

ZILMET UK LIMITED - TERMS & CONDITIONS OF SALE

1. GENERAL

- 1.1** In these Conditions
- 1.1.1** the following expressions shall have the following meanings
- 1.1.1.1** "Buyer" means the individual firm company or other party from whom an Order to Supply Goods is received by the Seller;
- "Conditions" means the standard terms and conditions of sale of the Seller as set out herein and includes any additional terms and conditions of sale agreed in Writing by the Seller;
- "Consumer" has the meaning as set out in section 2(3) of the Consumer Rights Act 2015;
- "Contract" means a contract for the Supply of Goods by the Seller to the Buyer on the terms of these Conditions whether made in Writing or otherwise;
- "Goods" means the goods which the Seller is to supply under the Contract and where the context so admits includes raw materials, processed materials and/or fabricated products whether manufactured by the Seller or not;
- "Intellectual Property Rights" means any patent trade mark registered design copyright or any other proprietary right of any third party;
- "Losses" means all loss of profit revenue or goodwill costs (including the cost of labour and materials) damages (including to reputation) charges and expenses incurred directly or indirectly by (as appropriate) the Buyer or the Seller;
- "Order" means an order placed by the Buyer for the Supply of Goods whether verbally or in Writing;
- "Recommendations for Use" means the recommendations (if any) relating to the storage handling application and/or use of the Goods contained in the published literature of the Seller (or, if relevant, a Supplier) or any recommendations made in Writing by an authorised representative of the Seller (or, if relevant, a Supplier);
- "Seller" means Zilmet UK Limited (company number: 08048321) of c/o Intatec Limited, Airfield Industrial Estate, Hixon, Staffordshire ST18 0PF and any subsidiary or holding company or associate of the said company and also, where the context so permits, any sub-contractor of the said company or of any subsidiary or holding company or associate of the said company;
- "Supplier" means any person, firm or company who or which supplies the Goods to the Seller in substantially the form in which they are supplied and/or provided to the Buyer;
- "Supply" includes, where the context so admits, lease, hire or loan of the Goods and "supplied" shall be construed accordingly;
- "Writing" includes facsimile transmission, electronic communication and comparable means of communication words importing the singular number shall include the plural and vice versa, words importing the masculine shall include the feminine and neuter and vice versa, and words importing persons shall include bodies corporate, unincorporated associations and partnerships.
- 1.2** The Seller reserves the right where there has been no previous course of dealings with the Buyer to insist that the Buyer notifies it in Writing of the full name and address of the Buyer and all its branches and where the Buyer is a limited company the full names and addresses of all its directors and the names and addresses of three persons firms or companies with whom the Buyer has had trade dealings and the names and addresses of the Buyer's bankers and accountants or auditors (as applicable) together with authority in Writing for the Seller to contact all of them for the purposes referred to above. If the information is not provided within seven days of a request therefor by the Seller or if, following the provision of such information, the Seller is unable to obtain satisfactory trade indemnity or similar cover in respect of its dealings with the Buyer, the Seller may terminate the Contract and the rights and liabilities of the parties shall be the same as if the Contract had been cancelled in accordance with the provisions of Condition 7.

