

## TERMS OF REPAIR AND SALE OF GOODS

### THE BUYERS ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION 9

#### 1. Interpretation

1.1 In these Terms:

- Buyer:** means the person who accepts the Company's quotation for the sale of the Goods and/or Services or whose Order for the Goods and/or Services is accepted by the Company.
- Company:** means Manvik Limited (registered in England and Wales under number 4179802).
- Contract:** means a contract for the sale and purchase of the Goods and/or the supply of the Services between the Company and the Buyer which incorporates these Terms.
- Goods:** means the goods (including any instalment of the goods or any parts of them) which the Company is to supply in accordance with the Contract.
- Order:** means an order for the Goods and/or Services submitted by the Buyer and accepted by the Company in accordance with clause 3.
- Services:** means the services to be provided by the Company to the Buyer in accordance with the Contract.
- Terms:** means the standard terms and conditions set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Company.
- Writing:** and any similar expression, includes facsimile transmission and electronic mail and comparable means of communication.

1.2 A reference in these Terms to a 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 Terms are for convenience only and shall not affect their interpretation.

#### 2. Basis of the sale

- 2.1 The Company shall sell the Goods and/or perform the Services and the Buyer shall purchase the Goods and/or the Services in accordance with the Company's quotation, or the Buyer's order (if accepted by the Company), subject in either case to these Terms, which shall govern the Contract to the exclusion of any other terms and conditions stipulated or referred to by the Buyer.
- 2.2 No variation to these Terms shall be binding unless agreed in Writing by the authorised representatives of the Company.
- 2.3 The Company's employees or agents are not authorised to make any representations concerning the Goods and/or Services unless confirmed by the Company 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.

#### 3. Orders

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Company unless and until confirmed in Writing by the Company's authorised representative.
- 3.2 The Buyer shall be responsible to the Company for ensuring the accuracy of the terms of any Order submitted by the Buyer, and for giving the Company any necessary information relating to the Goods and/or Services within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

#### 4. Price of the goods

- 4.1 The price of the Goods and/or Services shall be the Company's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Company's published price list current at the date of the Company's acceptance of the order.
- 4.2 Unless otherwise agreed in Writing by the Company all prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Company without giving notice to the Buyer.
- 4.3 The Company reserves the right, by giving Written notice to the Buyer at any time before delivery to increase the price of the Goods and/or Services to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the cost of labour, materials or other costs of performing the Contract), any changes in delivery dates or quantities for the Goods and/or Services which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions.
- 4.4 Unless stated in the Company's quotation the price due from the Buyer to the Company for the Goods and/or Services shall be exclusive of any applicable Value Added Tax, which the Buyer shall be additionally liable to pay to the Company.

#### 5. Terms of payment

- 5.1 The Buyer shall pay the price of the Goods and/or Services as directed by the Company but in the absence of such direction by the Company within 30 days of the date of the Company's invoice and the Company shall be entitled to such amount, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. Receipts for payment will be issued only upon Written request.
- 5.2 The time for payment shall be of the essence.
- 5.3 If the Buyer fails to make any payment on the due date then, without limiting any other right or remedy available to the Company, the Company may:
- 5.3.1 cancel the Contract or suspend any further deliveries to the Buyer; and
- 5.3.2 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 3% per annum above Allied Irish Bank plc base rate 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).
- 5.4 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counter-claim, discount or otherwise unless the Buyer has a valid Court Order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 5.5 The Company reserves the right to contra any amount owed to it by the Buyer with any amount it owes to the Buyer.
- 5.6 Where the Buyer cancels the Contract or any Order it shall pay on demand the Company's reasonable costs incurred in relation to the Contract or Order.
- 5.7 Where the Contract is for the sale of Goods which are specially ordered by the Company for the Buyer such Goods are not returnable.

5.8 The Company may charge the Buyer a handling and administration charge in respect of any Goods which may be accepted by the Company for return. Such charge is payable on demand.

5.9 If the Company makes delivery of Goods and/or performs the Services in instalments then the Company shall be entitled to invoice each instalment separately.

