



KOMMERLING UK LIMITED (“the Company”)

TERMS AND CONDITIONS OF SALE

1. Introduction

- 1.1 These terms and conditions govern all contracts entered into by the Company per the supply of goods or services. Any order given to the Company or the acceptance of a tender by the Company by any third party (a “Purchaser”) shall be deemed to constitute an Agreement to be bound by these terms and conditions. No variations of these terms and conditions shall be of any effect unless agreed by the Company in writing.
- 1.2 These terms and conditions shall have effect in place of any other terms and conditions which may have previously been notified by the Company to the Purchaser.

2. Description of Goods, Orders and Specifications

- 2.1 All goods are supplied subject to reasonable availability to the Company of suitable material. The Company reserves the right without notice to substitute materials and components other than those mentioned in the contract unless separately agreed in writing with the Purchaser, which do not materially affect the quality, performance or visual appearance of the goods.
- 2.2 The Company reserves the right to make any changes in the specification of the goods which are required to conform with any applicable statutory or EC requirements or, where the goods are to be supplied to the Company’s specifications, which do not materially affect their quality or performance.
- 2.3 All drawings, descriptive matter, weights, dimensions, specifications, brochures, catalogues, price lists and all advertising matter are approximate and by way of identification only and are intended merely to present a general idea of the goods or services described therein and their use shall not in any circumstances render any sale a sale by description nor shall they form any part of any contract. All prices quoted therein are subject to alteration or withdrawal from time to time without notice.
- 2.4 If the goods are to be manufactured or any process is to be applied to the goods by the Company in accordance with a specification submitted by the Purchaser, the Purchaser shall indemnify against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from the Company’s use of the Purchaser’s specification.
- 2.5 No order which has been accepted by the Company may be cancelled by the Purchaser except with the agreement in writing of the Company and in terms that the Purchaser shall indemnify the Company in full against all loss (including all loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

3. Warranties and Liabilities

- 3.1 All warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 3.2 The Company warrants that all goods are of satisfactory quality.
- 3.3 The above warranty is given by the Company subject to the following conditions:
 - 3.3.1 The Company shall be under no liability in respect of any defect in the goods arising from any drawing design or specification supplied by the Purchaser.
 - 3.3.2 The Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company’s instructions (whether oral or in writing), misuse or alteration or repair of the goods without the Company’s approval.
 - 3.3.3 The Company shall be under no liability under the above warranty (or any other warranty, conditions or guarantee) if the total price for the goods has not been paid by the due date for payment.
 - 3.3.4 The above warranty does not extend to materials or equipment not manufactured by the Company in respect of which the Purchaser shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer in the Company.
 - 3.3.5 Unless otherwise agreed in writing between the parties, the Company does not warrant that its products are fit for any particular purpose or use.

- 3.4 Any claim by the Purchaser which is based on any defect in the quality or condition of the goods or their failure to correspond with specification shall (whether or not delivery is refused by the Purchaser) be notified to the Company by the return of the goods with carriage paid within one month of delivery. If delivery is not refused, and the Purchaser does not notify the Company accordingly, the Purchaser shall not be entitled to reject the goods and the Company shall have no liability for such defect or failure, and the Purchaser shall be bound to pay the price as if the goods had been delivered in accordance with the contract.
- 3.5 Where any valid claim in respect of any of the goods which is based on any defect in the quality or condition of the goods or their failure to meet specification is notified to the Company in accordance with these conditions the Company shall be entitled at its absolute discretion to either replace the goods (or the part in question) free of charge, refund (to the extent of any payment made by the Purchaser) the price paid for the goods by the Purchaser or, if no payment has been made, forgo any claim for the price of the goods. In any event, the Company shall have no further liability to the Purchaser.
- 3.6 Except in respect of personal injury or death caused by the Company's negligence the Company shall not be liable to the Purchaser by reason of any representations (unless fraudulent) or any implied warranty condition or other term, or any duty at common law, or under the express terms of any contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses, or other claims for compensation whatsoever (whether caused by the negligence of the Company its employees or agents or otherwise).

4. Force Majeure

- 4.1 The Company shall not be liable to the Purchaser or be deemed to be in breach of the contract by reason of any delay in performing or any failure to perform any of the Company's obligations in relation to the goods, if the delay or failure was due to any cause beyond the Company's reasonable control without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:
- 4.1.1 Act of God, explosion, flood, tempest, fire or accident:
- 4.1.2 War or threat of war, sabotage, insurrection, and disturbance or requisition.
- 4.1.3 Acts, restrictions regulations, bye-laws, prohibitions, or measures of any land on the part of any governmental parliamentary or local authority:
- 4.1.4 Import or export regulations or embargoes:
- 4.1.5 Strikes, lock-outs or other industrial actions or trade disputes (whether involving employees or agents of the Company or of a third party)
- 4.1.6 Difficulties in obtaining raw materials, labour, fuel, parts or machinery:
- 4.1.7 Power failure or breakdown of machinery