2. ORDERS, ACKNOWLEDGEMENTS, CONDITIONS AND VARIATIONS

- 2.1** The Order will be deemed to be an offer by the Buyer to buy the Goods on the terms of these Conditions. This offer will be deemed accepted, and the Contract formed, only when the Seller acknowledges the Order in Writing.
- 2.2** The Contract will consist of the acknowledgement referred to in Condition 2.1 and these Conditions together with any special terms and conditions that may have been agreed between the parties and set out in the written acknowledgement.
- 2.3** The Contract contains the entire obligations between the Seller and the Buyer. In the case of any inconsistency between any letter or quotation incorporating or referring to these Conditions and any Order, letter or form of contract sent by the Buyer to the Seller, whatever may be their respective dates, the provisions of these Conditions shall prevail. In the event of the Seller entering into the Contract without the Seller having submitted a written quotation or other letter or document incorporating or referring to these Conditions but in circumstances where the Buyer has had prior notice of these Conditions then all Goods supplied shall be subject to these Conditions.
- 2.4** No variation of the Contract by the Buyer shall be binding upon the Seller unless made in Writing and signed on behalf of the Seller. In the event of such variation the Buyer shall indemnify the Seller in full against all Losses of the Seller as a result of such variation.
- 2.5** Any representations or warranties made by or on behalf of the Seller prior to the Contract (whether verbally or in Writing) are hereby expressly excluded and shall be of no effect.
- 3. DESIGNS, BUYER'S PROPERTY AND INTELLECTUAL PROPERTY**
- 3.1** Where Goods are made cut or otherwise supplied to the Buyer's own specification pattern or design the Buyer warrants and undertakes full responsibility not only for the suitability and fitness of the specification pattern or design but also that such specification pattern or design does not infringe any Intellectual Property Rights and the Buyer shall indemnify the Seller in full for any Losses arising from the performance of the Contract by reason of any infringement of any such Intellectual Property Rights and the Buyer acknowledges that the Seller shall be under no liability of any description to the Buyer if the Goods prove to be unsuitable for whatever reason for application or use notwithstanding that the Seller may, at the request of the Buyer, have given in good faith technical or other advice in relation to the proposed application or use of the Goods and the Buyer hereby undertakes to indemnify the Seller against any and all Losses arising out of or connected with the application or use of the Goods in accordance with the Buyer's specification pattern or design or otherwise.
- 3.2** The Seller reserves the right to change the Buyer's specification pattern or design as required to ensure that the Goods comply with any health safety or other statutory requirement or provision.
- 3.3** The Seller will be the sole owner of all inventions formulations and designs and the copyright in all documents and drawings made or produced by it (or by any person who would or might become a Supplier if an Order were to be placed by the Buyer) in preparing a quotation for the Buyer or in the course of work on any Contract with the Buyer.
- 3.4** The Buyer hereby warrants to and undertakes with the Seller that the Buyer will not utilise any such inventions formulations designs documents or drawings as are referred to in Condition 3.3 which come to its knowledge or into its possession during negotiations or the preparation of a quotation for the Supply of Goods by the Seller to the Buyer whether or not a Contract is entered into or during the execution of a Contract or thereafter other than in respect of the use or re-sale of such Goods by the Buyer in the ordinary course of its business without the consent in Writing of the Seller.

4. PRICE

- 4.1** The price payable for the Goods shall be the list price of the Seller current at the date of delivery of the Goods, subject to any other terms agreed in Writing. Any price set out in any quotation shall be considered to have been given solely for information and shall not constitute an obligation on the part of the Seller that it will deliver the Goods at that price.
- 4.2** Unless otherwise stated in Writing the price does not include Value Added Tax which will be charged at the rate applicable at the date of invoice.
- 4.3** Unless otherwise stated in Writing the price does not include the cost of packaging. Where packaging is included unless otherwise agreed it will be to the Seller's standard specification which should be adequate for the normal incidence of competent handling covered transport and short term indoor storage in a temperate climate. If additional protection is required the Buyer must specify this before the Contract is made.
- 4.4** Unless otherwise stated in Writing the price does not include the cost of carriage to the contracted place of delivery nor the cost of off-loading the Goods which should be arranged by the Buyer at its sole risk and expense. The Seller will endeavour to expedite delivery if requested so to do by the Buyer who must specify in Writing the means of transport to be used in default of which the Seller shall use such delivery service as it in its absolute discretion sees fit but the Buyer shall reimburse the Seller for all additional costs the Seller incurs thereby. The Buyer also agrees to pay any Losses or extra cost incurred by the Seller through the Buyer's faulty instructions, lack of instructions or any failure or delay of the Buyer in taking delivery or any act or default on the part of the Buyer and/or its servants agents or employees.

5. DELIVERY

- 5.1** Delivery of Goods shall be deemed to be effected by the Seller when the same arrive prior to unloading at the Buyer's premises or at premises nominated by the Buyer or at the nearest accessible road point to such premises.
- 5.2** Unless otherwise agreed in Writing Goods to be delivered to a Buyer whose address is outside the United Kingdom will be sold F.O.B.
- 5.3** Whilst the Seller will make every reasonable effort to deliver the Goods by the date(s) specified in the Contract such date(s) shall only constitute the times by which the Seller expects to effect such delivery but the time for performance of the Contract by the Seller shall not be of the essence of the Contract and the Seller's failure to so deliver by the date(s) shall not constitute a breach of the Contract and the Seller shall not be responsible for any Losses resulting therefrom.
- 5.4** The Seller may wholly or partly suspend deliveries of Goods and the Buyer shall accept late delivery of such Goods unless the Buyer has cancelled the Contract in accordance with the provisions of Condition 7.
- 5.5** The quantity of any consignment of Goods as recorded by the Seller upon despatch from the Seller's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 5.6** If the Buyer is a Consumer nothing in this Condition 5 will affect the statutory rights of a Consumer in respect of delivery.

