

CONDITIONS OF SALE OF KEL-TECH ENGINEERING (WATERFORD) LIMITED

GENERAL:

1. In these conditions KEL – TECH ENGINEERING (WATERFORD) LIMITED shall be referred to as the "Seller". These conditions shall form part of all contracts for the sale or supply of goods (of every nature and description whatsoever) by the Seller to any Buyer (hereinafter referred to as "the Buyer") and shall prevail over any inconsistent terms or conditions contained in or referred to in the Buyer's order or correspondence or elsewhere and all or any such conditions or stipulations contrary to these conditions are hereby excluded and shall form no part of any contractual relationship as between the seller and the Buyer. The Buyer is put on express notice of the fact that the Seller will only contract with the Buyer on the basis that these terms and conditions will govern the relationship between the parties to the exclusion of all others. No variation of any of the terms contained herein shall be applicable to these conditions unless accepted by the Seller in writing.
2. The Seller reserves the right to attach its imprint to all goods sold or otherwise supplied to the Buyer and the Buyer shall take no step whatsoever to remove, or otherwise interfere with same.
3. Where the Buyer is to supply the Seller with any specifications regarding the goods being purchased or manufactured, the Seller shall be under no obligation to commence production or take into stock any of the goods to be manufactured and / or sold or any part thereof until such specifications are delivered to the Seller by the Buyer. In all circumstances where the Seller has been asked to prepare any specification or design any part or other component of any of the Goods by the Buyer, then the Buyer specifically acknowledges that the Seller does not (i) carry the benefit of any professional indemnity insurance for undertaking such work and (ii) does not accept any responsibility of any nature or description whatsoever for any loss howsoever arising or incurred by the Buyer with respect to any act, omission, want of care or negligence on its part in the preparation of any such specifications or the design of any part or other component of any of the Goods.

DELIVERY:

4. In the case of delivery by instalments, each delivery shall be regarded as a separate and independent contract. The Seller reserves the right to make partial deliveries.
5. In the event of an act of God, governmental direction or other authoritative direction or intervention, strikes, lock-outs or other industrial civil or international unrest (whether the same affects the Seller, its suppliers or agents) or any other cause of whatsoever nature beyond the control of the Seller or force majeure, the Seller shall not be liable for any delay in delivery, non-delivery, destruction or deterioration of all or any part of the goods or for any other default in the performance of this contract arising therefrom and the Seller shall have the option either to cancel this contract either wholly or partially or to extend the time for delivery during such period. In the event of such cancellation by the Seller, or any such postponement, the Buyer shall have no claims whatsoever against the Seller.
6. In the event of the Buyer or his agents giving delivery instructions and afterwards finding it necessary to cancel them such cancellation can only be accepted on the terms that the Buyer accepts full responsibility to the Seller for all expenses (of every nature and description whatsoever) incurred by the Seller up to the time of cancellation. The Seller's estimate of expenses incurred shall be final and conclusive.
7. If the Buyer fails to obtain any necessary import license or quota allocation in time, the Seller shall have the right either to postpone delivery or to cancel the contract wholly or partially without being under any liability whatsoever to the Buyer. The Buyer shall be liable for any losses or expenses (of every nature and description whatsoever) that are incurred by the Seller as a result of such failure.
8. The delivery date shall be the date on which the Seller delivers the goods to the place indicated as the point of delivery by the Buyer in the order form. The Buyer shall give delivery instructions for, take delivery of, all goods governed by any contract between it and the seller on, or before, the delivery date specified above, or if none is specified, then within 14 days from the date of acceptance or confirmation of order by the Seller unless an extension of time is agreed to in writing.
9. Delivery shall be affected when the goods are delivered to the Buyer's premises or collected by the Buyer or delivered to a carrier whichever shall first occur.
10. The quantities of any consignment of goods delivered under any contract between the Seller and the Buyer shall be as specified by the Seller upon dispatch by it and shall be accepted by the Buyer as conclusive evidence of the quantity so delivered unless the Buyer notes any alleged variance in the Seller's delivery docket and, where the goods are being delivered by the Seller, returns the docket forthwith to the Seller or in any other case, forwards the duly noted delivery docket by registered post within 36 hours from the time of delivery.

