conditions prevail over those of the Order or Schedule (if any).
- 15.9 Entire Agreement
- The Contract constitutes the entire agreement between the parties in relation to its subject matter. No other terms apply.
- 15.10 Succession
- The Contract will bind and benefit each party's successors and personal representatives.
- 15.11 Governing Law & Jurisdiction
- 15.11.1 The Contract will be governed by the law of England and Wales.
- 15.11.2 Disputes will be submitted to the exclusive jurisdiction of the courts of England and Wales