

THESE CONDITIONS CONTAIN LIMITATIONS OF SELLER'S LIABILITY

1. GENERAL

1.1 These conditions contain the entire agreement in connection with products and /or services and may only be modified or supplemented by separate written agreement between seller and buyer. All other terms and conditions, express or implied, present or historic[including any statements made in any brochure or advertising literature of seller] are excluded, save in the case of fraud. Unless expressly and specifically agreed in writing to the contrary, seller only contract with buyer on these terms and conditions will not accept any subsequent terms and conditions of buyer.

1.2 In these conditions, defined in the 1990 edition of incoterms have, unless otherwise specified the same meaning and "Buyer" means the person buying the products of, if agent for another that person and the jointly and severally "products" means the product described in seller's written quotation and include their packaging and any replacement products "services" means that technical advice (if any) given by or on behalf of seller in connection with the products for which no specific charge is made, whether being specific advice given to buyer or whether in any of seller's technical literature including any advice given by any technical representative of seller made available by seller at buyer's site for this purpose: Specification means (if any) included in seller's written quotation or any other written specification supplied by seller.

2. DELIVERY AND/OR PERFORMANCE.

2.1 Delivery or dispatch dates quoted are given or accepted by seller in good faith. But not guaranteed unless stated to be "guaranteed" in writing.

2.2 Delivery shall be such place as seller may agree or reasonably specify prior to delivery. Buyer is responsible for unloading products.

2.3 Packaging is not returnable unless otherwise agreed in writing by seller any special packaging requirements will incur an additional charge. Where supply is by bulk container (IBC) seller's supplemental conditions relating to IBCs shall apply.

2.4 Save for clause 8 each delivery and/or performance shall be treated as a separate contract. Unless otherwise agreed in writing seller may deliver and/or perform in a part and any failure to perform or deliver or any related breach of contract by seller shall not affect any other delivery. Buyer shall take delivery of products of any day up to the date quoted or agreed by seller or (if none) within a reasonable time. Buyer shall bear all storage and other costs (including insurance) arising from buyer's failure to comply with the contract.

2.5 Conclusive evidence of delivery shall be (i) products are sold FAS, FOB, free alongside quay (FAQ) or to Buyer agent, and on-board bill of lading, mate's receipt or other documents in proof of such delivery, (ii) if seller or its carrier is unable for any reason to place products on board ship at the place of delivery a warehouse receipt for products, (iii) if products are sold CIF or C&F (or CFR), a receipted bill of lading or way bill, or (IV) in all other cases, a receipt from a carrier.

3. PRICE AND PAYMENT.

3.1 Prices are exclusive of VAT and all other duties, fees or taxes. Any delivery Charge will be at cost or as otherwise agreed in writing.

3.2 Unless otherwise agreed in writing by seller, payment is due thirty days from date of invoice. Seller may require security for payment before dispatch or performance

3.3 Payment shall be made in the currency specified on the invoice.

3.4 Unless the contract states price[s] to be fixed. Seller may increase prices for undelivered balances and/or unperformed services in accordance with increases in seller's costs and/or general price list increases occurring after

the date of acceptance of order but before dispatch and/or performance. Buyer shall pay any increases in delivery costs after the date of acceptance of order.

3.5 In the circumstances described in clause 7.2 clause 2.4 shall not apply and all unpaid balances owing to seller from buyer shall become a debt immediately due and payable to seller whether or not property in products has passed to buyer.

3.6 Time of payment is of the essence of the contract. Without prejudice to any other remedy seller may charge interest at 4% above Citibank Dubai base rate for the time being per annum [to accrue from day to day] on any sum which is not paid on due date after as well as before any judgment .

3.7 Seller may appropriate sums received from buyer against any debt whatsoever due to seller from buyer [irrespective of any purported appropriate on by buyer]. In no circumstances may buyer withhold payment or make any set- off on any account.

3.8 Buyer shall on demand indemnify seller against all costs, charges expenses and legal costs incurred by seller in recovering sums owing by buyer.

4. WARRANTIES

4.1 Other than for samples or goods sold as obsolete sub-standard, seller warrants [“the warranty”] that upon delivery products are sold with good title, are made with sound materials and workmanship, comply with seller’s then current published products that data sheets and comply with the specification which shall be prepared with reasonable care and be suitable for the purpose for which it was prepared.

4.2 Unless products are sold to be used in accordance with the specification, seller does not warrant that products are fit for any particular purpose or an intended use by buyer and buyer shall satisfy itself that products are so fit .if products correspond to any sample supplied or accepted by buyer they shall be deemed to comply with the warranty.

