

CONDITIONS OF SALE – TRATOS LIMITED

- 1. DEFINITIONS**
- "The Vendor" means Tratos Limited whose registered offices are situated at Park Road, Holmewood Industrial Park, Holmewood, Nr Chesterfield S42 5UW
- "The Purchaser" means the person, firm or company who places an order with the Vendor or otherwise agrees to buy from the Vendor any of the Goods.
- "The Goods" shall mean any or all of the goods or materials or services which from time to time the Vendor contracts to supply subject to these conditions.
- 2. GENERAL**
- 2.1 These conditions shall apply to all contracts, whether written or oral, for the sale of the Goods by the Vendor.
- 2.2 Conditions of purchase or other terms provided by the Purchaser shall be of no effect whatsoever and that these conditions shall prevail nor shall any variation or alteration of these conditions be of any effect unless made in writing and signed by a Director of the Vendor.
- 2.3 No binding contract shall be created by the placing of an order by the Purchaser unless and until the Vendor's written acknowledgement of order shall have been posted or delivered or in the event that no such acknowledgement is sent the date of despatch of the Goods to the Purchaser.
- 3. QUOTATIONS**
- Any quotation in whatever form given to the Purchaser is given subject to these conditions. Except where base materials or other materials are quoted as a variant all quotations are valid for a period of thirty (30) days after the date of its issue.
- 4. PRICES**
- 4.1 Subject to anything contained in any quotation issued by the Vendor, prices for the Goods are, unless otherwise stated, exclusive of value added tax and any other similar tax.
- 4.2 Prices quoted unless otherwise expressly stated in writing by the Vendor, are exclusive of carriage, packing, handling and any insurance charges.
- 4.3 The Purchaser shall have no right to set-off whether statutory or otherwise.
- 4.4 All prices payable must be settled in Sterling unless otherwise expressly agreed to by the Vendor.
- 5. PAYMENT**
- 5.1 Purchaser shall pay the Vendor in full for the Goods within 30 days of the date of invoice or delivery whichever is earlier.
- 5.2 In the event that the Purchaser fails to make payment by the due date or otherwise commits a breach of those conditions, the Vendor may in its absolute discretion and without prejudice to any other rights which it may have:-
- (i) suspend all future deliveries or supplies to the Purchaser under the contract in question or under any other contract(s) and/or terminate any such contract(s) without liability upon its part;
- (ii) require payment in advance for any future deliveries;
- (iii) (in the case of non-payment on or before the date or on demand as mentioned in sub-clause 5.3 below) charge interest in the amount due on a day to day basis at the rate of 8% above the base lending rate of Barclays Bank plc from time to time from the time payment was due until the date of actual payment, whether before or after judgement.
- 6. DELIVERY**
- 6.1 Delivery will be made by the Vendor at its works in the United Kingdom, however the Purchaser will, if requested, arrange an agent for the Purchaser but at the Purchaser's expense for the carriage of the Goods to a destination specified by the Purchaser and (if so required and at the Purchaser's expense) for their insurance.
- 6.2 Whenever delivery takes place it will be the Purchaser's responsibility to provide any necessary machinery and labour to off-load the Goods and to ensure delivery can take place at the agreed time and place. The Purchaser will indemnify and keep the Vendor indemnified against any loss or expense incurred as a result of a breach of these obligations.
- 6.3 Although given in good faith, delivery times for the supply of Goods specified by the Vendor in its quotation or otherwise are intended as estimates only and are therefore not to be treated as being of the essence of the contract and binding on the Vendor. The Vendor will not be liable to the Purchaser for any loss or damage (direct or indirect) occasioned by its failure (whether as a result of its negligence or otherwise) to deliver the Goods by the date or within the time stated and in no event shall delay be a ground for rejecting the Goods.
- 6.4 The right to deliver any part or parts of the Goods when they become available is expressly reserved by the Vendor.
- 6.5 In the event that the Purchaser refuses delivery of the Goods or is unable to accept delivery of the Goods through no fault of the Vendor, the Vendor will invoice the Purchaser its reasonable costs of storage of the Goods until delivery of the Goods is accepted by the Purchaser. For the avoidance of doubt the Vendor will be entitled to invoice the Purchaser the price of the Goods as soon as delivery has been tendered notwithstanding any inability of the Purchaser to accept delivery.
