



## **TERMS AND CONDITIONS OF SALES**

### **INTERPRETATION**

1.1 In these Conditions: "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.

"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 Geldbach (UK) Limited (registered in England and Wales under number 5853863). Ashby Scott is a sales division of Geldbach UK Ltd.

"Conditions" means the standard terms and conditions of sale set out in this document below and (unless the context otherwise requires) includes any special terms and conditions agreed in writ between the Buyer and Seller.

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

"Writing" includes telex, cable, facsimile transmission, e-mail and comparable means of communication.

1.2 Any reference in these Conditions to any 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 Conditions are for convenience only and shall not affect their interpretation.

### **BASIS OF SALE**

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any quotation of the Seller which is accepted by the Buyer or any 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 quotation is accepted or purported to be accepted or any 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 by 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.

### **ORDERS AND SPECIFICATIONS**

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until accepted by the Seller's authorised representative or by the Seller delivering the Goods. 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 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 or which do not materially affect their quality or performance.

3.5 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all losses, (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.

#### **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 national price list current at the date of acceptance of the order, less any agreed discount. Where the goods are supplied for export from the United Kingdom, the Seller's national price list shall apply unless the Seller has a specific price list for exports. All prices quoted are valid for three 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 (such as, without limitation, any foreign exchange fluctuation, currency regulation or alteration of duties), 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 and unless otherwise agreed in writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.

4.4 The price is exclusive of any applicable value added tax which the Buyer shall be additionally liable to pay to the Seller.

#### **TERMS OF PAYMENT**

5.1 Subject to any special terms agreed in writing between the Buyer and the Seller, 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 (less any discount to which the Buyer is entitled, but without any other deduction) within 30 days of the date of the invoice, 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. Receipts for payment will be issued only upon request.

5.4 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:

5.4.1 cancel the Contract or suspend any further deliveries to the Buyer; and/or



5.4.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and/or

5.4.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid at the rate of three and a half per cent per annum above HSBC Bank plc base rate from time to time or (if greater) at the rate determined by The Late Payment of Commercial Debts (Interest) Act 1998 in each case until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

#### **DELIVERY**

6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.

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 unless previously expressly agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

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.

#### **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 Seller's premises, at the time when the Seller 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 Seller's premises, at the time of delivery or if the Buyer wrongfully fails to take delivery of the Goods the time when the Seller has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions the 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 Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.

7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer 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 and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business but shall account to the Seller for the proceeds of sale or otherwise of the Goods whether tangible or intangible, including insurance proceeds and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and in the case of tangible proceeds properly stored protected and insured.

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

7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the



Seller) forthwith become due and payable.

#### **WARRANTIES AND LIABILITIES**

8.1 Subject to the Conditions set out below, if within a period of 12 months from the date of delivery, the Goods or any part of them, are found to be defective as a result of faulty materials or workmanship or (save for a discrepancy in weight or quantity) otherwise not in accordance with the Contract, and the Buyer gives notice in writing to the Seller of the defect within such 12 month period, the Buyer shall make the Goods available for inspection at a time and place to be arranged by the Seller and the Seller undertakes at its option to:

8.1.1 in exchange for the return of the Goods, repay or allow the Buyer the invoice price thereof; or

8.1.2 make good the defect at the Seller's expense as soon as may be reasonably practicable; or

8.1.3 in exchange for the return of the Goods, replace the Goods by delivering replacement Goods to the original place of delivery as soon as may be reasonably practicable. 8.2 The Sellers obligations under these Conditions and the Contract are subject to the following provisions:

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 or approved by the Buyer;

8.2.2 the Seller shall be under no liability in respect of any defect in the Goods arising from 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 Condition 8.1 (or any other guarantee, warranty or condition ) if the total price for the Goods has not been paid by the due date for payment.

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, common law, custom of the trade or otherwise are excluded to the fullest extent permitted by law.

8.4 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.

8.5 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within three working days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused and the Buyer does not notify the Seller accordingly, 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.

8.6 Where the Contract provides for delivery of the Goods elsewhere than at the Seller's premises, the Seller will entertain a claim by the Buyer in respect of loss or damage in transit only if the Buyer:

8.6.1 gives written notice to the Seller within 10 days after the date of the Seller's advice note or other notification of the despatch of the Goods in the case of non-delivery, or within three working days of the date of delivery of the Goods in any other case; and

8.6.2 where the Goods are transported by an independent freight carrier complies in all respects with the freight carrier's conditions of carriage for notifying claims for loss or damage in



transit.

8.7 The weight or quantity of the Goods printed upon the Seller's advice/despatch note shall be final unless the Buyer shall have given written notice of any discrepancy in weight or quantity within three working days after receipt of the Goods and has thereafter given the Seller a reasonable opportunity of witnessing a verification of the weight or quantity of the Goods before they have been used or sold.

8.8 The Buyer's remedy in respect of any defect in the Goods or any breach of its obligations under the Contract shall (subject to the provisions of Conditions 8.4) be confined to its express rights under these Conditions.

