

CONDITIONS OF SALE OF KEL – TECH ENGINEERING
(WATERFORD) LIMITED

GENERAL

1. In these conditions Kel – Tech Engineering (Waterford) Limited shall be referred to as the “Seller”. These conditions shall form part of all contracts for the supply of goods by the Seller to any buyer (hereinafter referred to as "the Buyer") and shall prevail over any inconsistent terms or conditions contained in or referred to in the Buyer's order or correspondence or elsewhere and all or any such conditions or stipulations contrary to these conditions are hereby excluded. The Buyer is put on express notice of the fact that the Seller will only contract the Buyer on the basis that these terms and conditions will govern the relationship between the parties to the exclusion of all others. No variation of any of the terms contained herein shall be applicable to these conditions unless accepted by the Seller in writing.
2. The Seller reserves the right to attach its imprint to all goods unless advised otherwise.
3. Where the Buyer is to supply the Seller with any specifications regarding the goods being purchased, the Seller shall be under no obligation to commence production or take into stock any of the goods to be sold or any part thereof until such specifications are delivered to the Seller by the Buyer.

DELIVERY

4. In the case of delivery by instalments, each delivery shall be regarded as a separate and independent contract. The Seller reserves the right to make partial deliveries.

5. In the event of an act of God, governmental direction or other authoritative direction or intervention, strikes, lock-outs or other industrial civil or international unrest (whether the same affects the Seller, his suppliers or agents) or any other cause of whatsoever nature beyond the control of the Seller or force majeure, the Seller shall not be liable for any delay in delivery, non-delivery, destruction or deterioration of all or any part of the goods or for any other default in the performance of this contract arising therefrom and the Seller shall have the option either to cancel this contract either wholly or partially or to extend the time for delivery during such period. In the event of such cancellation by the Seller, or any such postponement, the Buyer shall have no claims whatsoever against the Seller.
6. In the event of the Buyer or his agents giving delivery instructions and afterwards finding it necessary to cancel them such cancellation can only be accepted on the terms that the Buyer accepts full responsibility to the Seller for all expenses incurred by the Seller up to the time of cancellation. The Seller's estimate of expenses incurred shall be final and conclusive.
7. If the Buyer fails to obtain any necessary import licence or quota allocation in time, the Seller shall have the right either to postpone delivery or to cancel the contract wholly or partially without being under any liability whatsoever to the Buyer. The Buyer shall be liable for any losses or expenses that are incurred by the Seller as a result of such failure.
8. The delivery date shall be the date on which the Seller delivers the goods to the place indicated as the point of delivery by the Buyer in the order form. The Buyer shall give delivery instructions for, take delivery of, all goods governed by any contract on or before the delivery date specified above, or if none is specified, then within 14 days from the date of acceptance or confirmation of order by the Seller unless an extension of time is agreed to in writing.

9. Delivery shall be effected when the goods are delivered to the Buyer's premises or collected by the Buyer or delivered to a carrier paid by the Seller or the Buyer, whichever shall first occur notwithstanding, subsequently refunded, allowed or charged by the Seller.
10. The quantities of any consignment of goods delivered under this contract shall be as specified by the Seller upon dispatch by the Seller and shall be accepted by the Buyer as conclusive evidence of the quantity so delivery unless the Buyer notes any alleged variance in the Seller's delivery docket and, where the goods are being delivered by the Seller, returns the docket forthwith to the Seller or in any other case, forwards the duly noted delivery docket by registered post within 36 hours from the time of delivery.

PRICES, PAYMENT

11. All prices are strictly net unless otherwise quoted. Customs duties, consular fees and other taxes, duties or fees charged in accordance with the laws or regulations of the country of destination or any other country through which the goods are transported as well as any costs connected therewith shall be borne by the Buyer. The Seller shall be entitled to add to the price agreed upon the amount of any tax or other governmental charges which the Seller must pay in respect of the goods (including without limitation value added tax and import duties) such taxes or governmental charges now in effect or as may hereafter be imposed or any increase therein prior to delivery.
12. If at any time before delivery of the goods, the cost to the Seller of completing the contract is increased for any reason outside the control of the Seller, (including but not limited to currency fluctuation) then the price shall be increased proportionately and the Buyer agrees to pay such increased price.

13. All terms are strictly net and payment is due thirty days from the date of the invoice. Interest will be charged on all overdue accounts at the rate of 2% above the rate for the time being fixed by the joint standing committee of the Associated Irish Banks for personal unsecured overdrafts.
14. All payments received by the Seller shall first be utilised in settlement of accounts which have been outstanding longest and/or at the option of the Seller, any accumulated interest on arrears.