- 6.6 It is the Purchaser's responsibility to check that materials are correct and in good condition at the time of receipt. Claims for deficiencies of any nature will not be considered 10 days after delivery has been accepted by the Purchaser.
- 7. VARIATIONS**
- 7.1 The quantity of the Goods delivered to the Purchaser may vary by up to 5% for any Goods manufactured to specific specifications at the request of the Purchaser, due to production and/or manufacturing processes, and the Purchaser will pay quantum meruit for the Goods delivered and further will not be entitled to reject the Goods due to any shortage or overage.
- 8. PACKING**
- 8.1 Where the Goods have been supplied on wooden drums, packaging drums, reels and/or other packaging materials the Purchaser shall promptly retain such drums, reels or packaging materials in good condition. In the event of any loss of or damage to such drums, reels or packaging materials the Vendor reserves the right to charge the Purchaser for any repair or replacement of the same.
- 9. RISK**
- 9.1 In the event that the Goods are to be delivered by the Vendor to a place nominated by the Purchaser the risk thereon shall pass to the Purchaser at the time they are dispatched with the carrier for delivery.
- 9.2 In the event that the Goods are to be collected by or on behalf of the Purchaser from the Vendor's premises, the risk in the Goods shall pass to the Purchaser when the Purchaser takes control of the Goods which will be taken to be the place at which the delivery advice note is signed as received in the absence of evidence to the contrary.
- 10. CANCELLATION**
- The Vendor shall be under no obligation whatsoever to accept any cancellation of an order once accepted nor any return of Goods once dispatched.
- 11. TITLE OF GOODS**
- 11.1 The provision of this clause shall apply until such time as payment for the Goods has been made in full or until such payment has been made of all other sums owing to the Vendor at the date of this contract on any account whatsoever arising whichever occurrence shall be the latter.
- 11.2 The property of the Goods shall remain with the Vendor and the Purchaser shall hold the Goods as fiduciary agent and bailee for the Vendor.
- 11.3 The Purchaser shall store the Goods in such a manner that they can be identified as the property of the Vendor and shall ensure that the Goods are not incorporated in or mixed in or used as part of other Goods.
- 11.4 Subject to sub-clause 11.3, 11.5 and 11.6 the Purchaser shall be at liberty to sell or use the Goods in the ordinary course of its business and the Vendor grants the Purchaser a licence for this purpose.
- 11.5 The Purchaser shall account to the Vendor for the proceeds of any sale of the Goods, whether sold in their own or in conjunction with other goods and until such account is made the Purchaser will hold the proceeds of sale upon trust for the Vendor. The Purchaser shall ensure any monies received for the Goods are not mixed with other monies or paid into any overdrawn bank account

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- 11.6 The power of sale given to the Purchaser by sub-clause 11.4 above will automatically terminate if the Purchaser goes into receivership or if a petition is prepared for its winding up to passes a resolution for voluntary winding up or if a petition for an administration order is presented or (if applicable) bankruptcy. Further the Vendor may terminate the said power of sale at any time by written notice if the Purchaser is in default of payment of any sums due to the Vendor of the licence given by the Vendor.
- 11.7 At any time after termination pursuant to 11.6 above the Vendor may repossess the Goods and the Purchaser hereby grants to the Vendor an irrevocable licence to enter upon the premises of the Purchaser for the purpose of so doing.
- 11.8 The Vendor shall be entitled to appropriate any payment made by the Purchaser in settlement of such invoices or accounts as the vendor in its absolute discretion thinks fit notwithstanding any purported appropriation to the contrary by the Purchaser.
- 11.9 Each of the foregoing sub-clauses shall so far as the context permits be read and construed independently of the other sub-clauses so that if one or more of them shall held to be invalid this shall not affect the validity of the remaining sub-clauses.
- 12. WARRANTY**
- 12.1 No representation or warranty is given as to the suitability or fitness of the Goods for any purpose and the Purchaser shall satisfy itself in this respect.
- 13. EXCLUSION OF LIABILITY**
- 13.1 The Vendor shall be under no liability for any defect in , failure of, or unsuitability for any purpose of the Goods or any party thereof whether the same be due to the act or omission, negligence or default of the Vendor or its servants or agents, and all conditions warrants and other terms whether express or implied statutory of otherwise inconsistent with the provisions of this condition are hereby excluded provided that nothing herein contained shall be construed as excluding or restricting the liability of the Vendor for death or personal injury resulting from the negligence of the Vendor.
