

## SOLLATEK (UK) LTD - TERMS AND CONDITIONS OF SALE

Abbreviated version - for a copy of the full version contact Sollatek (UK) Ltd

**1. Applicability** - (a) In these General conditions the Company means Sollatek (UK) Ltd "the Goods" means the goods agreed to be supplied by the Company and shall where required include services; "the Customer" means the person, firm or corporation ("the Customer") which has agreed to buy the goods. (b) These conditions shall apply to and form part of every contract of sale entered into between the Company and the Customer to the exclusion of any terms submitted at any time by the Customer and may not be varied without the prior consent in writing of a senior manager or director of the company.

**2. Previous Agreements or Conditions** - Unless otherwise agreed to in writing by the Company the Contract shall supersede any earlier conditions appearing in the Company's price lists, catalogues or elsewhere and shall override and take precedence over any and all terms or conditions stipulated, incorporated or referred to whether expressly or implied by the Customer whether in the order or in any other document or any negotiations leading to the Contract.

**3. Quotations** - Quotations submitted by us shall be valid for the period stated, or where no period is stated then for a period of 30 days from the date of quotation.

**4. Descriptive Matter & Illustration** - (a) All descriptions and illustrations and particulars of weight and dimensions and performance criteria issued by the Company in catalogues, price lists, advertising matter and specifications are by way of general descriptions and approximate only and shall not form part of any contract or give rise to any liability on the part of the company. (b) It is the policy of the Company to endeavour to develop and improve its products and accordingly the Company reserves the right to change all specifications without prior notification.

**5. Warranties** - (a) The Customer hereby acknowledges and agrees that he shall have satisfied himself before entering into the Contract as to the capacity, quality, effectiveness and performance of the Goods and their fitness and suitability for the purpose(s) for which they are required by him and that in purchasing the Goods the Customer shall not rely upon any statement, representation, term, condition or warranty other than those (if any) stated in the Contract and that save as aforesaid all guarantees, warranties, representations and conditions whether express or implied statutory or otherwise (save with regard to the Company's title to the Goods) are hereby excluded and negated. (b) The Customer shall by entering into the Contract accept the exclusions from and the limitations on the Company's liability contained in the Contract as being fair and reasonable in the circumstances.

**6. Price** - (a) The price(s) to be paid by the Customer for the Goods shall be that specified in the Company's invoice, all of which shall unless otherwise stated be exclusive of Value Added Tax. (b) The Company reserves the right to vary the price of goods and services to take account of any variation in the costs including but not limited to any foreign exchange fluctuations, rates of duties, variations in cost of wages, materials and other costs of manufacture and distribution, taking effect between quotation and delivery. (c) Agreed prices are based on quantities intended to be taken by the Purchaser. The Company reserves the right to vary prices if the Customer fails to take delivery of such quantities within the agreed delivery period, or if no such period is agreed, within a reasonable time.

**7. Time of Delivery** - (a) Any time or date named by the Company for delivery of the Goods is given and intended as an estimate only based upon conditions prevailing at the time the Contract is made and time in this respect shall not be of the essence. (b) The Company shall use its best endeavours to supply the Goods in accordance with the estimated time or date for delivery, but it shall not be liable for any damage or loss arising directly or indirectly out of any delay in delivery or non delivery of the Goods and the Customer shall not be entitled to

terminate or rescind the Contract by reason thereof. (c) Where the goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the company to deliver any one of more instalments or any claim by the Customers under these conditions shall not entitle the Customer reject further instalments or cancel further contracts.

**8. Place of Delivery** - The Goods shall be delivered at the point of delivery specified in the Company's invoice or if so specified in the order, shall be collected by the Customer from the point of collection specified therein within seven days of the date upon which the Company notifies the Customer that the Goods or any part thereof are available for collection.