WITHHOLDING OF PAYMENT OF PURCHASE PRICE

15. The Buyer shall on or before the date for payment pay the purchase price and any additional expenses or charges due by the Buyer to the Seller under the terms of the contract for sale, and without any reduction, to the Seller. The Buyer may not make any set-off against the sum due or raise any counterclaim in diminution of the sum due. Any complaints regarding short delivery alleged defects or faults in the goods or failure to deliver in accordance with the terms of the contract shall leave the Buyer's obligation to pay the entire purchase price on time and other charges due under the contract intact.
16. In the event of the Buyer failing to make any payment due under this contract or any other contract for the sale of goods existing between the Buyer and the Seller, the Seller may refuse to deliver any goods purchased by the Buyer from the Seller under this or any other contract between the parties until such sums have been paid. The Buyer hereby acknowledges that the goods purchased under this contract may be withheld by the Seller because moneys are due under this or any other contract between the Seller and the Buyer and that the withholding of delivery by the Seller shall in no way diminish or detract from the Buyer's obligations under this contract.

RIGHTS TO USE GOODS BEFORE PAYMENT

17(a) Prior to the payment in full of all sums due by the Seller to the Buyer under this contract, the Buyer shall be entitled to use the goods (which remain the property of the Seller in the manner hereinafter appearing) in the manner set out in this Clause:-

(i) The Buyer may:-

(A) offer the goods for sale; or

(B) incorporate the same in any process of manufacture either in a worked or unworked state; or

(C) may use the same for his own private use or consumption.

(ii) The Buyer may not offer the goods as security for the performance of any obligation of the Buyer to any third party.

(b) At any time prior to the Buyer paying all sums due for the goods under this contract, the Seller may, by notice in writing delivered to the Buyer's last known residence or place of business, determine the Buyer's right to use the said goods in the manner detailed above or at all, whereupon the Buyer shall forthwith return the goods to the Seller and/or the Seller may enter the Buyer's premises for the purposes of recovering the said goods to be discharged by the Buyer.

(c) Further, the happening of any of the events set out below shall forthwith (without notice) determine the Buyer's right to use the goods:-

- (i) any notice to the Buyer that a receiver or manager is to be or has been appointed;
- (ii) any notice to the Buyer that a petition to wind up the Buyer is to be or has been presented or any notice of a resolution to wind up the Buyer (save for the purposes of re-construction or amalgamation);
- (iii) a decision by the Buyer that the Buyer intends to make an arrangement with its creditors;
- (iv) the insolvency of the Buyer within the meaning of Section 62 (3) Sale of Goods Act, 1893.

RESERVATION OF OWNERSHIP OF GOODS

18.1. Prior to the payment of all sums due by the Buyer to the Seller under this contract, the goods shall remain the Seller's property and the Buyer may not use the goods save as provided in Clause 16 above.

18.2. Until title passes to the Customer (in accordance with the provisions of this Agreement) it shall hold the Goods as bailee for the Company and shall store or mark them so that they can at all times be identified as the property of the Company.

- 18.3. The Company may at any time before title passes and without any liability to the Customer repossess and dismantle and use or sell all or any of the Goods and by doing so terminate the Customers right to use, sell or otherwise deal in them and for that purpose (or determining what if any the Goods are held by the Customer and inspecting them) enter any premises of or occupied by the Customer.
- 18.4. Until title passes the entire proceeds of sale of the Goods shall be held in trust for the Company and shall be held in a separate designated account and not mingled with other moneys or paid into any overdrawn bank account and shall be at all times identifiable as the Company's money.
- 18.5. The Company may maintain an action for the price of any the Goods notwithstanding that title in them has not passed to the Customer.

COMPLAINTS

19. Notwithstanding the provisions in this contract regarding delivery of and payment for the goods sold hereunder, if the Buyer makes any claim against the Seller that the goods are not in accordance with the specification agreed, that there is a shortage in delivery or that the goods delivered are faulty or defective, the Seller may suspend all further deliveries of goods pending the determination of the said dispute or alternatively, the Seller, at its option, may insist that all further deliveries are paid for in full prior to dispatch from the Seller's premises. In the event of delivery being suspended, any applicable delivery date or dates shall be delayed accordingly. In the event of suspension of delivery or alternatively the Seller insisting on payment in full prior to delivery, no liability shall attach to the Seller by reason of any delay thereby caused.

LIMITATION OF LIABILITY

- 20.1. The Company shall have no liability to the Customer for any loss or damage of any nature arising from any breach of any express or implied warranty or condition of the Contract or any negligence, breach of statutory or other duty on the part of the Company or in any other way out of or in connection with the performance or purported performance of or failure to perform the Contract except as expressly stated in these conditions.
- 20.2. If the Customer establishes that any of the Goods have not been delivered, have been delivered damaged or do not comply with their description the Company shall, at its option, replace with similar goods any of the Goods which are missing, lost or damaged or do not comply with their description, allow the Customer credit for their invoice value or repair any damaged Goods.
- 20.3. If the Customer establishes that any of the Goods are defective the Company shall, as its option, replace with similar goods or repair any defective Goods, allow the Customer credit for their invoice value or to the extent that the Goods are not of the Company's manufacture, assign to the Customer (so far as the Company is able to do so) any warranties given by the manufacturer of the Goods to the Company.
- 20.4. The delivery of any repaired or replacement Goods shall be at the Company's premises or other delivery point specified for the in the original Contract for the Goods

