



VAN ELLE
TOTAL FOUNDATION SOLUTIONS

CONDITIONS OF PURCHASE

1. INTERPRETATION

1.1 In these Conditions

“BUYER” means the Company on the front page of the Order.

“CONDITIONS” means the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Buyer and the Seller.

“CONTRACT” means the contract for the sale and purchase of the Goods.

“DELIVERY ADDRESS” means the address stated on the Order.

“GOODS” means the goods (including any installment of the goods or any part of them) described in the Order.

“ORDER” means the Buyer’s purchase order to which these Conditions are annexed.

“PRICE” means the price of the Goods.

“SELLER” means the person so described in the Order.

“SPECIFICATION” includes any plans drawings data or other information relating to the Goods.

“WRITING” includes telex, cable, facsimile transmission and comparable means of communication.

1.2 Any reference to these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.4, these Conditions are the only conditions upon which the Buyer is prepared to deal with the Seller and they shall govern the Contract to the entire exclusion of all other terms or conditions.

2.2 Each Order for Goods by the Buyer any from the Seller shall be deemed to be an offer by the Company to buy Goods subject to these Conditions and no Order shall be accepted until the Seller either expressly by giving notice of acceptance, or impliedly by fulfilling the Order in whole or in part accepts the offer.

2.3 No terms or conditions endorsed upon, delivered with or contained in the Seller's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Seller waives any right which it otherwise might have to rely on such terms and conditions.

2.4 These conditions apply to all the Buyer's purchases and any variation to these conditions shall have no effect unless expressly agreed in writing and signed by an authorised representative of the Buyer.

2.5 The Order will lapse unless unconditionally accepted by the Seller in Writing within 7 days of its date.

3. SPECIFICATIONS

3.1 The quantity, quality and description of the Goods shall subject as provided in these Conditions be as specified in the Order and/or in any applicable Specification supplied by the Buyer to the Seller or agreed in Writing by the Buyer.

3.2 Any Specification supplied by the Buyer to the Seller, or specifically produced by the Seller for the Buyer in connection with the Contract together with the copyright design rights or any other intellectual property rights in the Specification shall be the exclusive property of the Buyer. The Seller shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Seller or as required for the purpose of the Contract.

3.3 The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture packaging and delivery of the Goods and the performance of the Services.

3.4 The Seller shall not unreasonably refuse any request by the Buyer to inspect and test the Goods during manufacture processing or storage at the premises of the Seller or any third party prior to despatch and the Seller shall provide the Buyer with all the facilities reasonably required for inspection and testing. Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Seller's obligations under the Contract.

3.5 If as a result of Inspection or testing the Buyer is not satisfied that the Goods will comply in all respects with the Contract and the Buyer so informs the Seller within 7 days of inspection or testing the Seller shall take such steps as are necessary to ensure compliance.

3.6 The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.

4. PRICE OF THE GOODS

4.1 The price of the Goods shall be as stated in the Order and unless otherwise so stated shall be:

4.1.1 exclusive of any applicable value added tax (which will be payable by the Buyer subject to receipt of a VAT invoice); and

4.1.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties imposts or levies other than value added tax.

4.2 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in Writing.

4.3 The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller whether or not shown on its own terms and conditions of sale together with any such rebate, discount or allowance that may be agreed as between the Buyer and the Seller.

5. TERMS OF PAYMENT

5.1 The Seller shall be entitled to invoice the Buyer on or at any time after delivery of the Goods and each invoice shall quote the number of the Order.

5.2 Unless otherwise stated in the Order or subsequently agreed to the contrary the Buyer shall pay the Price of the Goods a minimum of 60 days after the end of the month of receipt by the Buyer of a proper invoice or if later after acceptance of the Goods in question by the Buyer, but time for payment shall not be of the essence of the Contract.

5.3 The Buyer shall be entitled to set off against the Price any sums owed to the Buyer by the Seller.

6. DELIVERY

6.1 The Goods shall be delivered to at the Delivery Address on the date or within the period stated in the Order and in either case during the Buyer's usual business hours.

6.2 Where the date of delivery of the Goods is to be specified after the placing of the Order the Seller shall give the Buyer reasonable notice of the specified date.

6.3 The time of the delivery of the Goods is of the essence of the Contract.

6.4 A packing note quoting the number of the Order must accompany each delivery or consignment of the Goods and must be displayed prominently.

