



TERMS AND CONDITIONS OF SALE

1. Interpretation

1.1 In these Conditions:

"ARG" means the prescribed form of written authorisation for return of Goods issued by the Seller with a unique number "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

"Conditions" means the standard terms and conditions of sale set out in this document

"Contract" means the contract for the purchase and sale of the Goods

"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

"Seller" means Kraus & Naimer Limited (registered in England under number 749778)

"Services" mean repair services for Goods

"Writing" includes facsimile transmission and comparable means of communication.

1.2 Any reference in these Conditions to a statute shall include a reference to the same 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 the 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 either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

2.2 No variation to these Conditions shall be binding unless agreed in Writing 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, and waives any claim for breach of, any such representations which are not so confirmed.

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 accordingly 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 and specifications

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.

3.2 The Buyer shall be responsible for ensuring the accuracy of the terms of any order of 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 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements.

3.5 There shall be a minimum order value (net of VAT) of such sum as shall, from time to time, be specified by the Seller, unless otherwise agreed by the Seller in writing.

3.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the consent in Writing of the Seller. If the Seller gives such consent in Writing, the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs, 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 the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of delivery of the order. 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 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 (for example, but without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, 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 or in any price list of the Seller, all quotations given by the Seller include the cost of carriage and transit insurance. The cost of any other agreed arrangements shall be charged to the Buyer.

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 The Seller shall be entitled to invoice the Buyer for the price 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 price 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 price of the Goods (without any deduction or set off) within 30 days of the end of the month during which the Seller's invoice is issued, 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 price 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:

(a) cancel the contract or suspend any further deliveries to the Buyer.

(b) 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

(c) charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 3 per cent per annum above Barclays Bank 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).

6. Delivery

6.1 Delivery of the Goods shall be made by the Seller delivering the Goods to the address stated on the Seller's quotation or order acknowledgment on or acknowledgement on or after the delivery date. Alternatively, the parties may parties may agree in Writing that the Buyer shall collect the Goods.

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 howsoever caused. Time for delivery shall not be of the essence.

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 the Seller fails to deliver the Goods 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.

6.5 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 force majeure or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

6.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

6.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Buyer for any shortfall below the price due under the Contract.

7. Risk and property

7.1 Goods supplied by the Seller shall be at the Buyer's risk immediately on delivery to the Buyer or into custody on behalf of the Buyer and the Buyer shall therefore insure accordingly.

7.2 Property in Goods supplied will pass to the Buyer when the Goods and any other small goods the subject of any other contract between the parties, have been paid for in full.

7.3 Until full payment has been received by the Seller, the Buyer shall hold the Goods in a fiduciary capacity for the Seller in a manner which enables them to be identified as the Goods of the Seller and the Buyer shall immediately return the Goods to the Seller should it so request.

7.4 The Buyer's right to possession of the Goods shall cease if it does anything or fails to do anything which would entitle an administrator or administrative receiver to take possession of any assets or would entitle any person to present a petition for winding-up.

7.5 The Buyer grants the Seller an irrevocable licence to enter at any time any vehicles or premises owned or occupied by the Buyer or in its possession for the purpose of repossessing and removing any such Goods the property in which remains in the Seller. If the Goods have been affixed to or incorporated in any product or equipment, the licence shall extend to include removing any such Goods for identification purposes.

7.6 Notwithstanding clause 7.3, the Buyer shall be permitted to sell the Goods to third parties in the normal course of its business.

In this respect the Buyer shall act in the capacity of a commission agent and the proceeds of any such sale shall be held in trust for the Seller in a manner which enables the proceeds to be identified as such. The Seller as principal shall remunerate the Buyer as commission agent by way of a commission being the surplus which the commission agent can obtain over and above the sum specified in the Contract.

7.7 If the Goods, the property of the Seller, are admixed with or fixed to goods the property of any other person other than the Buyer, the product shall be deemed to be owned in common with that other person.

8. Warranties and liability

8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from delivery to the Buyer.

8.2 The above warranty is given by the Seller subject to the following conditions:

8.2.1 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;

8.2.2 The Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in Writing), misuse or alteration or repair of the Goods without the Seller's approval;

8.2.3 The Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;

8.2.4 The above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

8.3 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.

8.4 Where the Goods are sold under a consumer transaction (as defined by the Sale of Goods Act 1979) the statutory rights of the Buyer are not affected by these Conditions.

8.5 Any warranty claim of the Buyer shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) as soon as practicable after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller as above, the Buyer shall not be entitled to reject the Goods, 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.

8.6 The Buyer shall not, under any circumstances, return Goods to the Seller without an ARG issued by the Seller. Goods received without an ARG will be returned to the Buyer at its cost and risk.

8.7 Where any valid warranty claim in respect of any Goods is notified to the Seller in accordance with these Conditions, and the Goods are returned (at the Buyer's cost and risk) with an ARG, the Seller shall be entitled to replace the Goods (or the 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.

8.8 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, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and 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, except as expressly provided in these Conditions.

8.9 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 any 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.

8.10 The Seller may, in its absolute discretion, offer Services where the Buyer's claim is not within the warranty offered by the Seller. Such services shall be provided on a time and materials basis, in accordance with the Seller's standard charges and terms from time to time applicable. Conditions 3, 4 and 5 shall apply to the provision of Services.

9. I.P. Rights

9.1 All diagrams, schematics, designs and other drawings prepared by the Seller (whether or not at the request of the Buyer) ("Works"), together with the copyright therein shall be and remain the property of the Seller.

9.2 All Works, together with all copies or extracts, shall be treated as strictly confidential and not copied, reproduced or disclosed to any third party without the prior written consent of the Seller and shall be returned by the Buyer to the Seller on demand (at the Buyer's cost and risk).

10. Insolvency of Buyer

10.1 This clause applies if the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or the Buyer ceases, or threatens to cease, to carry on business; or 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.

10.2 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.

11. General

11.1 Any notice 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 have been notified). Hand delivered and facsimile notices shall take effect immediately on receipt. Notices posted shall be sent by first class pre-paid post and shall take effect two working days after posting.

11.2 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.

11.3 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 thereby.

11.4 Disputes

11.4.1 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Contract promptly through negotiations between the respective senior executives of the parties who have authority to settle the same.

11.4.2 If the matter is not resolved through negotiation, the parties will attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution ("ADR") procedure as recommended to the parties by the Centre for Dispute Resolution.

11.4.3 If the matter has not been resolved by an ADR procedure within 30 days of the initiation of such procedure, (or such other period as may be agreed) or if either party will not or ceases to participate in an ADR procedure, the dispute shall be referred to the English Courts.

11.4.4 The construction performance and validity of this Agreement shall in all respects be governed by the Laws of England.