5. Price of Goods

- 5.1 The price of the goods shall be the Company's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Company's published price list current at date of acceptance of the order. Where the goods are supplied for export from the UK, the Company's published export price list shall apply. All prices quoted are valid for 30 days only or until earlier acceptance by the Purchaser, after which time they may be altered by the Company without giving notice to the Purchaser.
- 5.2 The Company reserves the right by giving notice to the Purchaser at any time before delivery, to increase the price of the goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, material or other costs of manufacture), any change in delivery dates, qualities or specifications for the goods which is requested by the Purchaser or any delay caused by any instructions of the Purchaser or failure of the Purchaser to give the Company adequate information or instructions.
- 5.3 Except as otherwise stated under the terms of any quotation or in any price list of the Company, and unless otherwise agreed in writing between the Purchaser and the Company, all prices are given by the Company on an ex-works basis (Incoterms 1550), and where the Company agrees to deliver the goods otherwise than at the Company's premises, the Purchaser shall be liable to pay the Company's charges for transport, packaging and insurance.
- 5.4 The price is exclusive of any applicable value added tax and, where applicable, customs clearance charges, local taxes and duties which the Purchaser shall be additionally liable to pay to the Company unless otherwise stated.
- 5.5 All containers and packaging used in the disputant delivery of goods to the Purchaser shall whereso marked as being returnable belong to the company absolutely and must be returned to the Company undamaged and carriage paid. The Purchaser shall be liable to the Company for the full replacement value of any container or package marked as aforesaid which is not returned or is returned in a damaged condition.

6. Payment

- 6.1 The Purchaser shall pay the price of the goods (less any discount to which the Purchaser is entitled, but without any other deduction) on the 20th day of the month following the month of invoice, and the time of payment of the price shall be of the essence of the contract.

7. Delivery

- 7.1 Unless otherwise agreed in writing with the Purchaser, delivery of the goods shall be made by the Company at the Purchaser's premises.
- 7.2 Any dates quoted for delivery of the goods are approximate only and the Company shall not be liable for any delay in delivery of the goods however caused. Time for delivery shall not be of the essence of the contract.

8. Passing of Property and Risk

- 8.1 Risk of damage to or loss of the goods shall pass to the Purchaser.
 - 8.1.1 In the case of goods to be delivered at the Company's premises, at the time when the Company notifies the Purchaser that the goods are available for collection: or
 - 8.1.2 In the case of goods to be delivered otherwise than at the Company's premises, at the time of the delivery or if the Purchaser wrongfully fails to take delivery of the goods, the time when the Company has tendered delivery of the goods.
- 8.2 Notwithstanding delivery and the passing of risk in the goods, or any other provision of these terms and conditions, the property in the goods shall not pass to the Purchaser until the Company has received in cash or cleared funds payment in full for the goods and for all other goods agreed to be sold by the Company to the Purchaser for which payment is then due.
- 8.3 Until such time as the property in the goods passes to the Purchaser, the Purchaser shall hold the goods as the Company's fiduciary agent and bailee and shall keep the goods separate from those of the Purchaser and third parties and properly stored, protected and insured and identified as the Company's property, but shall be entitled to resell or use the goods in the ordinary course of its business providing that the proceeds of the sale shall be held upon trust for the Company.
- 8.4 Until such time as the property in the goods passes to the Purchaser (and provided the goods are still in existence and have not been resold) the Company shall be entitled at any time to require the Purchaser to deliver up the goods to the Company and, if the Purchaser fails to do forthwith, to enter upon any premises of the Purchaser or any third party where the goods are stored and repossess the goods.
- 8.5 The Purchaser shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain the property of the Company, but if the Purchaser does so all moneys owing in the Purchaser to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

9. Insolvency of the Purchaser

- 9.1 This clause applies if:
 - 9.1.1 The Purchaser makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise made for the purposes of amalgamation or reconstruction); or is subject voluntarily or otherwise to any proceedings affecting creditor's rights generally: or
 - 9.1.2 An encumbrancer takes possession of, a receiver is appointed, over any of the property or assets of the Purchaser; or
 - 9.1.3 The Purchaser ceases, or threatens to cease, to carry on business; or
 - 9.1.4 The Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Purchaser and notifies the Purchaser accordingly.
- 9.2 If this clause applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the contract or suspend any further deliveries under the contract without any liability to the Buyer, and if the goods have been delivered but not paid for, the price shall become immediately due to be payable notwithstanding any previous agreement or arrangement to the contrary.

10. Indemnity

- 10.1 If any claim is made against the Company by the Purchaser, save those mentioned in clause 3.6 the Purchaser shall indemnify the Company against all legal costs and expenses awarded against or incurred by the Company in connection with the claim.

11. General

- 11.1 Any dispute arising under or in connection with these conditions or the sale of the goods shall be submitted to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Law Society of England and Wales.
- 11.2 This contract shall be governed by the laws of England, and the Purchaser agrees to submit to the non-exclusive jurisdiction of the English Courts.
- 11.3 All disputes on invoices to be notified in writing within one month of the date of invoice.

We confirm receipt of Kommerling UK Limited Terms and Conditions of Sales.

Signed: Company Name: Date: