

## TERMS OF SALE

### 1 INTERPRETATION

1.1 "Buyer" means the person whose order for the Goods is accepted by the Seller in accordance with clause 3.1  
"Contract" means the contract for the sale and purchase of the Goods  
"Goods" means the goods agreed to be supplied by the Seller to the Buyer in accordance with and subject to these Terms  
"Seller" means Tubetrade Plc.  
"Writing" and any similar expression includes facsimile transmission, electronic mail (save where indicated to the contrary in these Terms) and comparable means of communication

### 2 BASIS OF SALE

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with and subject to these Terms. These Terms govern the Contract to the exclusion of any other terms or conditions on or subject to which any order is made or purported to be made by the Buyer or contained in correspondence or elsewhere or implied by trade custom practice or course of dealing unless specifically previously agreed to in Writing by the Seller. Any purported provisions to the contrary are hereby excluded or extinguished.

2.2 No variation to these Terms shall be binding unless agreed in Writing (which for these purposes shall not include electronic mail) between the authorised representatives of the Buyer and the Seller

2.3 The Seller's employees or agents are not authorised 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 any such representations which are not so confirmed but nothing in these Terms affects the liability of either party for fraudulent misrepresentation

2.4 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 the Seller shall not be liable for any such advice or recommendation which is not so confirmed

2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller

### 3 ORDERS

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative in the Seller's Sales Order attached to these Terms. Where there is any inconsistency between the Buyer's order and the Seller's acceptance, the Seller's acceptance shall prevail.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) 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 No order which has been accepted by the Seller may be cancelled by the Buyer except with the previous agreement in Writing of the Seller and on terms amongst others 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 PRICES

4.1 A quotation by the Seller does not constitute an offer and the Seller reserves the right to withdraw or revise the same for any reason at any time prior to the Seller's acceptance of the Buyer's order. The price of the Goods is as set out in the Seller's acceptance referred to in clause 3.1 or, if varied in accordance with these Terms, as set out in the Seller's invoice

4.2 The Seller shall have the right at any time prior to delivery of the Goods to withdraw any discount from and/or to revise prices applicable to the Contract to take into account increases in costs including (without limitation) costs of any goods materials carriage labour or overheads the increase or imposition of any tax duty or other levy and any variation in exchange rates or currency regulation

4.3 Unless otherwise specified the price of the Goods is exclusive of any applicable Value Added Tax or other duties or taxes which may be chargeable in connection with the supply of the Goods to the Buyer which the Seller shall be additionally liable to pay to the Seller

4.4 The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date. Where a container is left with the Buyer and the container operator or owner has agreed to collect it, the Buyer will make the container available for return to the container operator or owner during the time specified by the container operator or owner. The Buyer will be liable for any costs arising from non compliance with the container operator or owner's demands

### 5 TERMS OF PAYMENT

5.1 Unless otherwise previously agreed by the Seller in Writing the Buyer shall pay the price of the Goods in Sterling in full without any deduction or set-off within thirty days after the end of the calendar month:

- 5.1.1 in which the Goods are delivered by the Seller
- 5.1.2 in which the Goods are collected by or for the Buyer
- 5.1.3 in which the Seller has sent an invoice to the Buyer, where the Buyer has wrongly failed to take delivery of the Goods
- 5.1.4 in which the Seller has sent an invoice to the Buyer and confirmed that the Goods are available for delivery or collection
- 5.1.5 whichever is relevant. The Seller shall be entitled to recover the price, notwithstanding that the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request

5.2 Any extension of credit allowed to the Buyer may be changed or withdrawn at any time

5.3 Interest (both before and after any judgment) shall be payable on overdue accounts at the rate of 3% above the base rate for the time being of the Royal Bank of Scotland plc accruing from day to day to run from the due date for payment until receipt by the Seller of the full amount

5.4 If in the sole opinion of the Seller the credit-worthiness of the Buyer shall have deteriorated prior to delivery of the Goods the Seller may require full or partial payment of the price prior to delivery or the provision of security for payment by the Buyer in a form acceptable to the Seller

5.5 The Buyer shall not be entitled to withhold payment for the Goods for any reason whether by way of set-off or any claim or dispute with the Seller, or any alleged breach of the Contract by the Seller, whether relating to the quality or performance of the Goods or otherwise

5.6 If the Buyer fails to make any payment on the due date then, without limiting any other right or remedy available to the Seller, the Seller may at its sole option:-

- 5.6.1 cancel the Contract or suspend any further deliveries to the Buyer; and/or
- 5.6.2 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)

### 6 DELIVERY

6.1 The Seller reserves the right to deliver up to 20 per cent more or 20 per cent less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered

6.2 Delivery shall be at the premises specified in the Contract and unless the Seller notifies the Buyer to the contrary the prices for the Goods shall include any packing, insurance, delivery or transportation charges to such premises. Where delivery is to be effected elsewhere than at the Seller's works or warehouses the Buyer shall be responsible for unloading the Goods at the place of delivery from the transport provided by the Seller. The type of transport will be at the sole discretion of the Seller unless the Buyer notifies the Seller in Writing at the time the Buyer places the relevant order of any unacceptable types of transport

6.3 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 howsoever caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date on giving reasonable notice to the Buyer

6.4 Unless otherwise previously agreed by the Seller in Writing the Seller shall have no obligation to pack the Goods or to provide any form of protection against the weather during transit

6.5 If the Buyer refuses or fails to take delivery of Goods tendered in accordance with the Contract or fails to give the Seller adequate delivery instructions the Seller shall be entitled to immediate payment in full for the Goods so tendered and at its sole discretion elect either:-

- 6.5.1 to store the Goods until actual delivery and charge the Buyer for the reasonable costs (including without limitation insurance, finance and storage) of so doing; or
- 6.5.2 to sell the Goods at the best price readily obtainable and (after deducting all reasonable storage, finance 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

6.6 Unless otherwise previously agreed by the Seller in Writing the Seller may effect delivery in one or more instalments. Where delivery is effected by 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 Terms 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 nor to claim compensation or to terminate or suspend the Contract and/or reject those or subsequent deliveries

6.7 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

### 7 VARIATIONS

7.1 The Seller shall be deemed to have fulfilled its contractual obligations in respect of any delivery:- though the quantity may be up to 20% more or less than the quantity specified in the Seller's Sales Order and in such event the Buyer shall pay for the actual quantity delivered; and

7.2 though the Seller may have failed to deliver the number of pieces stated upon the Seller's invoice (where Goods are charged according to weight and where (subject as provided in paragraph 7.1 above) such weight is delivered)

### 8 SPECIFICATIONS AND INFORMATION

8.1 All Goods are subject to normal rolling, cutting and weight tolerances; particulars of weights and dimensions submitted by the Seller are therefore approximate only and the Seller shall have no liability in respect of any deviation therefrom

8.2 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 EU requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance

### 9 RISK

9.1 Risk of damage to or loss of the Goods shall pass to the Buyer:-

- 9.1.1 in the case of Goods to be delivered at the Seller's premises or where the Seller informs the Buyer under clause 5.1.4 that the Goods are available for delivery or collection, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
- 9.1.2 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, at the time when the Seller has tendered delivery of the Goods. If requested to do so in Writing by the Buyer, the Seller shall advise the Buyer of the scheduled date of despatch

### 10 PROPERTY

10.1 Property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and until all other debts or other obligations from time to time and at any time owed by the Buyer to the Seller, and arising out

of or relating to the supply by the Seller to the Buyer of any goods whether supplied under these or any other terms have been paid in full. Until such time as the property in the Goods passes to the Buyer the Seller 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, insured and identified as the Seller's property until that time the Buyer shall be entitled to re-sell or use the Goods in the ordinary course of the business but shall account to the Seller for the proceeds of sale or otherwise of the Goods either tangible or intangible including insurance proceeds and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and in the case of tangible proceeds properly stored, protected and insured

10.3 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 may at any time require the Buyer to deliver up the Goods to the Seller and if the Buyer fails to do so forthwith enter upon any premises of the Buyer or of any third party where the Goods are stored and repossess the Goods

10.4 The Buyer shall not be entitled to pledge or in any way charge by way of security for indebtedness any of the Goods which remain the property of the Seller but if the Buyer does all monies owing by the Buyer to the Seller shall (without prejudice to any other rights or remedy of the Seller) forthwith become due and payable

### 11 LIABILITY

11.1 The Seller shall not be liable to the Buyer:-

- 11.1.1 for any claim arising out of or in relation to the Goods whether under these Terms or any other agreement or in tort if the total price for the Goods has not been paid by the date for payment
- 11.1.2 for shortages in quantity delivered unless the Buyer notifies the Seller of any claim for short delivery within 14 days of receipt of the Goods (subject always to the provisions of clause 7 of these Terms)
- 11.1.3 for damage to or loss of the Goods or any part thereof in transit (where the Goods are carried by the Seller's own transport or by carrier on behalf of the Seller) unless the Buyer shall notify the Seller of any such claim within 14 days after receipt of the Goods or the scheduled date of delivery whichever shall be the earlier
- 11.1.4 for any rusting wetness or other external condition of the Goods resulting from the exposure of the Goods to weather either directly or indirectly or for any other deterioration or being of the Goods during transit, unless the Seller has previously agreed in Writing to provide full protection against this
- 11.1.5 for any defect arising from fair wear and tear, wilful damage, negligence, failure to follow any instructions of the Seller (whether oral or in Writing) misuse or alteration or repair of the Goods without the prior Written approval of the Seller, abnormal working conditions or conditions of storage or use or any act, neglect or default of the Buyer or of any third party
- 11.1.6 for any claim for any Goods which have in any way been fabricated or altered in any way (including without limitation by the drilling of holes) by the Buyer or any employee, contractor or agent of the Buyer, nor any consequential loss arising from any such fabrication or alteration
- 11.1.7 for defects in the Goods which are or should be apparent on reasonable inspection on delivery unless notified to the Seller within fourteen days after (i) delivery of the Goods or (ii) earlier despatch by the Seller of the invoice confirming the availability for delivery or collection of the Goods pursuant to clause 5.1.4
- 11.1.8 for defects in the Goods where the defects are not or should not be apparent on reasonable inspection on delivery, unless notified to the Seller within six months after (i) delivery of the Goods or (ii) earlier despatch by the Seller of the invoice confirming the availability for delivery or collection to the Goods pursuant to clause 5.1.4