#### 6. Delivery and performance

- 6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Company's premises or, if some other place for delivery is agreed in Writing by the Company, by the Company delivering the Goods to that place. The Services shall be performed by the Company at such premises as may be agreed by the Company and the Buyer hereby grants the Company, its employees, agents or any other duly authorised representatives an irrevocable licence to enter such premises for the purpose of performing the Contract.
- 6.2 Any dates quoted for delivery of the Goods and/or the performance of the Services are approximate only and the Company shall not be liable for any delay in delivery of the Goods or the performance of the Services howsoever caused. The Goods may be delivered and/or the Services performed by the Company in advance of the quoted delivery date on giving reasonable notice to the Buyer.
- 6.3 Time for delivery shall not be of the essence.
- 6.4 Time for delivery shall not be made of the essence by any notice from the Buyer purporting to make time for delivery of the essence.
- 6.5 The Company may make delivery of the Goods and/or perform the Services in instalments and the Buyer will be obliged to accept delivery and/or performance by instalments.
- 6.6 Where the Goods are to be delivered or the Services to be performed in instalments each delivery and/or performance of the Services shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments of the Goods and/or Services 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.
- 6.7 If the Company fails to deliver the Goods (or any instalment) and/or perform the Services (or any instalment) for any reason other than any cause beyond the Company's reasonable control or the Buyer's fault, and the Company is accordingly liable to the Buyer, the Company's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods and/or services to replace those not delivered or performed over the price of the Goods and/or Services.
- 6.8 If the Buyer fails to take delivery of the Goods and/or fails to accept performance of the Services or fails to give the Company 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 Company's fault) then, without limiting any other right or remedy available to the Company, the Company may:
- 6.8.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 6.8.2 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; or
- 6.8.3 charge the Buyer for any loss, cost or damage incurred by the Company resulting from the Company making the Services available to the Buyer.
- 6.9 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence to the contrary.
- 6.10 The Company shall not be liable for any non-delivery of Goods and/or non-performance of the Services (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery and/or non-performance within 7 days of the date when the Goods and/or Services would in the ordinary course of events have been received.

#### 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 Company's premises, at the time when the Company 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 Company's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods.
- 7.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- 7.2.1 the Goods; and
- 7.2.2 all other goods and/or services supplied by the Company to the Buyer under any contract between them.
- 7.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:
- 7.3.1 if the Goods are fitted to a vehicle by the Company and the Buyer disposes of the vehicle to which they are fitted, hold the proceeds of such disposal separately from other cash assets of the Buyer and shall identify the proceeds as such, and shall in no event be paid into an overdrawn bank account or loan account;
- 7.3.2 hold the Goods on a fiduciary basis as the Company's bailee;
- 7.3.3 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
- 7.3.4 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 7.3.5 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company.
- 7.4 The exercise by the Company of its rights against the Buyer under this clause shall be without prejudice to any rights of the Company to claim against the Buyer for additional losses suffered by the Company as a result of the Buyer's breach of contract and this clause shall not prejudice or affect the right of the Company to claim from the Buyer the price of the Goods.
- 7.5 The Buyer's right to possession of the Goods shall terminate immediately if:
- 7.5.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of a reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the Court of the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986) or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer;

or

- 7.5.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
- 7.5.3 the Buyer encumbers or in any way charges the Goods.
- 7.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 7.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 7.8 Where the Company is unable to determine whether any goods are the Goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold or used all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.
- 7.9 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 7 shall remain in effect.

## 8. Quality

- 8.1 The Company warrants that (subject to the other provisions of these Terms), on delivery, the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 8.2 Where the Company supplies the Goods whether in connection with the Services or otherwise the Company does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company by a third party in respect of the Goods.
- 8.3 The Company shall not be liable for a breach of the warranty in condition 8.1 unless:
- 8.3.1 the Buyer gives written notice of the defect to the Company within 5 days of the time when the Buyer discovers or ought to have discovered the defect; and
- 8.3.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.
- 8.4 The Company shall not be liable for a breach of the warranty in condition 8.1 if:
- 8.4.1 the Buyer makes any further use of such Goods after giving such notice; or
- 8.4.2 the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
- 8.4.3 the Buyer alters or repairs such Goods without the written consent of the Company; or
- 8.4.4 the defect arises due to fair wear and tear or wilful damage by the Buyer or if the Goods are subject to abnormal conditions or use.
- 8.5 If the Buyer fails to notify the Company, within 5 days of performance of the Services, of any defect in the Services the Buyer shall not be entitled to reject the Services and the Company shall have no liability for such defect, and the Buyer shall be bound to pay the price of the Services in full without set off, deduction or counter-claim.
- 8.6 The Seller shall be under no liability in respect of any accidental damage suffered by or caused to the Buyer or any third party arising out of the performance of the Services by the Company. The Buyer shall ensure that it is insured against all such losses or liabilities.
- 8.7 Subject to condition 8.3 and condition 8.4, if any of the Goods do not conform with the warranty in condition 8.1 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Company's expense, return the Goods or part of such Goods which is defective to the Company.
- 8.8 If the Company complies with condition 8.5 it shall have no further liability for a breach of the warranty in condition 8.1 in respect of such Goods.

## 9. Limitation of Liability

- 9.1 The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- 9.1.1 any breach of these Terms;
- 9.1.2 any use made or resale by the Buyer of any of the Goods or of any product incorporating any of the Goods; or
- 9.1.3 any representations, statements or tortious act or omission, including negligence arising under or in connection with the Contract.
- 9.2 All warranties, conditions and other terms implied by statute or common law (save for conditions implied by section 12 of Sale of Goods Act 1979 or where the Buyer is dealing as a "Consumer" as defined in the Unfair Terms in Consumer Contract Regulations 1999 save also for any terms implied by ss13-15 of the Sale of Goods Act 1979 and ss 9-11 of the Supply of Goods (Implied Terms) Act 1973) are to the fullest extent permitted by law, excluded from the Contract.
- 9.3 Nothing in these Terms excludes or limits the liability of the Company:-
- 9.3.1 for death or personal injury caused by the Company's negligence; or
- 9.3.2 under s2(3) of the Consumer Protection Act 1987; or
- 9.3.3 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- 9.3.4 for fraud or fraudulent misrepresentation.
- 9.4 Subject to clauses 9.2 and 9.3:-
- 9.4.1 the Company's total liability 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 shall be limited to a sum equivalent to the price paid to the Company for the Goods and/or Services under this Contract;
- 9.4.2 the Company shall not be liable to the Buyer for any loss including but without limitation to:-
- 9.4.2.1 loss of profit;
- 9.4.2.2 loss of business;
- 9.4.2.3 depletion of goodwill or similar loss;
- 9.4.2.4 loss of revenue;
- 9.4.2.5 down time costs;
- 9.4.2.6 costs of providing alternative equipment;
- 9.4.2.7 additional labour costs;
- 9.4.2.8 loss of contracts;
- 9.4.2.9 loss of anticipated savings;

- 9.4.2.10 pure economic loss;
- 9.4.2.11 charges;
- 9.4.2.12 expenses;
- 9.4.2.13 costs;
- 9.4.2.14 damages;
- 9.4.2.15 operating losses;
- 9.4.2.16 repurchasing or re-working costs; or
- 9.4.2.17 any other loss of whatsoever nature
- in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## 10. Force Majeure

- 10.1 The Company 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 any failure to perform, any of the Company's obligations in relation to the Goods and/or Services, if the delay or failure was due to any cause beyond the Company's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:
- 10.1.1 Act of God, explosion, flood, tempest, fire or accident;
- 10.1.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 10.1.3 acts, restrictions, regulations, bye-laws, prohibitions or measures or any kind on the part of any governmental, parliamentary or local authority;
- 10.1.4 import or export regulations or embargoes;
- 10.1.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);
- 10.1.6 difficulties in obtaining materials, labour, fuel, parts or machinery utilised in respect of the Goods and/or Services;
- 10.1.7 power failure or breakdown in machinery or any equipment used by the Company.
- 10.2 If any event referred to in clause 10.1 above continues for a continuous period in excess of 180 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

## 11. Cancellation

- 11.1 This clause 11 applies if:
- 11.1.1 the Buyer makes a 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
- 11.1.2 an encumbrancer takes possession, or a receiver and/or manager or administrator is appointed, of any of the Buyer's undertaking or any part thereof or documents are filed with the Court for the appointment of an administrator of the Buyer or notice of the intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986); or
- 11.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
- 11.1.4 the Company is unable to obtain credit insurance up to the full amount of any credit risk that the Company has from time to time with the Buyer or if such risk is withdrawn; or
- 11.1.5 the Buyer gives the Company reasonable reason to believe that it may be unable to pay for any Goods and/or Services ordered; and
- 11.1.6 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 11.2 If this clause 11 applies then, without limiting any other right or remedy available to the Company, the Company may cancel the Contract or suspend any further deliveries of Goods and/or the performance of Services under the Contract without any liability to the Buyer, and if the Goods have been delivered and/or the Services performed but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 12. General

- 12.1 All communications between the parties shall be in Writing and delivered by hand or sent by prepaid first class post or sent by fax or electronic mail:-
- 12.1.1 (in case of communications to the Company) to its registered office or such other address as shall be notified to the Buyer by the Company; or
- 12.1.2 (in the case of communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer as set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.
- 12.1.3 Communications shall be deemed to have been received:-
- 12.1.3.1 if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and Bank and Public Holidays) after posting (exclusive of the day of posting); or
- 12.1.3.2 if delivered by hand on the day of delivery; or
- 12.1.3.3 if sent by fax on a working day prior to 4.00pm at the time of transmission and otherwise at 10.00am on the next working day; or
- 12.1.3.4 if sent by electronic mail at the time of transmission if during normal business hours on a working day or upon commencement of business on the next working day.
- 12.1.4 If communications are sent by fax or electronic mail then the evidence of transmission must be kept.
- 12.2 The Company may assign or sub contract the Contract or any of it to any person, firm or company. The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 12.3 No waiver by the Company 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.
- 12.4 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid or void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 12.5 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the exclusive jurisdiction of the English courts.
- 12.6 No term of this agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party except by any member of the group of companies to which the Company is a part of.