

Terms & Condition of Sales

DEFINITIONS

- 1 In these Conditions of Sale, the following expressions shall have the following meanings:
- 1.1 “the Seller” means EXIM & MFR ENTERPRISE;
 - 1.2 “the Buyer” means the person, firm or company whose offer to purchase the Goods as set out in the Seller’s quotation or whose purchase order for the Goods is accepted by the Seller and with whom the Contract is made by the Seller.
 - 1.3 “the Goods means the articles, parts or things or any of them in the quantity and description set out in the Seller’s quotation or the Buyer’s purchase order and which form the subject matter of the Contract;
 - 1.4 “the Contract” means the contract for the purchase and sale of the Goods on the terms set out in the Seller’s quotation for the sale of the Goods and any document referred to, these Conditions, the Seller’s acknowledgement of the Buyer’s purchase order for the Goods and the Buyer’s purchase purchase order for the Goods, and if there is any inconsistency between the documents comprising the Contract, they shall have precedence in the order herein listed; and
 - 1.5 “these Conditions” means the standard terms and conditions of sale 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.

2 GENERAL

- 2.1 These Conditions shall be deemed to be incorporated in all contracts of the Seller to sell the Goods and in particular in the Contract, to the exclusion of all other terms or conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document and the Buyer waives any right which it might have to rely on such terms or conditions), whether implied by law, trade custom, practice or course of dealing.
- 2.2 In the case of any inconsistency with any order, the Buyer’s purchase order, confirmation of order, specification, or letters or form of contract sent by the Buyer to the Seller or any communication between the Buyer and the Seller or other document whatever may be their respective dates, the provisions of these Conditions shall prevail unless expressly varied in writing and signed by a duly authorized officer on behalf of the Seller.
- 2.3 No terms or conditions endorsed upon, delivered with or contained in the Buyer’s purchase order, confirmation of order, specification, letters or form of order sent by the Buyer to the Seller or other document shall form any part of the Contract simply as a result of such document being referred to in the Contract.

3 QUOTATIONS AND ORDERS

- 3.1 All quotations by the Seller to the Buyer are subject to these Conditions as well as any additional terms and conditions that may appear on the face hereof.
- 3.2 Unless otherwise stated in writing, all quotations expire [30] days after date of issue, may be terminated earlier by notice and constitute only solicitations for offers to purchase and shall not impose any obligation or liability on the Seller.
- 3.3. Notwithstanding that the Seller may have given a detailed quotation, no order shall be binding on the Seller unless and until it has been accepted in writing (which shall include e-mail or facsimile transmission) by the Seller.

- 3.4 The quantity, quality and description of and any specification for the Goods shall be as set out in the Seller's quotation, or the Buyer's purchase order (if accepted by the Seller).
- 3.5 No order which has been accepted by the Seller may be cancelled by the Buyer except with the Seller's consent in writing and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including costs of all labour and material used), damages, charges and expenses incurred by the Seller as a result of the cancellation.

4 PRICE

- 4.1 The price payable for the Goods shall, unless otherwise stated by the Seller in writing and agreed on its behalf, be the list price of the Seller current at the date of dispatch.
- 4.2 The prices quoted in the Seller's quotation shall be on the basis of "Incoterms" (the international rules for the interpretation of trade terms of the International Chamber of Commerce) as in force at the date of the quotation.
- 4.3 The prices quoted in the Seller's quotation shall be on the basis of "Incoterms" (the international rules for the interpretation of trade terms of the International Chamber of Commerce) as in force at the date of the quotation.
- 4.4. The Seller's prices are subject to adjustment to take into account of any variation in the Seller's costs including but not limited to variations in wages, the costs of materials, exchange rate fluctuations, alterations of duties and other costs since the date of the Seller's quotation or (if no quotation is issued) the Buyer's purchase order.
- 4.5 The Seller accordingly reserves the right, by giving notice to the Buyer at any time before delivery, to increase or adjust the price of the Goods by the amount of any increase or decrease in such costs after the price is quoted. The adjusted price stated in the invoice shall be payable as if it were the original contract price.

