

LEWMAR TERMS AND CONDITIONS OF SALE

1. Definitions

In these Conditions of Sale "the Seller" shall mean Lewmar Ltd and/or its successors, assignees, sub-contractors and agents; "the Buyer" shall mean any person or persons, firm or firms, company or companies, authority or authorities who shall order or buy the Goods and shall include its or their successors, executors and personal representatives; "the Goods" shall mean the equipment, goods, materials and/or services supplied or sold by the Seller (including all replacements and renewals thereof and all accessories and additions thereto whether added or made before or after the date of the relative order); "the contract" shall mean the contract for the sale or supply of the Goods by the Seller to the Buyer; and "Ex-Works" shall have the meaning given by the 2000 International Chamber of Commerce Official Rules for the interpretation of trade terms ('Incoterms').

2. Contract

(a) These Conditions of Sale alone shall govern and be incorporated in every contract for the sale of Goods and shall be in substitution of any oral arrangement made between the Seller and the Buyer. They shall apply in place of and prevail over any terms or conditions (whether or not in conflict or inconsistent with these Conditions of Sale) contained or referred to in any documentation submitted by the Buyer or in correspondence or in verbal communications between the Seller and the Buyer or implied by trade custom, practice or course of dealing unless specifically excluded or varied in writing by a director or other authorised representative of the Seller and any purported provisions to the contrary are hereby excluded.

(b) No quotation by the Seller shall constitute an offer. No order placed with the Seller shall be binding on the Seller or deemed to be accepted by the Seller unless and until a written and unqualified acknowledgement and acceptance of such order is issued to the Buyer by the Seller.

(c) Any variation of the contract must be agreed in writing by the Buyer and the Seller.

(d) Acceptance by the Buyer of delivery of the Goods shall (without prejudice to any other manner in which acceptance of these Conditions of Sale may be evidenced) be deemed to constitute unqualified acceptance of these Conditions of Sale.

(e) In the event that orders are placed with the Seller through export merchants or confirming houses in the United Kingdom, the export merchants or confirming houses must supply the Seller with the full name and address of their principal.

(f) If, subsequent to any contract of sale which is subject to these Conditions of Sale, a contract of sale is made by the Seller with the same Buyer without reference to any conditions of sale or purchase, such contract howsoever made shall be deemed to be subject to these Conditions of Sale unless otherwise indicated in writing by the Seller.

3. PRICE

(a) Quotations of price will normally be given by the Seller in pounds Sterling, but in the event of a quotation being given in currency other than Sterling and the exchange rate on the date on which any payment falls due being different from that on (i) the date of the quotation or (ii) the date of acceptance of the Buyer's order, whichever is the earliest, then the Seller shall have the right to make such adjustments as it may reasonably consider necessary to take account of such difference.

(b) All prices quoted are strictly net. In addition to the quoted price the Buyer shall be responsible for and, if agreed to be provided by the Seller in any contract, pay the full cost of (i) packing, delivery, customs, duties (where applicable) and freight charges; (ii) insurance for the Goods against all risks during delivery; and (iii) any applicable Value Added Tax or other sales tax(es).

(c) Any price lists or catalogues issued or supplied by the Seller and all rates and prices contained therein are subject to variations or withdrawal without notice.

4. DELIVERY

(a) Unless otherwise agreed in writing between the Buyer and the Seller the Seller shall be entitled to supply the Goods by part-deliveries.

(b) Where supply of the Goods is made by part-deliveries each such delivery shall (for the purposes of this clause) be treated as if it arose from a separate and independent contract but any delay or failure by the Seller in respect of any such part-delivery shall not entitle the Buyer to cancel the contract(s) for the remainder of the Goods.

(c) Failure by the Buyer to pay for any part-delivery when payment falls due shall entitle the Seller to withhold delivery of the remainder of the Goods.

(d) The Buyer shall accept delivery of the Goods or, if relevant, any part-delivery thereof within a period of 7 days of being notified by the Seller that the Goods are available for delivery. If the Buyer shall fail to accept delivery as aforesaid the Seller shall be entitled:

(i) to charge interest to the Buyer at the rate of 4% per annum above the Bank of Scotland base lending rate for the time being (such interest being calculated daily and charged monthly by the Seller and payable by the Buyer on demand by the Seller); and

(ii) to make a daily storage charge against the Buyer at a rate equivalent to 10% per annum on all sums due to the Seller in terms of the contract and for the time being unpaid in respect of the period from the expiration of the said period of 7 days until delivery of the Goods is accepted by the Buyer.