Where the Buyer makes such notification under clauses 11.1.7 or 11.1.8 the Buyer shall afford the Seller a reasonable opportunity of inspecting the Goods in their state as at the time of such notification

PROVIDED THAT if delivery is not refused and the Buyer does not notify the Seller in accordance with this subclause

11.1, 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

11.2 11.2.1 Where liability is accepted by the Seller under paragraph 11.1 the Seller's only obligation shall be at its option to make good any shortage or non-delivery and/or as appropriate to replace or repair any Goods found to be damaged or defective and/or to refund the cost of such Goods to the Buyer

11.2.2 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 loss of profit or for any indirect, special or consequential loss or damage, 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 (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) 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 Terms

11.3 Save as expressly provided in these Terms all conditions warranties and representations or other terms expressed or implied by statute common law or otherwise in relation to the Goods are hereby excluded to the fullest extent permitted by law

### 12 LICENCES AND CONSENTS

If any licence or consent of any government or other authority shall be required for the acquisition, carriage or use of the Goods by the Buyer the Buyer shall obtain the same at its own expense and if necessary produce evidence of the same to the Seller on demand. Failure to obtain the same shall not entitle the Buyer to withhold or delay any payment due to the Seller under these Terms. Any additional expenses or charges incurred by the Seller resulting from such failure shall be for the Buyer's account

### 13 FORCE MAJEURE

The Seller shall not be liable to the Buyer for or deemed to be in breach of the Contract by reason of any loss or damage which may be suffered by the Buyer as a direct or indirect result of the supply of Goods by the Seller being prevented hindered or delayed or rendered uneconomic by reason of circumstances or events beyond the Seller's reasonable control including but not limited to Act of God, explosion, flood, tempest, fire, war or threat of war, act of terrorism, sabotage, insurrection, civil disturbance or requisition, riot, strikes, lock-out, trade dispute or labour dispute or other industrial action or labour disturbance, accident break-down of plant or machinery, power failure difficulty or increased expense in obtaining workmen materials fuel or transport, import or export regulations, acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental parliamentary or local authority or other circumstances affecting the supply of the Goods or of raw materials therefor by the Seller's normal source of supply or the manufacture of the Goods by the Seller's normal means or the delivery of the Goods by the Seller's normal route or means of delivery

13.2 If a limited quantity of Goods is available to the Seller by reason of such circumstances or events the Seller may apportion the available quantity between its customers at its entire discretion

### 14 INSOLVENCY AND DEFAULT

14.1 This clause applies if:

- 14.1.1 the Buyer makes any voluntary arrangement or composition 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
- 14.1.2 an encumbrancer takes possession or receiver is appointed of any of the property of assets of the Buyer or its assets or
- 14.1.3 distress or execution is levied against any of the Buyer's assets and is not paid or discharged within seven days or any judgment against the Buyer remains unsatisfied for more than seven days or
- 14.1.4 the Buyer suspends payments of its debts or is deemed unable to pay its debts under Section 123 of the Insolvency Act 1986 or
- 14.1.5 the Buyer refuses or is unable to meet sums due to the Seller when such sums fall due
- 14.1.6 the Buyer ceases or threatens to cease to carry on business or ceases to be in a position to fulfill the Contract or
- 14.1.7 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

14.2 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

### 15 WAIVER

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

### 16 NOTICES

16.1 Any notice required or permitted to be given by either party to the other under these Terms 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 notice

16.2 Notices shall either be delivered personally or sent by first class mail or airmail pre-paid post or by telex or facsimile transmission and shall be deemed duly served:-

- 16.2.1 in the case of a notice delivered personally, at the time of delivery;
- 16.2.2 in the case of a notice sent inland by first class pre-paid post, two clear business days after the date of despatch;
- 16.2.3 in the case of a notice sent overseas by airmail, seven business days (being business days in the place to which the notice is despatched) after the date of despatch; and

16.2.4 in the case of a telex or facsimile transmission, if sent during normal business hours then at the time of transmission and if sent outside normal business hours then on the next following business day provided (in each case) that the transmission was confirmed

In proving the giving of a notice it is sufficient to prove that the notice was left, or that the envelope containing the notice was properly addressed and posted, or that the telex or facsimile transmission was correctly addressed and despatched and despatch of the transmission was confirmed

### 17 GOVERNING LAW

The Contract shall be governed by and construed in accordance with the laws of England and the Buyer agrees to submit to the non-exclusive jurisdiction of the English Courts

### 18 GENERAL

If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected

Save as expressly provided herein, nothing in these Terms shall create any rights for third parties under the Contracts (Rights of Third Parties) Act 1999. No variation to these Terms and no supplemental or ancillary agreement shall create any such rights unless expressly so stated in any such agreement by the parties. This does not affect any right or remedy of a third party which exists or is available apart from that Act.