8.9 The Buyer expressly holds itself out as making the Contract in the course of a business.

8.10 The Seller does not exclude liability for:

8.10.1 death or personal injury resulting from its negligence or that of its employees;

8.10.2 direct physical damage to or physical loss of the property of the Buyer resulting from the Seller's, its employees' or agents' negligent acts or omissions and which arise out of the performance of its obligations under the Contract provided that the Seller shall only accept liability for any such damage or loss if and to the extent that such liability is covered by any public/product liability insurance policy taken out by the Seller and operative at the time of the damage or loss. Details of any such insurance policy will be made available to the Buyer upon request. If the Buyer requests in writing additional insurance, the Seller will take all reasonable steps to obtain it on the Buyer's behalf and any premium or additional premium and any other expenses incurred in obtaining such insurance shall be payable by the Buyer to the Seller.

8.11 Subject to paragraph 8.10, the Seller will not be liable to the Buyer for any:

8.11.1 loss of profits, loss of revenue, financial loss, loss of operating time or loss of use; and/or

8.11.2 direct loss damage or injury except for such direct loss damage or injury (if any) as the Seller shall have expressly agreed to assume responsibility for under these Conditions; and/or

8.11.3 indirect, consequential or special loss, damage or injury (including but without limitation third party claims) whether foreseeable or not to the Buyer or to the Buyer's property howsoever, whensoever or wheresoever arising whether by reason of any representation or any implied warranty, condition or other term or duty at common law or under statute or under the express terms of the Contract (and whether caused by the negligence of the Seller or otherwise) or otherwise in respect of or in connection with the supply of the Goods or their use or resale by the Buyer.

8.12 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. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond the Seller's reasonable control:

8.12.1 act of God, explosion, flood, tempest, fire or accident;

8.12.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

8.12.3 acts, restrictions, regulations, bye-laws prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

8.12.4 import or export regulations or embargoes;

8.12.5 strikes lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);

8.12.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;



8.12.7 power failure or breakdown in machinery.

8.13 The Seller is concerned to ensure that the price of the Goods remains competitive and taking into account:

8.13.1 the fact that the Buyer is in a better position than the Seller to know or ascertain the amount of any loss which will arise out of any defect in the Goods;

8.13.2 the fact that the extent of the damage that might be caused or alleged to be caused to the Buyer is disproportionate to the amount that can reasonably be charged (and is charged) by the Seller to the Buyer;

8.13.3 the terms and conditions upon which the Seller's own suppliers are prepared to supply goods and services to the Seller this must necessarily involve the incorporation of the terms and conditions set out in this Condition 8.

#### **INDEMNITY**

The Buyer shall indemnify and keep the Seller fully indemnified from and against any liability of any kind to any third party howsoever arising (whether in contract, tort or otherwise and including, but not limited to, liability arising from the negligence of the Seller or from the negligence of any person for whom the Seller is vicariously liable) in respect of or in connection with:

9.1 any defect in the Goods; and/or

9.2 any loss, injury or damage of any kind (whether direct, indirect or otherwise and including but not limited to any loss of profit and/or any incidental, consequential or special loss or damage of any description) arising out of, in respect of or in connection with the supply of the Goods, their use or resale; except to the extent that the Seller has expressly assumed liability under these Conditions for the defect, loss, injury or damage concerned.

#### **INSOLVENCY OF BUYER**

10.1 This Condition 10 applies if:

10.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or enters into administration or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes for amalgamation or reconstruction); or

10.1.2 an encumbrancer takes possession of or a receiver is appointed over any of the property or assets of the Buyer; or

10.1.3 the Buyer ceases or threatens to cease to carry on business; or

10.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to or reasonably likely to occur in relation to the Buyer and notifies the Buyer accordingly. 10.2 If this Condition 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.

#### **EXPORT TERMS**

11.1 Where the Goods are supplied for export from the United Kingdom, the provisions of this Condition 11 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.

11.2 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.

11.3 Unless otherwise agreed in writing between the Buyer and the Seller, the Goods shall be delivered ex-works and the Seller shall be under no obligation to give notice under Section 32(3) of





the Sale of Goods Act 1979.

11.5 Unless otherwise agreed in writing by the Seller, payment of all amounts due to the Seller shall be made by irrevocable letter of credit opened by the Buyer in favour of the Seller and confirmed by a bank in England acceptable to the Seller or if the Seller has agreed in writing on or before acceptance of the Buyer's order to waive this requirement, by acceptance by the Buyer and delivery to the Seller of a bill of exchange drawn on the Buyer payable 60 days after sight to the order of the Seller at such branch of HSBC Bank plc in England as may be specified in the bill of exchange.

#### **SUBCONTRACTING AND ASSIGNMENT**

12.1 The Seller reserves the right to sub-contract the fulfilment of the Contract or any part thereof in which event the Seller contracts on behalf of itself and its sub-contractors.

12.2 The Buyer may not assign or otherwise transfer any of its rights or obligations under the Contract without the prior written consent of the Seller and no term of the Contract will be enforceable against the Seller under the Contracts (Rights of Third Parties Act) 1999.

12.3 The Seller shall be entitled to assign or otherwise transfer all or any of its rights under the Contract to any other person, firm, company or other entity.

#### **LAW & JURISDICTION**

13.1 The Contract shall be governed by English law in every particular including formation and interpretation and shall be deemed to have been made in England.

13.2 Any proceedings arising out of or in connection with the Contract may be brought in any court of competent jurisdiction in England.

13.3 The submission by the Seller and the Buyer to such jurisdiction shall not limit the right of the Seller to commence any proceedings arising out of the Contract in any other jurisdiction it may consider appropriate.

#### **GENERAL**

14.1 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.

14.2 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.