5 TERMS OF PAYMENT

- 5.1 Unless otherwise stated by the Seller in writing and recorded on the Seller's acknowledgement of order or delivery order, payment shall be due in full in cash or cleared funds not later than [30] days of the date of the invoice, save that payment shall become immediately due in any event upon the occurrence of any of the events referred to in Condition 14.1 hereof.
- 5.2 Time of payment of the price shall be of the essence of the Contract.
- 5.3 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise (except where the Buyer has a valid Court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer).
- 5.4 In the event that the Buyer fails to pay the Seller any sum due pursuant to the Contract, the Seller shall have the right (but not the obligation) to suspend any other deliveries due from the Seller to the Buyer and/or to refuse to accept any further orders from the Buyer.
- 5.5 Without prejudice to any other rights it may have, the Seller shall be entitled to charge interest at [10]% per annum on overdue payments of the price of the Goods accruing daily until payment is made, whether before or after any judgment.
- 5.6 In the case of export orders, payment shall be made to the Seller by irrevocable letter of credit, confirmed by a Singapore bank, unless otherwise arranged prior to the acceptance of the order by the Seller. Payment shall be made in the currency in which the Goods are invoiced to the Buyer.

6 DELIVERY

- 6.1 All times or dates given for delivery of the Goods are given in good faith and are intended to be estimates only. Accordingly, the Seller shall not be liable for any delay in delivery howsoever caused.
- 6.2 Time for delivery of the Goods shall not be of the essence of the Contract (except where previously otherwise agreed by the Seller in writing).
- 6.3 The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

- 6.4 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.5 No liability for non-delivery, loss of or damage of the Goods occurring prior to delivery or for any claim that the Goods are not in accordance with the Contract will attach to the Seller unless claims to that effect are notified in writing by the Buyer to the Seller (and in the case of claims for non-delivery, loss or damage with a copy to the transportation company if the Seller's own vehicles have not been used to deliver the Goods): (i) within [seven (7)] days delivery for loss, damage or non-compliance with the Contract or (ii) within [ten (10)] days of the date of the invoice for non-delivery.
- 6.6 In the event of a valid claim for non-delivery, loss, damage or non-compliance with the Contract (even if caused by the Seller's breach of contract or negligence), the Seller undertakes at its option either to repair or replace the Goods at its expense, which shall be the Buyer's sole remedy, but shall not be under any further or other liability to any person in connection with such non-delivery, loss, damage or non-compliance.
- 6.7 If the Buyer shall fail to give notice in accordance with Condition 6.5 above, the Goods shall be deemed to be in all respects in accordance with the Contract, and the Buyer shall not be entitled to reject the Goods which are not in accordance with the Contract. Without prejudice to earlier acceptance by the Buyer, the Buyer shall be bound to accept and pay for the same accordingly.
- 6.8 Where the Buyer accepts or has been deemed to have accepted any of the Goods, the Seller shall have no liability whatsoever to the Buyer in respect of the same.
- 6.9 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may: (i) store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or (ii) sell the Goods at the best price readily obtainable (if any) and (after deducting all reasonable storage, insurance and selling charges) charge the Buyer for any shortfall below the price under the Contract.
- 6.1 In the case of export orders, the Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.

7 RETURNS

- 7.1 The Buyer shall not return any of the Goods supplied in accordance with the Contract without the Seller's prior written authorization.
- 7.2 Any duly authorized return shall be sent to the Seller's premises at the Buyer's expense.

8 PACKING

- 8.1 Unless otherwise agreed by the Seller in writing, the prices of the Goods are based on bulk packaging.
- 8.2 Any special packaging, whether required by the Buyer or otherwise, shall be subject to any extra charge which may be applicable.