If the Buyer does not accept delivery (or part-delivery, if relevant) of the Goods within the period stated in sub-clause

If the Buyer does not accept delivery (or part-delivery, if relevant) of the Goods within the period stated in sub-clause (d) above, the Seller shall be entitled to terminate the contract (or any contract relating to a part-delivery of the Goods) and to re-sell the Goods. Such termination shall not affect the rights of the Seller to apply the charges stated in sub-clause (d) above up to, and including, the date of termination of the contract.

5. DELIVERY AND PASSING OF RISK

Unless otherwise agreed in writing between the Seller and the Buyer, the Goods are sold Ex Works the Seller's premises. All costs, taxes and duties arising in respect of the carriage, delivery and supply of the Goods are the responsibility of the Buyer unless otherwise agreed in writing by the Seller. Risk or loss, damage or destruction of the Goods shall pass to the Buyer immediately upon delivery being made. Where the Seller has agreed to insure the Goods for delivery to the premises specified by the Buyer, the Seller shall have no liability for any loss or damage to, or destruction of the Goods and any claim for damage to the Goods in transit shall be submitted to the carrier within 7 days of delivery and a copy sent to the Seller for information only at the time of notification to the carrier.

6. DELAY IN DELIVERY

Any delivery date given by the Seller to the Buyer is the Seller's approximate best estimate of the date on which the Goods will be delivered to the Buyer and the Seller will use reasonable endeavours to meet such delivery date. Delivery and completion dates are not, however, subject to any condition, guarantee, warranty or representation and, unless otherwise agreed in writing between the Seller and the Buyer, time shall not be of the essence with regard to delivery of the Goods and there shall be no liability (in contract or otherwise howsoever, including negligence) upon the Seller in respect of any loss or damage (including consequential or economic loss or damage) incurred by the Buyer arising from any delay in delivery of the Goods; nor shall the Buyer be entitled to refuse to accept delivery or to repudiate or cancel the contract as a result of any delay in delivery of the Goods or any part thereof. Late delivery shall not affect the obligation of the Buyer to pay the price.

7. PAYMENT

(a) Unless otherwise agreed in writing between the Seller and the Buyer and subject to sub-clause (b) below, payment of all sums due to the Seller in respect of a contract for the supply of Goods shall be made within 30 days of the date of the invoice issued in respect of the Goods and time shall, in respect of payment, be a material condition in and of the essence of the contract.

(b) In respect of any Goods to be delivered to the Buyer or its nominees at an address overseas, any applicable shipping and/or transportation charges, insurance, storage, customs duties (where applicable) standing charges or other additional costs shall be paid by the Buyer prior to the despatch of the Goods by the Seller by means of a irrevocable letter of credit opened with a bank approved by the Seller or by such other means as may be agreed in writing between the Buyer and the Seller.

(c) The Seller shall have the right to charge interest (which shall accrue from day to day) on all sums which may at any time be overdue for payment in terms of the contract (from the time such sums become due for payment until such sums have been paid to the Seller in full) at the rate per month of 4% above the Bank of Scotland base lending rate from time to time, such interest shall be calculated daily and shall be charged monthly by the Seller and be paid by the Buyer on demand by the Seller.

(d) In the event that the Buyer fails to pay all sums due to the Seller in respect of a contract for the supply of Goods within 30 days of the date of the invoice issued in respect of the Goods in terms of sub-clause (a) above (i) the Seller shall be entitled to terminate the contract (without prejudice to its accrued rights and its right to charge interest under sub-clause (c) above up to and including the date of termination of the contract) and any other contract between the parties for the supply of Goods which has not yet been performed (without prejudice to its accrued rights thereunder) and (ii) all sums to become due to the Seller by the Buyer in terms of all other contracts between them for the supply of Goods including Goods ready but not yet despatched, shall become immediately due and payable.

8. PASSING OF PROPERTY

(a) Unless otherwise agreed in writing between the Seller and the Buyer and notwithstanding delivery or the passing of risk under Clause 5 above, property and title in the Goods shall not pass to the Buyer unless and until payment in full (together with any accrued interest) shall have been received by the Seller from the Buyer in respect of:

(i) the contract price of all of the Goods delivered or to be delivered to the Buyer and comprised in the contract;

(ii) any other goods and services supplied or to be supplied to the Buyer by the Seller under the contract or under any other contract between the Seller (or any other company within the group of companies of which the Seller forms part (a 'Seller Group Company')); and

(iii) any other sums owed by the Buyer to the Seller (or any other Seller Group Company).