- 20.5. Where the Company is liable in accordance with this condition in respect of only some or part of the Goods the Contract shall remain in full force and effect in respect of the other or other parts of the Goods and no set-off or other claim shall be made by the Customer against or in respect of such other or other parts of the Goods.
- 20.6. No claim against the Company shall be entertained for any defect arising from any design or specification provided or made by the Customer or if any adjustments, alterations or other work has been done to the Goods by any person except the Company.
- 20.7. The Company shall not be liable where any of the Goods, the Price of which does not include carriage, are lost or damaged in transit and all claims by the Customer shall be made against the carrier. Replacements for such lost or damaged the Goods will, if available, be supplied by the Company at the prices ruling at the date of despatch.
- 20.8. In no circumstances shall the liability of the Company to the Customer under this condition exceed the invoice value of the Goods.

CURRENCY FLUCTUATIONS

21. If at any time before the delivery of the goods, a re-valuation or devaluation of currency which increases the cost to the Seller of the completion of the contract, the Seller shall be entitled to increase the price of the goods, the subject matter of this contract, in proportion to the increased cost caused to the Seller and such new purchase price will be paid by the Buyer in accordance with the terms and conditions of payment herein contained. The Seller's bank's certified account of currency fluctuations affecting the purchase

price shall be accepted as conclusive proof thereof by the parties to this contract.

INSPECTION OF GOODS BEFORE DELIVERY

22. If the goods are to be manufactured or altered by the Seller after the contract to purchase but prior to delivery to the Buyer, the Buyer agrees to inspect the goods on delivery and shall endorse his acceptance of the same on the delivery docket.

PATENTS, TRADEMARKS AND DESIGNS

23. The Buyer shall be responsible for any infringement with regard to patent, utility, model, trademark, design or copyright in any country without exception when such infringement is due to the Seller having followed the design or instruction furnished by the Buyer. The Buyer shall be liable for all loss, damages and expenses suffered or incurred by the Seller as a result of any such infringement. In case any dispute and/or claim arises in connection with the above infringement, the Seller reserves every and all rights to cancel and make null and void this contract at its discretion and hold the Buyer responsible for any loss caused thereby to the Seller. Nothing herein contained shall be construed as transferring any patent, utility model, trademark, design or copyright in the goods or in any product that the goods can produce and all such rights are to be expressly reserved to the true and lawful owners thereof.

TRANSFER OF RISK

24. The risk in the goods shall pass to the Buyer when the Seller delivers the goods in accordance with the terms hereof.

RESCISSION

25. If the Buyer becomes bankrupt or enters into an arrangement with its creditors or if execution is levied against him or (if a company) a petition be presented or an order is made or a resolution is passed for a winding up or if a receiver or manager is appointed over the property of the Buyer or if the Buyer becomes insolvent or if the Buyer is in breach of any contract with the Seller, the Seller may stop any goods in transit and suspend further deliveries and may determine any contract with the Buyer without prejudice to any existing claim. Nothing in these conditions shall prejudice any other right vested in the Seller.

ARBITRATION

26. Any dispute or difference arising out of or relating to this contract or to any breach thereof which cannot be settled amicably without undue delay by the interested parties shall be referred to the arbitration in Dublin of an arbitrator to be appointed by the parties hereto or in default of appointment, such arbitrator as may be appointed by the President for the time being of the Incorporated Law Society of Ireland at the request of either the Seller or the Buyer, whoever shall be first to make the relevant application. Such Arbitrator shall be subject to the provisions of the Arbitration Acts, 1954 and 1980 or any statutory modification thereof for the time being in force. The award of such arbitrator shall be final and binding on both parties.

INTERPRETATION

27. The international rules for the interpretation of trade terms known as Inco Terms 1953 (including the supplements thereto) as amended from time to time shall apply to this contract. The headings of these conditions are for convenience of reference only and shall not affect the construction or interpretation thereof.

APPLICABLE LAW

28. This contract shall be governed by and construed in all respects (including the formation thereof and the performance thereunder) in accordance with the laws of the Republic of Ireland.

SEVERABILITY

29. If at any time any one or more of the provisions hereof or any part thereof is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

ANTECEDENT BREACH

30. The termination of any contract for any cause whatsoever shall not prejudice the right of the Seller to sue for any antecedent breach by the Buyer of such contract.

DAMAGE IN TRANSIT

31. The Buyer shall notify claims for damage in transit to the goods to the carrier on delivery of the goods to the Buyer and further shall notify the Seller of such claims within three days after such delivery.

ERRORS AND SHORTAGES

32. The Buyer shall notify the Seller in writing of any errors and shortages concerning the goods within seven days after delivery thereof to the Buyer.

RETURNS

33. The Seller will not accept any return of goods unless it shall have given its prior permission in writing to the making of such returns.

ORDERS

33. All orders shall be case multiples.