5. LIMITATIONS AND LIABILITY

5.1 Seller shall not be liable under clause 4 unless buyers satisfy seller that it has strictly complied with any instructions of seller relating to products and services.

5.2 Buyer shall examine products as soon as reasonably practicable after delivery. Buyer shall then immediately notify seller of any incomplete or failed delivery, loss of damages during carried, shortage of weight or quantity or if products fail to comply with the warranty and shall in the case of damage products be entitled to notify seller that it rejects all or any part of the damaged products in that delivery. Unless buyer so notify with in 30 days after the date when buyer became or ought reasonably to have become aware of any of the above buyer shall[subject to clause 9.1] be treated as having waived all claims connected with matter which should have been notified, where notification is so made no action whatsoever may be brought against seller in connection with products, services and /or the contract unless proceeding are issued against seller with in 2 years after buyer became or ought to have become aware of the circumstances giving rise thereto.

5.3 Provided notification is made within the above 30 day period, if it is shown to seller’s reasonable satisfaction that products fail materially to comply with the warranty, seller shall be given reasonable opportunity to correct such failure, if the failure is not corrected, seller will at buyer’s option either refund the purchase or, if the products have depreciated for reason other than seller’s default or been use or put into process, a reasonable part of purchase price[,or replace part of the whole of the products [if reasonably practicable] with in a reasonable time, free of charge .such correction, refund or replacement shall, subject to clause 5.6 and clause 9.1 be seller’s sole liability in relation to any such failure.

5.4 Products which are alleged not to comply with the warranty shall as far as possible to preserved for seller’s inspection, and shall be returned to seller [at seller’s cost] if seller reasonably so requests. Buyer shall be to have waived its rights thereof unless, wherever possible. It has given seller reasonable opportunity to inspect such product.

5.5 Seller shall not be liable in any way whatsoever,

[a] The incompatibility of any products by seller with the products of other manufacturers of supplier:

[b] Inadequate or incorrect surface preparation or coating application work carried out by, or the faulty equipment or products of buyer or any third party:

[c] Any representation, advice or assistance given or omitted to be given in connection with products. Services, the specifications in the contract, other than services specifically charged for by seller. Where seller has specifically charged for services, and in the absence of any other written agreement. Seller shall provide services with reasonable care and skills and liability for failure shall be limited to a refund of the fee charged for those services;

[d] The supervision or quality control [or lack thereof] by or on behalf of any third party.

[e] In the case of products used for packaging, any failure on the part of buyer to carry out appropriate packing testing prior to the use of products.

5.6 Buyer shall promptly notify seller of any claim against seller. Seller shall only be liable to buyer in the event products which are defective at the time of delivery by seller shall not be liable to the extent that any liability arises from any act or omission of buyer.

5.7 Without prejudice to any other limitation of seller's liability [whether effective or not] :

[a] in no circumstances whatsoever [including any fault or default of seller] shall seller be liable for any indirect or consequential losses [including losses of goodwill, business or anticipated savings], loss of profits or use, any rectification costs or [subject to clause 5.6] any third party claims, in connection with products, specification, services or the contract :

[b] except as provided under clause 5.3, 5.6 and 9.1, seller's total aggregate liability under any proceeding or law in connection with products, specification, services or the contract is limited to the cost of products sold, provided however that this clause shall not affect any written performance guarantee given to buyer.

5.8 The warranty and buyer's remedies under clause 5, 7.1 and 9.1 are in substitution for any other warranties obligations, representations, liabilities, terms or/ conditions [whether they are express or implied or arise in contract, tort or otherwise] in connection with products and or services [including, without limitation, any relating to satisfactory quality, fitness for purpose, conformity with description or sample care and skill or compliance with [representations] which are hereby expressly included.

5.9 Unless specially stated otherwise in these conditions. Buyer's sole remedy shall be in damages. This clause 5 applies notwithstanding any fundamental breach or breach of a fundamental term of the contract by seller.

6. EVENTS BEYOND SELLER'S REASONABLE CONTROL

Seller shall not be liable for any failure to comply with the contract related to any failure to comply with the contract related to any circumstances whatever [whether or not involving seller's negligence] which are beyond seller's reasonable control and which prevent or restrict seller from complying with the contract. However seller may where reasonable and without liability suspend or terminate all or some of its obligations under the contract if seller's ability to fulfill such obligations is materially, impaired.

7. TERMINATION AND SUSPENSION

7.1 Except where Buyer has caused or contributed to any delay. Buyer may [Buyer's sole remedy; without affecting the balance of the contract quantity] terminate the contract by notice to seller in respect of any installment of products which is not dispatched by any date stated in writing to be guaranteed by seller or within 60 days after any date indicated by seller or quoted on seller's written quotation unless the goods have been specially manufactured or adapted for buyer.