Unless and until payment in full shall have been received as aforesaid, the following provisions of this Clause 8 shall be applicable.

(b) Until such time as property and title in the Goods has passed to the Buyer, the Buyer shall : -

(i) hold the Goods (in so far as the Goods or any of them have not been sold by it) as the Seller's fiduciary agent and as its bailee and trustee;

(ii) keep the Goods separate from those of the Buyer and third parties (and clearly identified as being the Seller's property), insured, properly stored and protected against damage and deterioration; and

(iii) give the Seller such information relating to the Goods as the Seller may from time to time require.

(c) The Buyer shall keep the Goods free from any charge, lien, other security or encumbrance but if the Buyer shall fail to do so, all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

(d) Whilst the Buyer is in possession of the Goods with the Seller's consent (but not otherwise) the Buyer may in the ordinary course of its business sell the Goods at full value (being not less than the full sales price therefor invoiced by the Seller to the Buyer) provided that

(i) as between the Buyer and its sub-buyer or customer the Buyer shall sell the Goods as principal and the Buyer shall not be empowered to commit the Seller to any contractual relationship with or liability to the sub-buyer or customer or any other person;

(ii) as between the Seller and the Buyer, the Buyer shall sell the Goods in a fiduciary capacity as agent for the Seller;

(iii) notwithstanding any agreed period of credit for payment of the price of the Goods the Buyer shall pay the proceeds of such sales to the Seller forthwith upon receipt;

(iv) the Buyer shall not exchange or barter the Goods in any way whatsoever;

(v) the Buyer shall be wholly liable for any breach of contract, warranty or misrepresentation made by the Buyer in the course of any such sale and the Buyer shall keep the Seller fully indemnified in respect thereof; and

(vi) upon request the Buyer shall assign forthwith to the Seller the benefit of any agreement whether written or oral under which the Goods have been sold to any third party including but not limited to any claim for the sale price thereof or their recovery or value; thereafter the Seller shall be entitled to pursue any remedy open to the Buyer and shall be entitled to retain any sum or property recovered as payment towards any sum owing to the Seller by the Buyer.

(e) Until such time as the property in the Goods passes to the Buyer, the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller (at the Buyer's sole expense) and, if the Buyer fails to do so forthwith, the Seller reserves the right to repossess any Goods sold by it under the contract or any other contract with the Buyer in respect of which payment is overdue and thereafter to re-sell the same and for this purpose the Buyer hereby grants an irrevocable right and licence to the Seller, through its servants and agents, to enter with or without vehicles upon all and any premises on which such Goods may be situated and to take possession of any such Goods (where appropriate detaching them from any new objects of which they have become part or with which they have been mixed) without liability to the Buyer for any consequential damage to the said objects. These rights shall continue to subsist notwithstanding the termination of the contract and without prejudice to any other accrued rights of the Seller under these Conditions of Sale. In such circumstances, the Buyer hereby waives any right to claim from the Seller damages for loss, injury or damage (including, but not limited to damages for negligence) caused to the Buyer's or its agent's premises, business reputation, profits or business whatsoever as a result of such entry and will keep the Seller fully indemnified on demand against all (i) costs and expenses incurred in exercising its rights under this Clause 8(e); and (ii) claims for loss, injury or damage caused to any third party's products, business, reputation, profits or business whatsoever as a result of such entry (including, but not limited to any claim for negligence).

(f) Notwithstanding the provisions of this Clause 8 the Seller shall be entitled to bring an action against the Buyer for any indebtedness of the Buyer in the event of non-payment by the Buyer for the Goods by the due date for payment even though property in the Goods has not passed to the Buyer. Such action shall not preclude the Seller, at its option, from seeking re-delivery of the Goods.

(g) Nothing in this Clause 8 shall give the Buyer the right to return any Goods sold by the Seller.