6.5 If the Goods are to be delivered by instalments the Contract will be treated as a single contract and not severable.

6.6 The Buyer shall be entitled to reject any Goods delivered which are not in accordance with the Contract and shall not be deemed to have accepted any

Goods until the Buyer has had reasonable time to inspect them following delivery or if later within a reasonable time after any latent defect in the Goods has become apparent.

6.7 The Seller shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods.

6.8 The Buyer shall not be obliged to return to the Seller any packaging or packing materials for the Goods whether or not any Goods are accepted by the Buyer.

6.9 If the Goods are not delivered on the due date then, without prejudice to any other remedy it may have the Buyer reserves the right to:

- a) deduct from the Price or (if the Buyer has paid the Price) to claim from the Seller by way of liquidated damages for costs of such delays.
- b) refuse to accept any subsequent delivery of the Goods which the Seller attempts to make;
- c) recover from the Seller any expenditure reasonably incurred by the Buyer in obtaining Goods in substitution from another supplier; and
- d) claim damages for any additional costs, loss or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to deliver the Goods (or part thereof) on the due date.

7. RISK AND PROPERTY

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery to the Buyer in accordance with the Contract.

7.2 The property in the Goods shall pass to the Buyer upon delivery unless payment for the Goods is made prior to delivery when it shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Contract.

8. WARRANTIES AND LIABILITIES

8.1 The Seller warrants to the Buyer that the Goods:

8.1.1 will be of merchantable quality and fit for any purpose held out by the Seller or made known to the Seller in Writing at the time the Order is placed;

8.1.2 will be free from defects in design material and workmanship;

8.1.3 will correspond with any relevant Specification or sample; and

8.1.4 will comply with all statutory requirements and regulations relating to the sale of the Goods.

8.2 Without prejudice to any other remedy, if any Goods are not supplied or performed in accordance with the Contract then the Buyer shall be entitled;

8.2.1 to require the Seller to repair the Goods or to supply replacement Goods in accordance with the Contract within 7 days; or

8.2.2 at the Buyer's sole option and whether or not the Buyer has previously required the Seller to repair the Goods or to supply any replacement Goods to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the Price which has been paid.

8.3 The Seller shall indemnify the Buyer in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with;

8.3.1 breach of any warranty given by the Seller in relation to the Goods;

8.3.2 any claim that the Goods infringe or their importation use or resale infringes the patent copyright design right trade mark or other intellectual property rights of any other person except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;

8.3.3 any liability under the Consumer Protection Act 1987 in respect of the Goods;

8.3.4 any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering or installing the Goods.

8.4 Neither the Seller nor the Buyer shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of its obligations in relation to the Goods if the delay or failure was beyond that party's reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond either party's reasonable control:

8.5.1 Act of God explosion flood tempest fire or accident;

8.5.2 war or threat of war sabotage insurrection civil disturbance or requisition;

8.5.3 acts restrictions regulations bye-laws prohibitions or measures of any kind on the part of any governmental or parliamentary or local authority;

8.5.4 import or export regulations or embargoes;

8.5.5 strikes lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or the Buyer or of a third party);

8.5.6 difficulties in obtaining raw materials labour fuel parts or machinery;

8.5.7 power failure or breakdown in machinery

8.6 The Seller shall keep the Buyer indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:

a) defective workmanship, quality or materials;

b) an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Goods; and

c) any claim made against the Buyer in respect of any liability, loss, damage, injury, cost or expense sustained by the Buyer's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Seller.

9. TERMINATION

9.1 The Buyer shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Seller written notice whereupon all work on the Contract shall be discontinued and the Buyer shall pay to the Seller fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

9.2 The Buyer shall be entitled to terminate the Contract without liability to the Seller by giving notice to the Seller at any time if:

9.2.1 the Seller makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1988) or (being a company becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or

9.2.2 an encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Seller; or

9.2.3 the Seller ceases or threatens to cease to carry on business; or

9.2.4 the Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller and notifies the Seller accordingly; or

9.2.5 the Seller commits a material breach of the Contract.

10. GENERAL

10.1 The Order is personal to the Seller and the Seller shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract.

10.2 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.

10.3 No waiver by the Buyer of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.

10.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

10.5 Any dispute arising under or in connection with these Conditions or the sale of Goods shall be referred 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 in accordance with the rules of The Law Society of England and Wales.

10.6 The Contract shall be governed by the laws of England.

10.7 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.