

MELETT TERMS AND CONDITIONS OF SALE



FS 535592

1. Interpretation

1.1 In these Terms and Conditions (Terms) the following words and phrases shall have the following meanings:

the Buyer means the person, firm or company who purchases the Goods from the Company;

the Buyer's Provisions has the meaning given in Clause 2.1;

the Company means Melett Limited (company number 04442787);

Contract means the contract between the Company and the Buyer which shall be deemed to incorporate these Terms;

Goods means any goods agreed in the Contract to be supplied by the Company to the Buyer;

Order Confirmation means the order confirmation from the Company accepting the Buyer's order on these Terms;

Place of Delivery means the place to which the Goods are to be delivered;

Price has the meaning given in Clause 5;

Specification means the specification of the Goods which shall in the case of any standard product of the Company mean the Company's standard specification and in the case of any other product shall mean the specification as agreed in writing between the parties from time to time.

1.2 In these Terms, reference to any statute or statutory provision shall be construed as a reference to such statute or statutory provision as amended, modified, re-enacted or replaced from time-to-time.

2. Conditions applicable

2.1 The express provisions of these Terms shall apply to the sale of the Goods by the Company to the Buyer. Any provisions not set out in these Terms, including those of the Buyer which the Buyer applies or purports to apply, shall not be the terms and conditions concerning the sale of the Goods by the Company to the Buyer, however such provisions are introduced (including but not limited to provisions included on purchase order(s), confirmations of order or similar documents) (**Buyer's Provisions**). For the avoidance of doubt, the Buyer acknowledges and agrees that the Company shall not be bound by any of the Buyer's Provisions and that the Company's pricing is based upon these Terms.

2.2 An order for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to the provisions of these Terms.

2.3 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Terms.

2.4 Any variation of the provisions of these Terms (including any special terms and conditions agreed between the Parties) shall be inapplicable unless agreed in writing by the Company.

3. Delivery

3.1 If the Buyer makes arrangements for the carriage of the Goods then the Place of Delivery shall be the Company's premises.

3.2 If the Company makes arrangements for the carriage of the Goods then the Place of Delivery shall be the address stipulated by the Buyer for delivery.

3.3 The Buyer shall take delivery within seven days of the Company notifying the Buyer that the Goods are ready for delivery.

3.4 Any dates specified by the Company for delivery of the Goods are intended to be an estimate only and time of delivery is not of the essence. If no date is specified for delivery of the Goods, delivery shall be within a reasonable time.

3.5 Subject to the other provisions of these Terms and except as otherwise expressly agreed in writing by the Company, the Company shall not be liable for any loss, whether direct, consequential, economic or loss of profits or otherwise, arising directly or indirectly out of any delay in the delivery of the Goods nor will any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 60 days.

3.6 The Company may effect delivery in one or more installments.

4. Risk in and Ownership of the Goods

4.1 The Buyer shall not obtain title to the Goods until the earlier of:

(a) full payment to the Company of all sums due from the Buyer to the Company under this contract and under all other contracts between the Company and the Buyer (whether or not the sums are immediately payable); or

(b) incorporation of the Goods by the Buyer in other products; and

(c) bona fide sale and delivery of the Goods by the Buyer at full market value.

4.2 Risk in the Goods shall pass to the Buyer (so that the Buyer is then responsible for all loss and deterioration of the Goods or for any damage occurring) at the time delivery takes place in accordance with Clause 3.

4.3 The Company may recover Goods in respect of which title has not passed to the Buyer at any time and the Buyer irrevocably licences the Company, its officers, employees and agents to enter upon any premises of the Buyer, with or without vehicles for the purpose either of satisfying itself that condition 4.4 below is being complied with by the Buyer or of recovering any Goods in respect of which title has not passed to the Buyer.

4.4 Until title to the Goods has passed to the Buyer under these Terms, it shall possess the Goods as fiduciary agent and bailee to the Company. The Buyer shall ensure that the Goods are kept properly stored and protected and are kept separate from other Goods and shall ensure that they are kept identifiable as belonging to the Company. During such time as the Buyer possesses the Goods with the Company's consent, the Buyer may in the normal course of its business sell the Goods as principal but without committing the Company to any liability to the person dealing with the Buyer.

4.5 The Buyer shall insure the Goods, with an insurer of good repute, against all risks and to the full market value of the Goods.

5. Price

The price for the Goods shall, unless otherwise agreed, be the price set out in the Company's Order Confirmation. The price for the Goods shall be exclusive of all costs of carriage and insurance and applicable VAT which the Buyer shall pay in addition. The Buyer shall pay such deposit as the Company shall direct.

6. Payment

6.1 Subject to Clause 5, payment of the price of the Goods shall be as printed on the Company's invoice for the Goods.

6.2 Payment shall not be deemed to have taken place until the receipt by the Company of cleared funds.

6.3 If payment is not received by the due date the Company shall be entitled:

(a) to charge interest on the outstanding amount at the rate of 5% per annum above the base lending rate of National Westminster Bank plc, accruing daily;

(b) to require that the Buyer make a payment in advance of any delivery not yet made;

(c) not to make any delivery.

7. Specification of the Goods

7.1 The Company warrants that all Goods sold by the Company to the Buyer pursuant to these Terms will conform in all material respects to the Specification and shall continue to do so for the period of 12 months from the date of delivery (Warranty). The Company's pricing reflects the extent of this Warranty and takes account of its limitations and all other warranties or conditions (whether express or implied) as to quality, condition, description, compliance with sample or fitness for purpose (whether statutory or otherwise) other than those expressly set out in these Terms are excluded from the Contract to the fullest extent permitted by law.

7.2 Subject to the remaining provisions of this Clause 7, the Buyer shall be entitled to give written notice to the Company that it rejects any quantity of the Goods which do not comply with the Warranty, provided that any such notice of purposes rejection and return is made in accordance with Clause 8.

7.3 The Company may consult with the Buyer from time to time during the term of the Contract to ensure that the Specification is acceptable to both parties, but the Company is not obliged to agree to any change requested by the Buyer to the Specification or to the Goods.

7.4 The Company shall not be liable for breach of the Warranty or otherwise whatsoever if the Buyer makes any further use of the Goods after having rejected them or if it in any way re-balances, re-calibrates, repairs, disassembles alters or interferes in any way with the Goods without the express written agreement of the Company.

7.5 The Company's liability under the Warranty shall be limited to repairing or replacing the Goods in question or refunding the price of such Goods.

8. Returns procedure

8.1 The Buyer shall, within seven days of delivery of the Goods give written notice of rejection to the Company on account of any defect by reason of which the Buyer alleges that the Goods delivered do not comply with the Warranty and which was apparent on reasonable inspection.

8.2 If the Buyer fails to give notice as specified in Clause 8.1 then, except in respect of any defect which is not one which would be apparent on reasonable inspection, the Goods shall conclusively be presumed to comply with the Warranty and, accordingly, the Buyer shall be deemed to have accepted the delivery of the Goods in question and the Company shall have no liability to the Buyer with respect to that delivery.

8.3 If the Buyer alleges that any Goods are defective, it shall, if so requested by the Company, return the relevant Goods (unaltered and unprepared) to the Company for inspection as soon as possible and its own risk and expense. Before returning the relevant Goods the Buyer must obtain a goods return number from the Company and this must be clearly marked on the packaging and paperwork accompanying the Goods returned.

8.4 Following receipt of returned Goods the Company shall perform diagnostic tests on the Goods returned and shall provide written details of the results of such diagnostic tests to the Buyer.

8.5 If the Goods do not comply with the Warranty the Company shall, as soon as reasonably practicable following the results of the diagnostic tests:

(a) refund to the Buyer the reasonable economy carriage costs incurred by the Buyer in returning the rejected Goods;

(b) supply replacement Goods which comply with the Warranty at its own cost (including carriage) in which event the Company shall be deemed not to be in breach of the Contract or have any liability to the Buyer for the rejected Goods; or

(c) notify the Buyer that it is unable to supply replacement Goods, in which case the Company shall grant to the Buyer a credit or, at the request of the Buyer, a refund equal to the value of the Goods which the Company agrees do not comply with the Warranty.

8.6 The Company's reasonable decision as to whether the Goods comply with the Specification shall be final.

9. LIMITATION OF LIABILITY

9.1 The Company's total liability in contract, tort (including negligence), misrepresentation or otherwise in relation to the Contract shall be limited to Price of the Goods to which the claim relates and, where appropriate, to a refund of reasonable economy carriage costs in accordance with Clause 8.5(a).

9.2 The Company shall not be liable to the Buyer for:

(a) any indirect, special or consequential loss or damage; or

(b) loss of data or other equipment or property; or

(c) economic loss or damage; or

(d) incurring of liability for loss or damage of any nature whatsoever suffered by third parties (including in each case incidental and punitive damages); or

(e) any loss of actual or anticipated profit, interest, revenue, anticipated savings or business or damage to goodwill, even if the Company is advised in advance of the possibility of any such losses or damages and nor shall the Company be liable for any losses arising from the Buyer's subsequent use or misuse of the Goods including (without limitation):

(f) fair wear and tear;

(g) willful damage;

(h) the Buyer's negligence, or that of its agents or employees, or any failure to follow the Company's instructions as to use of the Goods;

(i) abnormal working conditions beyond those referred to in the Specification; and

(j) any alteration, re-balancing, recalibration, dismantling or repair of or interference with the Goods by any manufacturing process or otherwise.

9.3 The Company is not liable for a defect in the Goods unless it is notified to the Company within 7 days of the date of delivery or, if the defect would not be apparent on reasonable inspection and testing, within twelve months of the date of delivery.

9.4 The Company is not liable for:

(a) non-delivery, unless the Buyer notifies the Company of the claim within 7 working days of the date of the invoice; or

(b) shortages in the quantity of Goods delivered unless the Buyer notifies the Company of a claim within 15 working days of receipt of the Goods; or

(c) damage to or loss of all or part of the Goods in transit (where the Goods are carried by the Company's own transport or by a carrier on behalf of the Company), unless the Buyer notifies the Company within 15 working days of receipt of the Goods or the scheduled date of delivery, whichever is the earlier.

9.5 The Buyer acknowledges and agrees that the Price reflects the limitations of liability contained in these Terms.

10. Import and export licences

The Buyer is responsible for obtaining, at its own cost, such import licences and other consents in relation to the Goods as are required from time to time and, if required by the Company the Buyer shall make those licences and consents available to the Company prior to the relevant shipment.

11. Force Majeure

If either party is subject to an event of Force Majeure, that is circumstances outside its reasonable control, including but not limited to war, fire, industrial disputes, material shortages beyond its control or civil commotion, it shall notify the other and the first party's obligations under the Contract shall be suspended until it notifies the other party of the end of such event of Force Majeure.

12. Severance

If any part of these Terms is found to be void or unenforceable by any Court of competent jurisdiction, such part shall be severed from the Contract and these Terms which will otherwise remain in full force and effect.

13. Law and Jurisdiction

The Contract and these Terms shall be governed by and interpreted according to English Law and the parties submit to the exclusive jurisdiction of the English Courts.