(h) If the Buyer sells or disposes of any of the Goods which remain the property of the Seller, the Seller shall be legally and beneficially entitled to the proceeds of sale up to the aggregate amount of any indebtedness of the Buyer to the Seller and the Buyer shall pay such proceeds of sale (up to the aforesaid amount) into a separate account or otherwise make sure that all such proceeds of sale are kept by or on behalf of the Buyer in a separate and identifiable form solely for the benefit of the Seller. Further, forthwith upon receipt of the proceeds of sale as aforesaid the Buyer shall pay to the Seller any of the aforesaid sums outstanding to the Seller and shall not use or deal with the proceeds of sale in any way whatsoever until such sums shall have been paid in full to, and received by, the Seller.

(i) The Buyer's right to use the Goods or to sell them prior to any sums owing to the Seller being repaid in full may be terminated forthwith by written notice given by the Seller to the Buyer but shall automatically cease (without the necessity of giving notice):-

(1) if the Buyer (being an individual or firm) shall become apparently insolvent or commit or suffer any act of bankruptcy; or

(2) if the Buyer (being a company) (1) holds a meeting to consider, or passes a resolution for, the appointment of an administrator or its winding up, bankruptcy, insolvency or dissolution or is presented with a petition for its winding up, bankruptcy, insolvency or dissolution or the appointment of an administrator to it or (2) holds any meeting with or makes or proposes or enters into or has proposed to it any arrangement or composition with or for its creditors (including any voluntary arrangement as described in the Insolvency Act 1986) or (3) has a supervisor, receiver, administrator, administrative receiver or other encumbrance take possession of or appointed over or has any distress, execution or other process levied or enforced upon it (and not discharged within 14 days) upon the whole or a material part of its assets or (4) ceases or threatens to cease to trade or (5) is or becomes unable to meet its debts as they fall due; or

(3) if the Buyer defaults in making payment in accordance with the contract or any other contract or any payment is not received by the Seller when due; or

(4) if any event occurs in relation to the Buyer which in any jurisdiction to which the Buyer is subject is analogous to any of the events set out in sub-clauses (i) and (ii) above.

(5) Each of the foregoing Sub-Clauses of this Clause 8 shall be construed, receive effect and be enforceable as a separate and independent clause of these Conditions of Sale.

9. TECHNICAL DATA

With the exception of these Conditions of Sale all information, details, measurements, descriptions and illustrations contained in the Seller's catalogues and sales manual(s) and all drawings, descriptive statements, weights, dimensions, power consumptions, price lists and advertisements are intended to be and may be construed only as of a general informative nature and no such information, details, measurements, descriptions and illustrations shall form any part of or be incorporated in any way into the contract. Unless otherwise agreed in writing between the Seller and the Buyer, no statements, description, warranty or recommendation made verbally by the Seller shall constitute a representation, warranty or undertaking in respect of the Goods and they shall not be construed to enlarge, vary or override in any way any of these Conditions of Sale.

10. SELLER'S WARRANTY AND LIABILITY FOR DEFECTS

(a) The Buyer is deemed to have satisfied itself as to the suitability of the Goods for the purpose for which the Buyer requires them.

(b) Subject to the provisions of clause 5 above in relation to damage to Goods while in transit and to sub-clause (c) below, where any of the Goods supplied by the Seller to the Buyer are manufactured by the Seller and are found by the Buyer within six calendar months after delivery to be defective in material or workmanship or not to conform to the specifications set out in the Buyer's order as accepted by the Seller and forming part of the contract, the Buyer shall notify the Seller of such defect within 10 days of discovery of such defect or failure to conform and shall return such Goods, carriage paid, to the Seller within one calendar month after such notification and the Seller shall, provided that the Goods have been accepted and paid for and at its own option either repair such Goods free of charge, replace such Goods or refund to the Buyer the price thereof but in no circumstances whatsoever (subject to any applicable statutory provision from time to time in force) shall the liability of the Seller in connection with any such Goods exceed the price paid by the Buyer therefor.

The liability of the Seller under this Clause is conditional upon the Buyer (i) adhering strictly to the terms of payment provided for in the contract; (ii) notifying the Seller of the defect in the Goods within the said period of 10 days and returning said Goods to the Seller within the said period of one calendar month after such notification; and (iii) not attempting to repair or allowing anyone not previously approved and authorised by the Seller to repair any part or parts of the Goods.