9 PASSING OF TITLE AND RISK

- 9.1 From the time of delivery, the Goods shall be at the risk of the Buyer who shall be solely responsible for their custody and safekeeping but, unless otherwise expressly agreed in writing, the Goods shall remain the property of the Seller until all payments under the Contract have been made in full and unconditionally.
- 9.2 Notwithstanding that ownership of any of the Goods has not passed from the Seller to the Buyer, the Seller shall be entitled to recover payment for the Goods.
- 9.3 Whilst the ownership of the Seller continues, the Buyer shall keep the Goods separate and readily identifiable as the Seller's property from all other goods in its possession as bailee for the Seller.

- 9.4 In the event of any resale by the Buyer of the Goods, the beneficial entitlement of the Seller shall attach to the proceeds of sale or other disposition thereof so that such proceeds or any claim therefor shall be assigned to the Seller and until and subject to such assignment, shall be held on trust in a separate identified account for the Seller by the Buyer who will stand a strictly fiduciary capacity in respect thereof.
- 9.5 In the event of the Buyer's failure to pay the price in accordance with the Contract, the Seller shall have power to re-sell the Goods. Such power being additional to (and not in substitution for) any other power of sale arising by operation of law or implication or otherwise and for such purposes the Seller, its employees and agents may forthwith enter upon any premises or land occupied or owned by the Buyer to remove the Goods.
- 9.6 In the case of export orders, the Seller will normally follow the Buyer's shipping instructions but reserves the right to ship the Goods freight collect and to select the means of transportation and routing when the Buyer's instructions are deemed unsuitable or ambiguous. Unless otherwise advised by the Buyer in writing, the Seller may insure the value of the Goods or declare full value thereof to the transportation company at the time of shipment and all freight and insurance costs shall be invoiced to the Buyer and paid within the period stated therein.

10 CONDITIONS AND WARRANTIES

- 10.1 The Seller warrants to the Buyer (as the original buyer only) that the Goods supplied will at the time of delivery correspond to the description given by the Seller.
- 10.2 The Seller shall not be liable for breach of the warranty in Condition 10.1 above if the Buyer fails to give notice in writing of any defect to the Seller pursuant to the provisions of Condition 6.5 above.
- 10.3 All other conditions or warranties (whether express or implied by statute, common law or arising from conduct or a previous course of dealing or trade custom or usage) as to the satisfactory quality or condition of the Goods or their fitness for any particular purposes (even if that purpose is made known expressly or by implication to the Seller) are excluded to the fullest extent permitted by law.

11 DEFECTIVE GOODS

- 11.1 The Seller will endeavour to pass on to the Buyer, to the extent that it is able, any benefits obtainable under any warranty or guarantee given by the Seller's supplier provided that the Goods have been accepted and paid for.
- 11.2 Nothing herein shall impose any liability on the Seller in respect of any defect in the Goods arising out of the acts, omissions, negligence or default of the Buyer, the Buyer's employees or agents including in particular without prejudice to the generality of the foregoing, any failure by the Buyer to comply with any statute, local law, regulations or standards as to the storage, installation, maintenance and use of the Goods.
- 11.3 Nothing herein shall have the effect of excluding or restricting the Seller's liability for death or personal injury resulting from its negligence in so far as the same is prohibited by law.

12 CONSEQUENTIAL LOSS

- 12.1 The Seller shall not be liable to the Buyer for any economic loss, loss of profits, loss of business, depletion of goodwill, production downtime or any type of indirect or consequential loss or costs, claims, damages or expenses which arise out of any tortious act or omission or any breach of contract or statutory duty resulting from or in connection with the Contract, whether calculated by reference to profits, income, production or accruals or loss of such profits, income, production or accruals by reference to accrual of such costs, claims, damages or expenses on a time basis, or otherwise.

13 LIMITATION OF LIABILITY

- 13.1 The liability of the Seller to the Buyer in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract, for any loss or damage of whatsoever nature and howsoever caused shall be limited to, and in no circumstances shall exceed, the price of the Goods the subject of the claim.