**9. Storage** - If the Company does not receive forwarding instructions sufficient to enable it to despatch the goods within 14 days after notification that they are ready for delivery the Company shall be entitled to invoice and be paid for the goods as though the goods had duly been delivered in accordance with these Conditions.

**10. Shortage & Non-delivery** - (a) No claims for shortage of Goods may be made by the Customer unless the Company shall receive and where the Goods are transported by a carrier and the carrier also receives written notification thereof within 3 working days of delivery. (b) No claims for non-delivery of Goods shall be accepted or considered unless the Company receives written notification thereof within 7 working days from the date of receipt by the Customer of the Company's invoice in respect of the Goods.

**11. Loss or Damage in Transit** - If the Company agrees to deliver goods the Company will only consider claims for damage in transit if notice is received in writing by the Company within 3 working days of the date of the Advice Note. The Customer shall retain any damaged goods and any associated packing for examination by the Company. The Company shall not be liable to the Customer for any loss or damage whatsoever if the Customer fails to notify the Company in accordance with this clause.

**12. Payment** - (a) The time specified for payment shall be of the essence of the Contract. (b) Unless otherwise agreed in writing by the Company payment in respect of each contract must be made in full with order and the order will not be considered confirmed by the Company until full cleared funds are received by the Company. (c) If a credit account is agreed with the Customer then unless otherwise agreed in writing by the Company payment in respect of each contract must be paid in full by a date which will ensure that fully cleared funds are received by the Company not later than the 20th day of the month following the month during which the Company's invoice is rendered to the Customer ("the due date"). (d) If the Customer shall have failed to pay all sums payable hereunder prior to the due date then the Company shall be entitled to charge interest at the rate per annum of 2.5 per cent above the Base Rate from time to time of National Westminster Bank Plc on all overdue payments such interest to accrue on a daily basis with effect from the due date and to be payable after as well as before judgement. The Company may suspend delivery of the Goods where payment is not made in accordance with this Condition.

**13. Title** - (a) Notwithstanding the passing of risk immediately on delivery, the legal and beneficial ownership in all goods shall not pass to the Customer and shall remain with the Company which retains the right of disposal until full payment has been received by the Company from the Customer for all Goods supplied at any time whether hereunder or in respect of any other Contract or Contracts and of all other sums due. (b) Until the property in the Goods passes to the Customer pursuant hereto the Customer shall hold the Goods as the fiduciary agent and bailee of the Company and shall keep the Goods separate from any other property of the Customer or any other person and properly stored, protected and identified as the Company's property and insured to their full value against all normal comprehensive risks with the Company's interest as owner being noted

on the relevant policy or policies.

**14. Risk & Insurance** - (a) All Goods shall be at the risk of the Customer, from the time of delivery to or collection by the Customer his servant agent or other representative at the agreed point of delivery or collection. (b) The Customer shall keep the Goods fully and comprehensively insured and a note of the Company's interest in the Goods shall be endorsed on all policies of insurance until the Company receives payment in full for the sale and supply of the Goods. (c) All payments received by the Customer from insurance in the event of the Goods being damaged shall first be applied towards payment of any outstanding sums due to the Company under the Contract.

**15. Liability of the Company** - (a) The Company shall not be liable, either in contract or in tort for any loss, injury or damage of whatsoever nature or to whomsoever or by whatsoever cause arising directly or indirectly from any defect in the Goods (whether latent or apparent) or as a result of the use of the Goods (save and except any liability for death or injury to any person resulting directly from the negligence of the Company) and the Customer shall fully indemnify the Company against all claims and demands made upon the Company by reason of any such loss or injury or damage. (b) Without prejudice to the provisions of the immediately preceding sub clause the Company shall not in any event be liable for consequential or indirect loss or damage howsoever arising under the Contract or in relation to the Goods. (c) The Customer hereby acknowledges that the restrictions in this clause are fair and reasonable in the circumstances.