The Seller shall have no liability under the contract or otherwise for any defects which in the opinion of the Seller occur as a result of:-

- (i) misuse of the Goods or negligence on the part of any person other than the Seller;
- (ii) failure to use the Goods in accordance with their product specification(s) or instructions;
- (iii) loss or theft of the Goods or any part of them;
- (iv) damage from any cause other than negligence by the Seller;
- (v) the Goods being used for any purpose other than their intended purpose;
- (vi) the manufacture or supply of the Goods to any specification stipulated by the Buyer;
- (vii) unauthorised modification, alteration or repair of any of the Goods; or
- (viii) corrosion and wear and tear of the Goods.

(c) In the case of Goods not of the Seller's manufacture the Seller will pass to the Buyer any benefits obtainable under any warranty given by the Seller's supplier provided that the Goods have been accepted and paid for. The Seller will not otherwise have any liability to the Buyer in respect of such Goods.

(d) Where the Goods are for delivery by instalments any defect in any instalment shall not be a ground for cancellation of any of the remainder of the instalments or of the contract and the Buyer shall be bound to accept delivery thereof.

(e) All conditions, warranties or other terms whether express or implied, statutory or otherwise (including liability for negligence), inconsistent with the provisions of this Clause 10 are hereby expressly excluded to the fullest extent permitted by law provided that nothing in this clause shall exclude or restrict:-

- (i) any liability of the Seller for death or personal injury resulting from negligence of the Seller or its servants or agents;
- (ii) any liability of the Seller for breach of its implied undertakings as to title; or
- (iii) in situations where the Buyer deals as a consumer within the meaning of the Unfair Contract Terms Act

1977 (or any analogous law under any other jurisdiction applicable to the Buyer and/or the contract), any liability of the Seller for breach of its implied undertakings as to conformity of the Goods with description or sample or as to their quality or fitness for a particular purpose

in each case to the extent that it would be unlawful for the Seller to so exclude or restrict its liability.

11. SUSPENSION OR CANCELLATION

If any of the events specified in sub-clauses (1) to (4) of Clause 8(i) above occurs, the Buyer then the Seller may, without prejudice to its accrued rights, either suspend or cancel the delivery or further deliveries of the Goods terminate the contract and charge the Buyer in respect of any loss sustained thereby. If the Buyer cancels its order the Seller shall be entitled (without prejudice to its other rights under the contract) to recover all costs accrued and/or incurred by the Seller up to the date on which the Seller receives notices of such cancellation.

12. FORCE MAJEURE

(a) If performance of the contract shall be delayed by any circumstance or condition beyond the control of the Seller, including, but not limited to,) any war, act of terrorism, industrial dispute, strike, lockout, riot, malicious damage, fire, storm, flood, Act of God, accident, non-availability or shortage of material or labour, failure by any sub-contractor or supplier to perform, failure of production equipment, any statute, rule, byelaw, order, regulation or requisition made or issued by any government department, local or other duly constituted authority, then the Seller shall have the right to suspend further performance of the contract until such time as the cause of the delay shall no longer be present.

(b) If the performance of the contract by the Seller shall be prevented by any such circumstances or conditions beyond the control of the Seller, then the Seller shall have the right to be discharged from further performance of and liability under the contract. If the Seller exercises such right the Buyer shall thereupon pay all sums due in terms of the contract less a reasonable allowance for such part of the contract as has not then been performed by the Seller.

13. RULING LAW

The contract shall be governed by and construed in all respects in accordance with the law of England and the parties hereto submit to the exclusive jurisdiction of the English courts.

14. GENERAL

(a) Each clause and sub-clause in these Conditions of Sale and any provision or provisions therein is separate and severable and enforceable accordingly.

(b) Any failure by the Seller to exercise or enforce any of its rights under the Contract or at law shall not be deemed to be a waiver of any such right nor operate to prevent its exercise or enforcement at any future time or times.

(c) The Buyer shall not be entitled to assign, sub-contract or transfer any of its rights of obligations under the contract.

(d) The Seller shall be entitled to deduct from any monies due or becoming due to the Buyer in connection with the contract any and all sums owing by the Buyer to the Seller but the Buyer shall not be permitted to make any such deduction in respect of any sums owing by it to the Seller.

(e) Subject to any liability of the Seller under Clause 10(e), the Seller shall have no liability to the Buyer, under the contract or in tort (including negligence) for any loss of profit, business, production, revenue, goodwill, anticipated savings or any indirect, economic, special or consequential loss or damage.

(f) No servant or agent of the Seller is authorised to make any representation or give any guarantee,

warranty or undertaking in relation to the Goods except as set out in Clause 10 or as otherwise agreed in writing by a director of the Seller.



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