6. TERMS OF PAYMENT

- 6.1** Unless otherwise agreed in Writing the price shall be due and payable at the Seller's offices in pounds sterling thirty days after the date of the Seller's invoice.
- 6.2** Time for payment shall be of the essence however the Seller reserves the right to require payment immediately on delivery of the Goods or on sending notification that the Goods are in a deliverable state if the Buyer has previously failed to make any payment owing to the Seller on the due date or if the Buyer has failed to provide the information referred to in Condition 1.2 in accordance with the provisions of that Condition or if the Seller has received unsatisfactory credit rating information relating to the Buyer.
- 6.3** If the Buyer does not pay the amount due on the required day then the Buyer shall pay to the Seller interest on the amount outstanding from the required day until the actual date of payment at either of the following rates the choice of which shall be at the absolute discretion of the Seller:
- 6.3.1** the rate of 4% per annum over the base rate of Barclays Bank plc from time to time in force which shall accrue on a daily basis.
- 6.3.2** the maximum rate chargeable by the Seller under any applicable late payment legislation
- 6.4** So long as any payment is due from the Buyer to the Seller it is outstanding, whether under the same or any other Contract or transaction the Seller shall have a lien on any Goods in its possession and it shall be entitled to retain them and/or suspend work on any Contract.
- 6.5** The Buyer shall not be entitled to withhold payment of any amount due to the Seller by reason of any disputed claim by the Buyer in connection with the Contract nor shall the Buyer be entitled to set off against any amount payable under the Contract to the Seller any amount which is not then due and payable by the Seller or for which the Seller disputes liability.

7. SUSPENSION AND CANCELLATION

- 7.1** The Buyer shall have the following rights of cancellation:
- 7.1.1** Where the Buyer is not a Consumer, it may inform the Seller of its desire to cancel the Contract, but the Seller may elect at its discretion not to accept such cancellation. Any cancellation that is accepted by the Seller shall be subject to such terms as the Seller may specify.
- 7.1.2** Where the Buyer is a Consumer, it has the right to cancel the Order at any time within 14 days of delivery of the relevant Goods by contacting the Seller's customer services department on 01889 272180 and quoting the relevant Order number and delivery address. Cancellations made after 14 days will not be accepted by the Seller unless the Goods are faulty.
- 7.2** Where an Order is validly cancelled the Buyer must return (at its cost) or make available for collection by the Seller all of the Goods delivered pursuant to that Order. All cancelled Goods must be returned unused and the

- Buyer must take reasonable care of all Goods in its possession. Where the Goods are to be collected by the Seller and such Goods are not ready for collection at the time when the Seller's carrier arrives the Seller reserves the right to charge a collection fee.
- 7.3** Once the cancelled Goods have been received, the Seller will issue a credit note for the full amount of the Order unless the Buyer has failed to take reasonable care of the Goods in which case a partial refund will be issued.
- 7.4** The cancellation right detailed in Condition 7.1 is not available where the Buyer has made an Order for bespoke Goods whether or not the Buyer is a Consumer.
- 7.5** In the event of the Seller being prevented from completing the Contract either wholly or in part in accordance with the provisions of Condition 7.1 for any reason beyond its reasonable control then further performance of the Contract shall be suspended for the period during which the Seller is so prevented provided that in the event of the Contract being suspended for a continuous period of more than three months then either party may give the other notice in Writing to terminate the Contract forthwith and in such circumstances the Buyer shall pay for all Goods supplied to the date of such termination such payment to be immediately due and payable upon termination. The Seller shall be under no liability whatsoever to the Buyer for any Losses suffered as a result of the Seller's inability to perform the Contract in those circumstances.
- 7.6** If the Seller shall be prevented from or delayed in delivering Goods in accordance with the Contract as a result of default or default on the part of the Buyer or any other reason beyond the Seller's reasonable control and the Contract is not cancelled in accordance with the other provisions of this Condition 7 the Seller shall be entitled to reschedule the date or dates for such delivery of Goods to such time or times as it shall reasonably require taking into account its commitments to third parties. The Seller shall also be entitled to be paid storage charges for Goods in the event of such delay or default by the Buyer and notwithstanding Condition 11 such Goods shall be at the sole risk of the Buyer.