PRICES, PAYMENT:

11. All prices are strictly net unless otherwise quoted. Without prejudice to the generality of the foregoing all customs duties, consular fees and other taxes, duties or fees charged in accordance with the laws or regulations of the country of destination or any other country through which the goods are transported as well as any costs connected therewith shall be borne by the Buyer upon the production of an appropriate invoice for same. The Seller shall be entitled to add to the price agreed upon the amount of any tax or other governmental charges which the Seller must pay in respect of the goods (including without limitation value added tax and import duties) such taxes or governmental charges now in effect or as may hereafter be imposed or any increase therein prior to delivery.
12. If at any time before delivery of the goods, the cost to the Seller of completing the contract is increased for any reason outside the control of the Seller, (including but not limited to currency fluctuation) then the price shall be increased proportionately and the Buyer agrees to pay such increased price.
13. All terms are strictly net and payment is due thirty days from the date of the invoice. Interest will be charged on all overdue accounts at the rate of 2% above the rate for the time being fixed by the joint standing committee of the Associated Irish Banks for personal unsecured overdrafts.
14. All payments received by the Seller shall first be utilised in settlement of accounts which have been outstanding longest and/or at the option of the Seller, any accumulated interest on arrears.

WITH-HOLDING OF PAYMENT OF PURCHASE PRICE:

15. The Buyer shall, on or before the date for payment pay the purchase price and any additional expenses or charges due by the Buyer to the Seller under the terms of the underlying agreement between them, and without any reduction or set off, to the Seller. The Buyer may not make any set-off against the sum due or raise any counterclaim in diminution of the sum due. Any complaints regarding short delivery, alleged defects or faults in the goods or failure to deliver in accordance with the terms of the contract shall leave the Buyer's obligation to pay the entire purchase price on time and other charges due under the contract intact.
16. In the event of the Buyer failing to make any payment due under this contract or any other contract for the sale of goods existing between the Buyer and the Seller, then the Seller may refuse to deliver any goods purchased by the Buyer from the Seller under this or any other

contract between the parties until such sums have been paid. The Buyer hereby acknowledges that the goods purchased under this contract may be withheld by the Seller because moneys are due under this or any other contract between the Seller and the Buyer and that the withholding of delivery by the Seller shall in no way diminish or detract from the Buyer's obligations under this contract.

RIGHTS TO USE GOODS BEFORE PAYMENT:

- 17(a) Prior to the payment in full of all sums due by the Seller to the Buyer under this contract, the Buyer shall be entitled to use the goods (which remain the property of the Seller in the manner hereinafter appearing) by offering the same for sale or otherwise incorporate same into any process of manufacture in a worked or unworked state, but shall not be entitled to offer the goods as security for the performance of any obligations of the buyer to any third party whatsoever.
- 17(b) At any time prior to the Buyer paying all sums due for the goods under this contract, the Seller may, by notice in writing delivered to the Buyer's last known residence or place of business, determine the Buyer's right to use the said goods in the manner detailed above or at all, whereupon the Buyer shall forthwith return the goods to the Seller and/or the Seller may enter the Buyer's premises for the purposes of recovering the said goods. The Buyer hereby irrevocably grants to the Seller, its servants and / or agents the right to enter any premises where the goods are situate.
- 17 (c) Further, the happening of any of the events set out below shall forthwith (and without notice) determine the Buyer's right to use the goods:-
 - (i) any notice to the Buyer that a receiver or manager is to be, or has been, appointed over its assets or any part thereof;
 - (ii) any notice to the Buyer that a petition to wind up the Buyer is to be, or has been presented, to any Court of competent jurisdiction to wind up the Buyer, or in the event of any notice of a resolution to wind up the Buyer (save for the purposes of re-construction or amalgamation) being passed;
 - (iii) a decision by the Buyer that the Buyer intends to make an arrangement with its creditors;
 - (iv) the insolvency of the Buyer within the meaning of Section 62 (3) Sale of Goods Act, 1893.