**16. Safety** - (a) The Customer shall ensure that the Goods are properly used and, without prejudice to the foregoing, that they are selected, installed, commissioned and maintained in accordance with all applicable safety and other regulations. The Customer shall ensure that all Goods incorporated within or otherwise joined to other components or products are so incorporated or joined as to ensure that the Goods and the final product comply in all respects with all applicable safety and other regulations. (b) The Customer shall take such steps as are necessary or desirable to ensure that all information and instructions relevant to the Goods and their use are provided to any person using the Goods or likely to be affected by them. Without prejudice to the foregoing, the Customer shall ensure that all packaging and instruction supplied to the Customer remain with the Goods whenever they are the subject of any future supply.

**17. Warranty** - Unless otherwise agreed with the Company or where the Company has notified the Customer of special terms in respect of specified categories of goods the Company agrees at its option either to refund the cost of or repair or replace goods proved to the Company's reasonable satisfaction to have failed under proper storage and use within 24 months of delivery by reason of defects due to faulty design (other than any design made, furnished or specified by the Customer) materials or workmanship provided that: (a) The Customer shall have followed any instruction issued by the Company in relation to the goods and their storage; (b) In the case of defects which would have been apparent to the Customer on reasonable examination of the goods on delivery, 'the' Customer shall notify the Company of the defects within 14 days of delivery; (c) In the case of any other defects the Customer shall notify the Company of the defects in writing within 7 working days of the date when the defect becomes apparent; (d) Where in discharge of its obligation under this clause the Company agrees that the Customer may undertake any repair work on its behalf the cost of such work shall be agreed in writing between the Customer and the Company before the commencement of such work.

**18. Return of Goods** - (a) Goods supplied in accordance with the Customer's orders cannot be accepted for return without the prior written consent of the Company and in accordance with the Company's returns procedure. (b) The Company reserves the right to levy a handling, administration or other charge of such amount as it, in its absolute discretion, decides and may deduct this from any credit allowed unless the reason for any return by the Customer is due to any fault or breach of these Conditions on the part of the Company. (c) Returned Goods must be sent carriage paid at the Customer's risk

to the Company's trading premises or to such other address as the Company may direct. (d) The Company will not allow credit in respect of returned goods not in fully re-saleable condition.

**19. Patent Rights** - (a) Indemnity - the Company, at its own expense, shall defend any suit brought against the Customer insofar as based upon a claim that any goods in the form as supplied by the Company hereunder directly infringes any United Kingdom patent right and shall indemnify the Customer against any final award of damages and costs in such suit This indemnity is subject to the limitation of liability set out below and is conditional upon the Customer giving the Company prompt, notice in writing of any suit for infringement, full authority at the ' Company's option to settle or to conduct the defence thereof and full assistance and co-operation in said defence. No cost or expense shall be incurred on behalf of the Company without its prior written consent and no admission shall be made by the Customer of liability. In the event that goods supplied hereunder by the Company in the form as specified above are in such suit held to constitute infringement and their use is prohibited, the Company shall at its own election and at its own expense, either procure for the Customer the right to continue their use or shall replace the infringing goods by non-infringing goods or shall against return of such goods grant the Customer a credit for the price paid by him therefore. (b) Limitation of liability - the Company assumes no liability for infringement of patent rights covering any combination of any goods supplied hereunder with any product, whether or not supplied by the Company, or any method or process' in which any goods supplied hereunder may be used. Furthermore, the Company shall not be liable for any patent right infringement arising from compliance with the Customer's design, specification or instruction except to the extent that the infringement arises from the manufacturing process employed by the Company. The Customer shall indemnify the Company against any final award of damages and costs for such infringement and shall reimburse all costs incurred by the Company in defending any suit for infringement, provided the Company gives the Customer prompt notice in writing of any such suit for infringement and, if so requested, full authority to conduct the defence. The foregoing stated the entire liability of the Company in connection with infringement of patent rights by the supply of goods and, except as stated in this clause, the Company shall not be liable for any loss or damage of whatsoever kind (including in particular any incidental, indirect, special or consequential damage suffered by the infringement of any patent right. (c) Exclusion of Implied licence - the sale of the goods does not convey any licence, by implication, estoppel or otherwise, under any proprietary or patent rights covering any combination in which any goods supplied by the Company hereunder are combined with any other product whether or not supplied by the Company or any method or process in which any goods may be used.