7.2 Seller may without prejudice to its other rights or remedies or suspend Seller's performance of the whole or any outstanding part of the contract in the relevant circumstances. Seller may also suspend deliveries of supply of services while investigating any claim relating to prior shipment [under any contract of products clause 2.4 shall not apply in these circumstances. The relevant circumstances are

[a] Buyer failing to take delivery of or to pay for products and/ or services [if any]by the due date. Or breaches to any other terms of the contract; or

[b] Buyer becoming bankrupt or insolvent or if a receiver. Administrator or encumbrancer takes possession of any material part of buyer's asset, or Buyer suffers any foreign equivalent of the foregoing.

[c] Seller having reasonable grounds for suspecting that an event in clause 7.2[b] has occurred or will occur, or that Buyer will not pay for products or services on the due date. And so notifies Buyer; or

[d] Where the contract is for a fixed prices there has been a substantial increase in Seller's costs of manufacture and supply of products and/ or services between the date of contract and date of dispatch arising from circumstances beyond seller's reasonable control and seller and buyer have failed within 30 days of seller notifying buyer of such increase, to reach agreement on a reasonable adjustment in the prices for remaining deliveries to recognize increase.

7.3 If Buyer provides seller with security for the contract prices reasonably acceptable to seller, within 3 working days after a notice has been given under clause 7.2 [c] seller shall withdraw the notice.

8. RISK AND TITLE

8.1 Risk in products shall pass to Buyer upon delivery. Seller shall retain ownership of products until

8.2 Buyer shall insure products against all usual risks to full replacement value until own ship passes to buyer. Buyer shall sell, use or part with possession of them only in the ordinary course of trading and shall, where responsibly possible, keep each delivery separate and clearly identified as seller's property .any insurance monies received by Buyer in respect of products owned by seller, shall be held on trust for seller. In the circumstances describe in clause 7.2, Buyer may not sell, use or part with possession of products, seller may without prejudice to seller's other remedies enter buyer's premises, and recover and /or sell such products.

9. THIRD PARTY CLAIMS AND CONDUCT OF CLAIMS.

9.1 Seller will defend buyer against any third party claims against buyer in the country where products were supplied alleging that products [other than any products manufactured by a third party or manufactured to buyer's specifications] as such, in the original state sold by seller, infringe any patent effective in the said country seller will pay any damages and costs finally awarded against buyer in respect of such a claim. Seller may modify products to prevent infringement provided buyer is not substantially prejudiced by the modification.

9.2 Buyer shall not use any trade mark or trade names applied to or used by seller in relation products in any manner not approved by seller.

9.3 Buyer shall indemnify seller against any liability incurred by seller] from incorporating property of buyer in products or complying with any specification of other instruction of buyer relating to products; and [iii] arising from the use of or dealings in products by or a behalf of buyer, except as provided in clause 5.6 and 9.1 or if arising from seller's willful default.

9.4 Each party shall promptly notify the other of any relevant claims under this contract [including without limitation, under clause 5.6], shall comply with the other's reasonable requirements minimize and/or avoid further liability and shall allow the other conduct of any action and/or settlement negotiations, on reasonable terms.

10. INFORMATION AND COMPLAINS WITH LAWS

10.1 Buyer shall ensure that all products are safely and lawfully received, stored maintained, used by buyer and shall obtain relevant information in seller's possession relating thereto

10.2 Buyer shall ensure that all appropriate safety information[whether supplied by seller, buyer or another] is distributed and drawn to the attention of customers and all others[including Buyers employees]who require it for the safe handling or use of product and shall promptly supply to seller all information and assistance for seller to executive Buyer's order.

11. MISCELLANEOUS

11.1 The contract may not be assigned by buyer without seller prior written consent.

11.2 Notices must be in writing to sellers or buyers address and are deemed delivered on the first working day after sending by hand or[subject to information] by telex or facsimile to Buyer's or sellers address. Qualified acceptances by buyer on delivery notes shall not constitute notice of any claim or acceptance by seller of any such qualification

11.3 No failure by seller to enforce any provision of this contract shall be constructed as a release of its rights relating to sanction any further breach

11.4 If any provision on of the contract is found to be invalid or unenforceable it shall have effect to the maximum extent permitted, shall be deemed deleted.

12. LAW

This control shall be governed by and construed in accordance with the law of U.A.E. Buyer here by agrees. For seller's exclusive benefit, that the U.A.E shall have sole jurisdiction to hear all claims of proceedings connected with product, service or the contract seller may nevertheless bring claims in any other court of competent jurisdiction.