

Terms and Conditions of Sale

Rev. 03.09

1. DEFINITIONS

1.1. In these Conditions:

- 1.1.1. 'Buyer' means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller
 - 1.1.2. 'Goods' means the goods (including any instalment of the goods or any parts for them), which the Seller is to supply in accordance with these Conditions
 - 1.1.3. 'Seller' means STERLING THERMAL TECHNOLOGY LIMITED registered in England and Wales under company registration number 1335179 whose registered office is at Brunel Road, Aylesbury, Buckinghamshire, HP19 8TD, UK
 - 1.1.4. '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 and signed by authorised representatives of the Buyer and the Seller
 - 1.1.5. 'Contract' means the contract for the purchase and sale of the Goods
- 1.2. Any reference in these Conditions to any provision of a statute shall be construed as a reference to that 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. BASIS OF SALE

- 2.1. The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller, which is accepted by the Buyer, or any written order of the Buyer, which is accepted by the Seller subject in any case to these Conditions. For the avoidance of doubt, these Conditions shall govern the Contract to the exclusion of any other terms and conditions put forward by the Buyer unless specifically agreed otherwise.
- 2.2. The Seller shall not be bound by any representations made by its agents or employees unless such representation is confirmed in writing by the Seller and signed by an authorised representative of the Seller.
- 2.3. 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 and signed by an authorised representative of 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.

3. ORDERS AND SPECIFICATIONS

- 3.1. No order submitted by the Buyer shall be deemed to have been accepted by the Seller unless and until confirmed in writing by the Seller's authorised representative.
- 3.2. The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specifications) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.3. The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).
- 3.4. If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with specifications submitted by the Buyer, the Buyer shall indemnify

the Seller against all losses, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

- 3.5. The Seller 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 Seller's specification, which do not materially affect their quality or performance.
 - 3.6. No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.
4. PRICE OF THE GOODS
- 4.1. The price of the Goods shall be as quoted by the Seller subject to any stated term of validity after which time they may be altered by the Seller without giving notice to the Buyer.
 - 4.2. The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
 - 4.3. Except as otherwise stated under the terms of any quotation and unless otherwise agreed in writing between the Buyer and the Seller, all prices are given by the Seller on an ex-works basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.
 - 4.4. The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.
5. TERMS OF PAYMENT
- 5.1. Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the total amount due in respect of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the total amount due at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
 - 5.2. The Buyer shall pay the total amount due in respect of the Goods in Sterling within thirty (30) days from the end of the month of the Seller's invoice (unless otherwise agreed in writing by the Seller), and the Seller shall be entitled to recover the total amount due, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the total amount due shall be of the essence of the Contract.

- 5.3. If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
 - 5.3.1. cancel the contract or suspend any further deliveries to the Buyer;
 - 5.3.2. appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
 - 5.3.3. charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 4% per annum above the base rate of Barclays Bank plc from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
6. DELIVERY
 - 6.1. Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.
 - 6.2. Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods. Time for delivery shall not be of the essence of the Contract.
 - 6.3. 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.
 - 6.4. If it shall be found that there is any discrepancy in quantity of the Goods delivered from the quantity ordered, the Seller shall only be liable for any shortfall providing notice has been given in writing within forty eight (48) hours of delivery.
 - 6.5. If the Seller fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
 - 6.6. 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:
 - 6.6.1. store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - 6.6.2. sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
7. RISK AND PROPERTY
 - 7.1. Risk of damage to or loss of the Goods shall pass to the Buyer:
 - 7.1.1. in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
 - 7.1.2. in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
 - 7.2. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has

received in cash or cleared funds payment of the total amount due in respect of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.

7.3. Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property, but shall be entitled to resell or use the Goods in the ordinary course of its business.

7.4. Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

8. WARRANTIES AND LIABILITY

8.1. The Seller shall take all reasonable steps to ensure that the Goods are free from defects and of good quality and, subject to the following provisions of this Clause, Goods supplied by the Seller shall be guaranteed in respect of defects in the Goods arising as a result of faulty materials or workmanship for a period of eighteen (18) months from the date of delivery or twelve (12) months from date that the Goods are put into service by the end user, whichever is the sooner.

8.2. To make a claim under the guarantee set out in Clause 8.1, the Buyer shall return the Goods, carriage paid, to the Seller within eighteen (18) months of the date of delivery of those Goods.

8.3. Upon receipt of the Goods the Seller shall determine, in its sole discretion, whether the Goods are defective due to faulty materials or workmanship of the Seller.

8.4. In the event that the Seller determines that the Goods are defective due to the faulty materials or workmanship of the Seller, the Seller shall repair or replace the Goods free of charge.

8.5. The foregoing represents the Seller's entire liability in respect of defective Goods supplied by the Seller.

8.6. The foregoing warranty shall not apply to Goods supplied by the Seller, which are not manufactured by the Seller. Goods supplied but not manufactured by or under the direct control of the Seller, will be subject to the warranty supplied by the original manufacturer.

8.7. Any claim by the Buyer which is based upon any defect in the quality, quantity or condition of the goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within twenty-four (24) hours of delivery or (where the defect or failure was not apparent on reasonable inspection) within fourteen (14) days after the discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the Price as if the Goods had been delivered in accordance with the Contract.

8.8. Where any valid claim in respect of any of the Goods which is based upon any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with condition 8.7 above, the Seller shall be entitled to replace the Goods (or part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the Price), but the Seller shall have no further liability to the Buyer whatsoever.

- 8.9. The remedies set out in clauses 8.1 to 8.8 inclusive represent the Seller's entire liability in respect of any defective Goods and without limitation to the generality of the foregoing:
- 8.9.1. the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
 - 8.9.2. the Seller shall be under no liability in respect of any defect arising from wilful damage, negligence, abnormal working conditions, misuse, alteration or repair of the Goods without the Seller's approval;
 - 8.9.3. the Seller shall be under no liability in respect of any defect arising from a failure to install, operate or assemble the Goods in accordance with the Seller's instructions (whether oral or in writing);
 - 8.9.4. in no event shall the Buyer be entitled to reject the Goods on the basis of any defect or failure which is so slight that it would be unreasonable for the Buyer to reject them.
- 8.10. Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by Statute or Common Law are excluded to the fullest extent permitted by Law.
- 8.11. Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at Common Law, or under the express terms of the Contract, for any loss whatsoever including, but not limited to, any indirect, special or consequential loss or damage (whether for loss of profit, loss of business, loss of goodwill, loss of sales, increased costs or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the Price of the Goods, except as expressly provided in these Conditions.
- 8.12. The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control (including but not limited to, Acts of God, explosion, flood, tempest, fire, accident, war or threat of war, sabotage, import or export regulations or embargoes, strikes, lockouts, difficulties obtaining raw materials, labour, fuel, parts or machinery, power failure or breakdown in machinery).
9. **INSOLVENCY OF BUYER**
- 9.1. This clause applies if:
- 9.1.1. the Buyer 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 than for the purposes of amalgamation or reconstruction); or
 - 9.1.2. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
 - 9.1.3. the Buyer ceases, or threatens to cease, to carry on business; or
 - 9.1.4. the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 9.2. If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller 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 and payable notwithstanding any previous agreement or arrangement to the contrary.

10. 10. GENERAL

- 10.1. 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 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.
- 10.2. No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 10.3. 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.
- 10.4. The Contract shall be governed and construed in accordance with the laws of England and the Buyer and the Seller hereby submit to the exclusive jurisdiction of the English courts in relation to any matter or dispute arising out of or in connection with the Contract.