13.2 The Buyer accepts as reasonable that the Seller's total liability for any loss or damage shall be as set out above. In fixing that limit the Buyer and the Seller have had regard to the source, specification and price of the Goods, their nature, the use they will be put to, and the resources available to each party including but not limited to insurance cover to meet any liability.

14 DEFAULT ON INSOLVENCY OF THE BUYER

- 14.1 If the Buyer ceases, or threatens to cease, to carry on business, or any distress or execution shall be levied on the Buyer's property or assets or if the Buyer (being an individual) shall make or offer to make any voluntary arrangement or composition with his creditors or commit any act of bankruptcy or if any bankruptcy petition be presented against him, or if the Buyer (being a company) has any resolution or petition to wind up passed or presented or if a receiver of the whole or any part of its undertaking, property or assets shall be appointed, the Seller in its discretion and without prejudice to any other right or claim may by notice in writing determine wholly or in part any and every contract between the Seller and the Buyer, or may (without prejudice to the Seller's right subsequently to determine the Contract for the same cause should it so decide) by notice in writing suspend further deliveries of the Goods until any defaults of the Buyer be remedied.
- 14.2 The Seller's rights under Condition 14.1 above shall include the Buyer being in breach of any of its obligations under the Contract.

15 REPRESENTATIONS

- 15.1 No statement, description, information, warranty, condition or recommendation contained in any of the Seller's catalogue, price list, advertisement or communication or made orally by any of its employees or agents shall form any part of the Contract nor be construed to enlarge, vary or override in any way any of these Conditions.
- 15.2 The Seller's employees or agents are not authorized to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract, the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 15.3 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 15.4 Any typographical, clerical or other error or omission in any quotation, catalogue, price list, advertisement or any other document issued by the Seller shall be subject to correction without any liability on the part of the Seller.

16 FORCE MAJEURE

- 16.1 The Seller shall be entitled to delay or cancel delivery or to reduce the quantity delivered if it is prevented from or hindered in or delayed in obtaining or delivering the Goods by normal route or means of delivery through any circumstances beyond its reasonable control including but not limited to act of God, accidents, war, threatened war or civil disturbances, riots, acts of terrorism, national emergencies, fire, flood, explosion, strikes, lock-outs or other forms of industrial action (whether or not relating to either party's workforce), delays affecting carriers, reduction in or unavailability of power at manufacturing plant, breakdown of plant or machinery or shortage or unavailability of raw materials from normal sources of supply or failure of suppliers or sub-contractors to supply.
- 16.2 Where the event in question continues for a continuous period in excess of [90] days, the Buyer shall be entitled to give notice in writing to the Seller to terminate the Contract.

17 CONFIDENTIALITY

- 17.1 The Seller's drawings or technical documents supplied with its quotations or the Goods are strictly confidential and shall not be used for any purpose other than in connection with the Seller. All rights thereto are reserved and no document may be copied or distributed in part or in whole without the Seller's prior consent in writing.

- 17.2 The Buyer specifically agrees not to reproduce the Goods for sale or use.
- 17.3 The Buyer shall not disclose or make use of confidential information provided to the Buyer by the Seller (whether patentable or not) for purposes other than the performance of the Contract, without the Seller's prior consent in writing, except where such information is or becomes publicly available through no fault of the Buyer.
- 17.4 As part of the Seller's policy of the development of its products, improvements are made in design from time to time and it reserves the right to supply substitute materials, components and units in place of the products ordered (and which shall thereby become 'the Goods' for the purposes of the order) at no greater price than that specified in the price list current at the date of placement of order. In such cases, the Seller will notify the Buyer of any substantial changes made to the Goods before they are dispatched.
- 17.5 All specifications as to material, pattern, colour and dimensions are subject to normal tolerance margins and variations consistent with usages of the trade and/or good mill practice.