RESERVATION OF OWNERSHIP OF GOODS:

- 18.1 Prior to the payment of all sums due by the Buyer to the Seller under this contract, the goods shall remain the Seller's property and the Buyer may not use the goods save as provided in Clause 16 above. The Buyer shall store all goods in such a manner that they are clearly identified as the property of the Seller.
- 18.2 Until title passes to the Buyer (in accordance with the provisions of this Agreement) it shall hold the Goods as bailee for the Seller and shall, in accordance with Clause 18.1 hereof, store or mark them such that they can at all times be identified as the property of the Seller.
- 18.3 The Seller may at any time before title passes to the Buyer, and without any liability to the Buyer, repossess and dismantle and use or sell all or any of the Goods and by doing so terminate the right of the Buyer to use, sell or otherwise deal in them and for that purpose (or determining what if any the Goods are held by the Buyer and inspecting them) enter any premises of or occupied by the Buyer.
- 18.4 Until title passes the entire proceeds of arising on the re-sale of the goods by the Buyer to any third party whatsoever shall be held in trust for the Seller and shall be held in a separate designated account and not mingled with other moneys of the Buyer or paid into any overdrawn bank account and shall be at all times identifiable as the Seller's money.
- 18.5 The Seller may maintain an action for the price of any the Goods notwithstanding that title in them has not passed to the Buyer.

COMPLAINTS:

19. Notwithstanding the provisions in this contract regarding delivery of and payment for the goods sold hereunder, if the Buyer makes any claim against the Seller that the goods are not in accordance with the specification agreed, that there is a shortage in delivery or that the goods delivered are faulty or defective, the Seller may suspend all further deliveries of goods pending the determination of the said dispute or alternatively, the Seller, at its option, may insist that all further deliveries are paid for in full prior to the dispatch of same from the Seller's premises. In the event of delivery being suspended, any applicable delivery date or dates shall be delayed accordingly. In the event of suspension of delivery or alternatively the Seller insisting on payment in full prior to delivery, no liability shall attach to the Seller by reason of any delay thereby caused.

LIMITATION OF LIABILITY:

- 20.1 The Seller shall have no liability to the Buyer for any loss or damage of any nature or description whatsoever arising from any breach of any express or implied warranty or condition of the underlying agreement between it and the Buyer or any negligence, breach of statutory or other duty on the part of the Seller or in any other way out of or in connection with the performance or purported performance of or failure to perform the said agreement except as expressly stated in these conditions. If the Buyer establishes that any of the Goods have not been delivered, have been delivered damaged or do not comply with their description the Seller shall, at its option, replace with similar goods any of the goods which are missing, lost or damaged or do not comply with their description, allow the Buyer credit for their invoice value or repair any damaged goods.
- 20.2 If the Buyer establishes that any of the Goods are defective the Seller shall, as its option, replace the same with similar goods or repair any defective goods, allow the Buyer credit for their invoice value or to the extent that the goods are not of the Seller's manufacture, assign to the Buyer (so far as the Seller is able to do so) any warranties given by the manufacturer of the goods to the Seller.

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- 20.3 The delivery of any repaired or replacement Goods shall be at the Seller's premises or other delivery point specified for the in the original agreement between the Seller and the Buyer.
- 20.4 Where the Seller is liable in accordance with this condition in respect of only some or part of the goods the agreement between the Seller and the Buyer shall remain in full force and effect in respect of the other or other parts of the goods and no set-off or other claim shall be made by the Buyer against or in respect of such other or other parts of the goods.
- 20.5 No claim against the Seller shall be entertained for any defect arising from any design or specification provided or made by the Buyer or if any adjustments, alterations or other work has been done to the goods by any person except the Seller.
- 20.6 The Seller shall not be liable where any of the goods, the Price of which does not include carriage, are lost or damaged in transit and all claims by the Buyer shall be made against the carrier. Replacements for such lost or damaged the goods will, if available, be supplied by the Seller at the prices ruling at the date of dispatch.
- 20.7 In no circumstances shall the liability of the Seller to the Buyer under this condition exceed the invoice value of the Goods

CURRENCY FLUCTUATIONS:

21. If at any time before the delivery of the goods, a re-valuation or devaluation of currency which increases the cost to the Seller of the completion of the agreement between it and the Buyer, the Seller shall be entitled to increase the price of the goods, the subject matter of this agreement, in proportion to the increased cost caused to the Seller and such new purchase price will be paid by the Buyer in accordance with the terms and conditions of payment herein contained. The Seller's bank's certified account of currency fluctuations affecting the purchase price shall be accepted as conclusive proof thereof by the parties to this contract.