**20. Copyright** - All drawings, descriptions and other information submitted by the Company shall remain the property of the Company together with the copyright therein.

**21. Force Majeure** - If the Company's ability to perform any of its obligations under the Contract is limited, delayed or prevented in whole or in part by reason of any cause or event beyond the Company's control, including, but without limiting the foregoing, fire, storm, tempest, explosion, accident, breakdown of plant or machinery, strike or industrial dispute, shortage of materials or failure of supplies, war, civil strife or commotion, act of foreign enemy, hostilities, law or act of or authorised by any government, the Company's performance of its said obligations under the contract shall be suspended for so long as such event or cause shall continue and the Company shall not be liable to the Customer therefore nor for any loss, damage or liability arising there from and if such cause or events shall be continued for longer than six months the Company shall be entitled to terminate the Contract without incurring any liability whatsoever to the Customer and without prejudice to the Company's rights accrued up to the date of such termination.

**22. Variations of Conditions** - (a) Any purported variation of the Contract shall only be valid if evidenced in writing and signed by a

senior manager or director of the Company.

**23. Assignment** - The Company reserves the right to assign or sub-contract the performance of its obligations under the Contract or any part thereof or to assign the benefit of its rights thereunder. The Contract may not be assigned sub-let or charged in whole or in part by the Customer without the prior written consent of the Company.

**24. Waiver** - The waiver by the Company or any breach of any term of the Contract by the Customer or any time or indulgence granted by the Company to the Customer shall not affect the enforcement of the rights of the Company hereunder or be deemed a waiver of any further breach.

**25. Termination** - (a) The Company shall be entitled to determine the Contract or the unfulfilled part thereof forthwith by written notice to the Customer in any of the following events:- (a1) If the Customer commits any breach of the terms or conditions of the Contract. (a2) If the Customer ceases to carry on business or pay his debts as and when they fall due or threatens so to do. (a3) If the Customer shall become bankrupt or have a receiving order or administration order made against him or shall make any composition or arrangement with or conveyance or assignment for the benefit of his creditors or shall purport so to do or if any proposal shall be made for a voluntary arrangement in relation to the Customer or if the Customer shall have any application made against him under the Insolvency Act 1986 or any Statutory re enactment or replacement thereof or any other insolvency legislation in whatever jurisdiction or (being a Company) if any Resolution be passed or any Order of the Court be made that the Customer be wound up or a Receiver and/or Manager be appointed by any creditor or any act shall be done which would cause any of the foregoing to be done. (b) Any termination of the Contract shall be without prejudice to the Company's rights accrued up to the date of termination and the Customer shall forthwith pay to the Company all payments due to it up to such a date.

**26. Severability** - The various provisions of the Contract are severable and if any provision is held to be invalid or unenforceable by any Court of competent jurisdiction then such invalidity or unenforceability shall not affect the remaining provisions of the Contract.

**27. Headings** - The headings to the clauses hereof shall not affect the construction of the Contract and are inserted for ease of reference only.

## 28. Applicable Law

**28.1** This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.

**28.2** The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

**29. Notices** - Any notice to be served under the provisions of the Contract shall only be deemed to have been effectively served if it is personally delivered or sent by prepaid first class recorded delivery or registered post in the case of the Company to its registered office for the time being and in the case of the Customer to its address as specified on the application for credit or such other address as may have been notified to the Company in accordance with the provisions hereof. Any notices sent by post as aforesaid shall be deemed to have been served on the day next following the date of posting (excluding Saturdays, Sundays and public holidays).

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