- 13.2 In no circumstances shall the Vendor be liable for any loss or damage suffered by the Purchaser of the following nature however caused and whether foreseeable or comtemplateable:-
- (i) Economic loss which shall include loss of profits, business revenue, goodwill or anticipated savings;
- (ii) any claim made against the Purchaser by any third party.
- 13.3 Each of the foregoing sub-clauses shall so far as the context permits, be read and construed independently of the other sub-clauses so that if one or more of them shall be held to be invalid this shall not affect the validity of the remaining sub-clauses.
- 14. INTELLECTUAL PROPERTY**
- 14.1. The Purchaser warrants that any instructions or plans furnished or given by the Purchaser will not be such as may cause the Vendor to infringe any letters patent, copyright, registered design, right of confidence or trade mark in execution of the Purchaser's order and agrees to indemnify the Vendor against all claims, costs or other expenses incurred by the Vendor in respect thereof.
- 15. CATALOGUES ADVERTISEMENTS AND DRAWINGS**
- 15.1 Whilst the Vendor believes that all specifications, illustrations, performance data and other information contained in any drawings, catalogues and advertisements are as accurate as reasonably possible they do not constitute description of the Goods, shall not be taken to be representations made by the Vendor and are not warranted to be accurate.
- 15.2 Any sample seen by the Purchaser is simply an indication of what attributes the bulk should have. No warranty or representation is given or may be implied that the bulk will be identical to the sample in any attribute.
- 16. ALTERATIONS AND MODIFICATIONS**
- The Vendor may carry out from time to time and without prior notice to the Purchaser alterations or improvements in construction or design, specification, materials or manner of manufacture of the Goods.
- 17. DEFACING OF THE GOODS**
- The Purchaser shall not deface, tamper with or remove in all or part any trade mark logo or insignia which may be embossed upon or affixed to the Goods (nor affix any other trade mark, logo or insignia thereon) without the prior consent of the vendor and shall not otherwise deface and/or interfere with, alter or modify any of the Goods.
- 18. FORCE MAJEURE**
- Without prejudice to the generality of any of the foregoing conditions the Vendor shall not be liable for any loss or damage caused by the non-performance or delay in the performance or any of its obligations hereunder if the same is occasioned by any clause whatsoever which is beyond the Vendor's control, including but not limited to Acts of God, war, civil disturbances, requisitioning, import or export regulations, strike, lock-out or trade dispute, difficulties in obtaining materials, breakdown of machinery fire or accident. Should any such event occur the Vendor may cancel or suspend this contract without incurring liability for any loss or damage thereby occasioned.
- 19. NOTICES**
- A notice required or permitted to be given by either party to the other under these terms 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 under this provision to the party giving the notice.
- 20. WAIVER**
- The failure on the part of the Vendor to exercise or enforce of right in these Terms 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.
- 21. GOVERNING LAW**
- This contract is governed in accordance with the laws of England and the Purchaser agrees to submit to the exclusive jurisdiction of the English law courts.
- 22. EXPORT TERMS**
- 22.1 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 these conditions, but if there is any conflict between the provisions of Incoterms and these conditions, the latter shall prevail.
- 22.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 22 shall (subject to any special terms agreed in Writing between the Vendor and the Purchaser) apply notwithstanding any other provision of these Terms.
- 22.3 The Purchaser shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.
- 22.4 Unless otherwise agreed in Writing between the Purchaser and the Vendor, the Goods shall be delivered for the air or sea port of shipment and the Vendor shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 22.5 The Purchaser shall be responsible for arranging testing and inspection of the Goods at the Vendor's premises before shipment. The Vendor shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.
- 22.6 Payment of all amounts due to the Vendor shall be made by irrevocable letter of credit opened by the Purchaser in favour of the Vendor and confirmed by a bank acceptable to the Vendor or, if the Vendor has agreed in Writing on or before acceptance of the Purchaser's order to waive this requirement, by acceptance by the Purchaser and delivery to the Vendor of a bill of exchange drawn on the Purchaser payable 60 days after sight to the order of the Vendor at such branch of Barclays Bank plc in England as may be specified in the bill of exchange.