INSPECTION OF GOODS BEFORE DELIVERY:

22. If the goods are to be manufactured or altered by the Seller after the agreement to purchase but prior to delivery to the Buyer, the Buyer agrees to inspect the goods on delivery and shall endorse his acceptance of the same on the delivery docket.

PATENTS, TRADEMARKS & DESIGNS:

23. The Buyer shall be responsible for any infringement with regard to patent, utility, model, trademark, design or copyright in any country without exception when such infringement is due to the Seller having followed the design or instruction furnished by the Buyer. The Buyer shall be liable for all loss, damages and expenses suffered or incurred by the Seller as a result of any such infringement and shall effectually indemnify the Seller against same. In case any dispute and/or claim arises in connection with the above infringement, the Seller reserves every and all rights to cancel and make null and void its contract with the Buyer at its discretion and hold the Buyer responsible for any loss caused thereby to the Seller. Nothing herein contained shall be construed as transferring any patent, utility model, trademark, design or copyright in the goods or in any product that the goods can produce and all such rights are to be expressly reserved to the true and lawful owners thereof.

TRANSFER OF RISK:

24. The risk in the goods shall pass to the Buyer when the Seller delivers the goods in accordance with the terms hereof.

RESCISSION:

25. If the Buyer becomes bankrupt or enters into an arrangement with its creditors or if execution is levied against him or a petition be presented or an order is made or a resolution is passed for a winding up or if a receiver or manager is appointed over the property of the Buyer or if the Buyer becomes insolvent or if the Buyer is in breach of any agreement with the Seller, the Seller may stop any goods in transit and suspend further deliveries and may determine any agreement with the Buyer without prejudice to any existing claim. Nothing in these conditions shall prejudice any other right vested in the Seller.

GUARANTEE:

26. In consideration of the Seller entering into any Contract with the Buyer (where the Buyer is a company formed pursuant to the laws of Ireland or otherwise) then the Directors for the time being of the Buyer hereby jointly and severally unconditionally guarantee the obligations of the Buyer to the Seller including, but not limited to, the obligation to pay for any goods and / or services supplied by the Seller. The obligation imposed hereby on the Directors of the buyer (where applicable) shall be a primary obligation and the Seller shall be entitled, though not obliged, to proceed against the Directors of the Buyer as if they, or any of them, were the Buyer.

ARBITRATION:

27. Any dispute or difference arising out of or relating to this contract or to any breach thereof which cannot be settled amicably without undue delay by the interested parties shall be referred to the arbitration in Dublin of an arbitrator to be appointed by the parties hereto or in default of appointment, such arbitrator as may be appointed by the President for the time being of the Law Society of Ireland at the request of either the Seller or the Buyer, whoever shall be first to make the relevant application. Such Arbitrator shall be subject to the provisions of the Arbitration Acts, 1954 and 1998 or any statutory modification thereof for the time being in force. The award of such arbitrator shall be final and binding on both parties.

INTERPRETATION:

28. The international rules for the interpretation of trade terms known as Inco Terms 1953 (including the supplements thereto) as amended from time to time shall apply to this contract. The headings of these conditions are for convenience of reference only and shall not affect the construction or interpretation thereof.

APPLICABLE LAW:

29. This contract shall be governed by and construed in all respects (including the formation thereof and the performance thereunder) in accordance with the laws of the Republic of Ireland.

SEVERABILITY:

30. If at any time any one or more of the provisions hereof or any part thereof is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

ANTECEDENT BREACH:

31. The termination by the Seller of any agreement between it and the Buyer for any cause whatsoever shall not prejudice the right of the Seller to sue for any antecedent breach by the Buyer of any such agreement.