8. ADDITIONAL GOODS

- 8.1** Where the Buyer requires Goods to be provided in addition to those set out in the Contract but as part of the Contract the Buyer shall place an Order in Writing therefor and upon acceptance in Writing by the Seller of such Order the provisions of these Conditions shall apply to those additional Goods.

9. CLAIMS FOR DAMAGE IN TRANSIT/SHORTAGES

- 9.1** The Seller undertakes to make up any shortages or to repair or at its discretion replace free of charge any Goods lost partially lost or damaged in transit to the contracted place of delivery in which event the time for the delivery of the same shall be extended for such period as the Seller may reasonably require.
- 9.2** No claims for non-delivery, partial loss or damage to Goods will be accepted by the Seller unless:
- 9.2.1** they are notified in Writing by the Buyer to the Seller (with a copy to the carrier if the Seller's own vehicles were not used) within 3 days after the day of delivery (in the case of partial loss or damage) or 14 days after the date of the invoice (in the case of non-delivery); and
- 9.2.2** the Goods in respect of which a claim is made together with the packaging are preserved intact as received for a period of 21 days from notification of any such claim and the Buyer permits the Seller or its servants or agents full and free right of access to inspect the Goods and investigate the claim.

10. WARRANTIES

- 10.1** The Seller shall use its reasonable endeavours to pass on to the Buyer such benefits relating to warranties in respect of or guarantees of the Goods which the Seller has under contract with a Supplier. Save as aforesaid any warranties conditions or undertakings whether express or implied by statute common law or otherwise whatsoever in respect of such Goods are subject to Section 6(1) of the Unfair Contract Terms Act 1977 hereby expressly excluded.
- 10.2** If the Buyer is a Consumer nothing herein contained shall operate to exclude any liability for breach of the implied terms set out in the Consumer Rights Act 2015, nor limit the remedies available under that Act.
- 10.3** Nothing in these Conditions excludes or limits the liability of the Seller for death or personal injury caused by the Seller's negligence or fraudulent misrepresentation.
- 10.4** Subject to the above, the Seller's liability in respect of the Goods shall be limited to the following:
- 10.4.1** the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price payable for the Goods as referred to in Condition 4.1; and
- 10.4.2** the Seller shall not be liable to the Buyer for any indirect or consequential Losses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11. TITLE OF GOODS

- 11.1** The Goods are at the risk of the Buyer from the time of delivery.
- 11.2** Title to the Goods shall not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of:
- 11.2.1** the Goods; and
- 11.2.2** all other sums which are or which become due to the Seller from the Buyer on any account.
- 11.3** Until ownership of the Goods has passed under Condition 11.2 the Buyer must:
- 11.3.1** hold the Goods on a fiduciary basis as the Seller's bailee;
- 11.3.2** store the Goods (at the Buyer's sole cost) separately from all other goods held by the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;
- 11.3.3** not remove, destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 11.3.4** maintain the Goods in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller and will produce the policy of such insurance to the Seller upon request; and
- 11.3.5** hold the proceeds of the insurance referred to in condition 11.3.4 on trust for the Seller and not mix them with any other money nor pay the proceeds into an overdraft bank account.
- 11.4** The Buyer shall remain the owner of the Goods until the ownership has passed to the Buyer on the following conditions:
- 11.4.1** any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
- 11.4.2** any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 11.5** The Buyer's right to possession of the Goods shall terminate immediately if:
- 11.5.1** the Buyer (being an individual) has a bankruptcy order made against it; or makes an arrangement or composition with its creditors or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors or (being a body corporate) convenes a meeting of creditors (whether formal or informal) or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation or has a receiver and/or manager administrator or administrative receiver appointed of its undertaking or any part thereof or a resolution is passed or a petition presented to any court for the winding up or for the granting of an administration order in respect of it or any proceedings are commenced relating to the insolvency or possible insolvency of it;
- 11.5.2** the Buyer suffers or allows any execution whether legal or equitable to be levied on its property or obtained against it or fails to observe or perform any of its obligations under the Contract or any other contract between it and the Seller or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or ceases to trade; or
- 11.5.3** the Buyer or members or in any way charges any of the Goods.
- 11.6** The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not yet passed from the Seller.
- 11.7** The Buyer grants the Seller its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them or where the Buyer's right to possession has terminated to recover them.
- 11.8** For the purposes of Condition 11.1 the expression "Buyer" includes any subsidiary or holding company or associate of the Buyer.