18 INTELLECTUAL PROPERTY

- 18.1 The copyright subsisting or which subsequently subsists in all documents, drawings, specifications, designs, programmes or any other material prepared by the Seller whether readable by humans or by machines shall belong to the Seller absolutely and they shall not be reproduced or disclosed or used in their original or translated form by the Buyer, its employees or agents without the Seller's prior consent in writing for any purpose other than that for which they were furnished to the Buyer.
- 18.2 The Seller shall not be responsible for the accuracy of drawings, patterns or specifications supplied by the Buyer
- 18.3 The Seller shall not be responsible for the accuracy of drawings, patterns or specifications supplied by the Buyer
- 18.4 The Buyer shall indemnify the Seller against all claims whatsoever for damages and costs and against all liability in respect of any infringement of patent or other intellectual property rights resulting from compliance with the Buyer's instructions, express or implied, and the Buyer shall indemnify the Seller against any liability in respect thereof and shall pay all costs and expenses which may be incurred by the Seller in reference to any such claim
- 18.5 The Buyer's indemnity shall extend to any amount paid by the Seller on the basis of legal advice received in respect of any such claim.

19 INDEMNITY

- 19.1 the Buyer shall give the Seller all reasonable assistance for the purpose of any such proceedings or negotiations; If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark, or other industrial or intellectual rights of any other person, then (except where the Goods had been purchased at the Buyer's request by the Seller from some other third party supplier), the Seller may indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that :-
- 19.1.1 the Seller is given full control of any proceedings or negotiations in connection with any such claim;
- 19.1.2 the Buyer shall give the Seller all reasonable assistance for the purpose of any such proceedings or negotiations; the Buyer shall give the Seller all reasonable assistance for the purpose of any such proceedings or negotiations;
- 19.1.13 except pursuant to a judgment or final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the prior consent in writing of the Seller (which shall not be unreasonably withheld);
- 19.1.14 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do):

- 19.1.15 the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if awarded) in favour of the Buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim;
- 19.1.16 without prejudice to any duty of the Buyer at law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under the provisions of this Condition.

20 ASSIGNMENT

- 20.1 The Buyer may not assign or otherwise transfer the Contract or any rights or duties hereunder in whole or in part without the Seller's prior consent in writing.
- 20.2 The Seller may at any time assign, transfer, sub-contract or deal in any other manner with all or any of its rights under the Contract, and may sub-contract or delegate in any manner any and all of its obligations under the Contract to any third party or agent.

21 RIGHTS OF THIRD PARTIES

- 21.1 No person other than the Seller and the Buyer shall have any right to enforce the Contract by virtue of the Contracts (Rights of Third Parties) Act (Chapter 53B) which is hereby excluded.

22 RIGHTS OF REMEDIES

- 22.1 Each right or remedy of the Seller under the Contract shall be without prejudice to any other right or remedy of the Seller whether under the Contract or not.

23 NO WAIVER OF RIGHTS

- 23.1 Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 23.2 Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall not in any way affect the other terms of the Contract.
- 23.3 Any concession made or latitude allowed by the Seller to the Buyer shall not affect the strict rights of the Seller under the Contract.

24 SEVERABILITY

- 24.1 If in any particular case any of these Conditions shall be held by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly invalid or unenforceable or otherwise shall not apply to the Contract, the remainder of these Conditions shall not be affected thereby but shall be deemed severable and continue in full force and effect.

25 NOTICES

- 25.1 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 (if applicable) 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
- 25.2 Such notices may be delivered by hand or sent by pre-paid post or facsimile transmission.

26 HEADINGS

- 26.1 The headings in these Conditions are intended for reference only and shall not affect their construction.

27 GOVERNING LAW

- 27.1 The Contract shall in all respects be governed by and interpreted in accordance with Singapore law, and the Buyer agrees, at the Seller's option, to submit to the non-exclusive jurisdiction of the Singapore Courts. This shall not limit the Seller's right to commence legal proceedings against the Buyer in any other jurisdiction.
- 27.2 The Contract shall be deemed to have been made in Singapore.