12. INSURANCE

- 12.1** Notwithstanding the reservation of title contained in Condition 11 the Buyer shall insure the Goods and/or any products made wholly or partly therefrom for the full amount of the price payable under the Contract with an insurance policy in addition to the Country of origin of the Goods until the date title in the Goods passes to the Buyer pursuant to Condition 11 and procure that the interest of the Seller as the owner of the Goods is noted on the policy of such insurance and produce such policy to the Seller for inspection on demand.

13. GENERAL

- 13.1** All returns of Goods under the Contract are subject to a handling and/or re-stocking fee.
- 13.2** The Seller reserves the right to assign or sub-contract or subcontract the fulfilment of the Contract or any part thereof. The Buyer shall not be entitled to assign the benefit or the burden of the Contract without the consent in Writing of the Seller.
- 13.3** The Seller reserves the right to correct any clerical or typographical errors made by its employees servants or agents at any time.
- 13.4** The attention of the Buyer is drawn to the provisions of Section 6 of the Health and Safety Act 1974. The Seller shall shall be under no obligation to pass on or to provide to the Buyer any such information on the design and construction of the Goods provided by the manufacturer to ensure that as far as is reasonably practicable they are safe and without risk to health when properly used. It is the responsibility of the Buyer to take such steps as are necessary to ensure that such information relevant to the Goods which is appropriate is made available to its servants agents or any person to whom the Buyer supplies them and to any other person to whom the Buyer reasonably considers any such information should be given.
- 13.5** The Goods shall not be used in any country other than that for which the Seller was aware they were originally ordered without the Seller's consent in Writing.
- 13.6** If Goods are to be supplied under the Contract to be used outside the United Kingdom the Buyer shall be deemed to have satisfied itself that such Goods comply with the safety regulations of any country or state in which the Goods are to be so used and the Buyer shall indemnify the Seller in full for any Losses incurred if such Goods do not comply with such safety regulations.
- 13.7** The Buyer warrants to the Seller that:
- 13.7.1** the Buyer will install operate or otherwise use or store the Goods strictly in accordance with any Recommendations for Use and with all relevant or applicable statutory or other regulations governing the installation operation use or storage of the Goods;
- 13.7.2** any collection vehicle container ship or other means of transport provided by the Buyer or any agent of the Buyer will comply with all relevant legislation and regulations relating to health and safety requirements;
- 13.7.3** the Seller shall be entitled to use the Goods and all parts thereof and all equipment used in connection therewith is suitable for storage (both short term and long term) and transport of the Goods and complies with any statute regulation by law or other rule having the force of law and relating to the storage of goods of the nature of the Goods; and
- 13.7.4** the Buyer will ensure that the Goods are stored at temperatures appropriate to goods of that nature and will comply with any recommendations as to the storage of the Goods notified to it by the Seller from time to time.
- 13.8** The Buyer shall indemnify the Seller against any Losses arising from any breach of the warranty contained in Condition 13.6.
- 13.9** If at any time one or more of the provisions of these Conditions becomes or is invalid illegal or unenforceable in any respect under any law or is held by a court to be invalid illegal or unenforceable the validity and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.
- 13.10** In the event of a dispute arising between the Seller and the Buyer concerning the sum or sums to which the Seller is entitled in addition to the Country of origin of the Goods provided for in these Conditions then a certificate from the Seller's auditors certifying such sum or sums shall be conclusive and binding upon the Seller and the Buyer. Any sum certified by such auditors shall be paid by the Buyer on or before thirty days from its receipt of such certificate together with the cost of obtaining such certificate.
- 13.11** These Conditions and each and every Contract made pursuant thereto shall be governed by and construed in all respects in accordance with the law of England and the Seller and the Buyer hereby agree to submit to the non-exclusive jurisdiction of the English Courts.
- 13.12** Any notice required or permitted to be given by either party to the other under these Conditions 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 pursuant to this provision to the party giving the notice.
- 13.13** No waiver by the Seller of any breach of any provision of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision and the Seller shall not be prejudiced by any forbearance or indulgence granted by it to the Buyer.