

SOLIDTEK LIMITED - TERMS OF BUSINESS

CONDITIONS

1. Interpretation

1.1 Definitions:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: these terms and conditions set out in clause 1 to clause 12 (inclusive).

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Delivery Date: the date specified for delivery of an Order in accordance with clause 3.

Delivery Location: the address for delivery of the Goods, as set out in the Order.

Force Majeure Event: events, circumstances or causes beyond a party's reasonable control.

Goods: the goods (or any part of them), as set out in the Order.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: an order for the Goods submitted by the Customer in accordance with clause 3.

Price: the price for the Goods, as set out in the Order.

Specification: the specification for the Goods as set out in the Order.

Supplier: SolidTek Limited (Reg No: 09912267) Unit 2 Britonwood Trading Estate, Abercrombie Road, Knowsley Industrial Park, Liverpool. L33 7YN

1.2 Interpretation:

(a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

(b) any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

(c) a reference to **writing** or **written** includes emails.

2. Basis of Contract

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3. Orders

- 3.1 Orders shall be given in writing. The Supplier may accept or decline Orders at its absolute discretion. The Supplier may, at its discretion, accept an amendment to an Order by the Customer.
- 3.2 The Supplier shall assign an order number to each Order it accepts and notify the order number to the Customer. Each party shall use the relevant order number in all subsequent correspondence relating to the Order.
- 3.3 After confirming an Order, the Supplier shall as soon as is practicable inform the Customer of the Supplier's estimated delivery date for the Order.
- 3.4 The Customer is responsible for ensuring that Orders and any applicable Specification submitted by the Customer are complete and accurate. The Customer shall give the Supplier all necessary information relating to the Goods that the Supplier reasonably requires in order to fulfil each Order.

4. The Goods

- 4.1 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 4.2 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 4.2 shall survive termination of the Contract.
- 4.3 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

5. Delivery

- 5.1 The Supplier shall ensure that:
- (a) each delivery of Goods is accompanied by a delivery note which shows the contract number, order number, the type and quantity of Goods (including the code number of the Goods, where applicable), storage instructions (if any) and, if the relevant Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - (b) if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 5.2 The Supplier shall endeavour to deliver Goods to the Delivery Location on the relevant Delivery Date. Where the Supplier has expressly agreed in writing that the Goods are to be collected, the Supplier shall use reasonable endeavours to have Goods ready for collection at the Delivery Location on the relevant Delivery Date and the Customer shall collect Goods from the Delivery Location within three Business Days of the Supplier notifying the Customer that they are ready.
- 5.3 Delivery is completed on the completion of unloading of the Goods at the Delivery Location, or upon completion of the loading of the Goods where the Supplier has agreed to make them available for collection.
- 5.4 Delivery Dates are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of any Goods that is caused by:
- (a) a Force Majeure Event; or
 - (b) the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.5 If the Supplier fails to deliver Goods (or where collection has been agreed, have the Goods ready for collection) by the relevant Delivery Date, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market

available, less the Price of the Goods. The Supplier shall have no liability for any failure to deliver Goods to the extent that such failure is caused by:

- (a) a Force Majeure Event; or
- (b) the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

5.6 If 10 Business Days after the day on which the Supplier attempted to make delivery of Goods (or where collection has been agreed in writing, notified the Customer that Goods were ready for collection) the Customer has not taken delivery of (or collected, as the case may be) those Goods, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods, or charge the Customer for any shortfall below the price of the Goods.

5.7 If the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, a pro rata adjustment shall be made to the Order invoice.

5.8 The Supplier may deliver Orders by instalments, which shall be invoiced and paid for separately. The Customer may not cancel an instalment because of any delay in delivery or defect in another instalment.

6. Quality and fitness for purpose

6.1 The Supplier warrants that, for a period of 6 months from the date of delivery (**warranty period**), the Goods shall:

- (a) conform in all material respects with their description;
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

6.2 Subject to clause 6.3, if:

- (a) the Customer gives notice in writing to the Supplier during the warranty period, within 5 Business Days discovery that some or all of the Goods do not comply with the warranties set out in clause 6.1;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,

the Supplier may, at its option, replace any Goods that are found to be defective, or refund the price of such defective Goods in full.

6.3 The Supplier shall not be liable for Goods' failure to comply with the warranties set out in clause 6.1 if:

- (a) the Customer makes any further use of such Goods after giving notice of defects in accordance with clause 6.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions, product bulletins or other information provided as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
- (d) the Customer has not paid the Price or any part of it when due for payment; or
- (e) the Customer alters such Goods without the written consent of the Supplier;
- (f) the defect arises as a result of negligence or wilful misuse or abnormal storage or working conditions by the Customer or its agents, employees or sub-contractors; or
- (g) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

6.4 The Supplier's only liability to the Customer if the Goods fail to comply with the warranties set out in clause 6.1 is as set out in this clause 6.

6.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

6.6 The terms of the Contract shall apply to any replacement Goods supplied by the Supplier.

7. Title and risk

7.1 Risk in Goods shall pass to the Customer on completion of unloading the Goods at the Delivery Location (or upon completion of loading at the Delivery Location where collection has been agreed in writing).

7.2 Title to Goods shall only pass to the Customer once the Supplier receives payment in full (in cash or cleared funds) for them.

7.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 11.1(b); and
- (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

7.4 The Supplier may recover Goods in which title has not passed to the Customer. The Customer irrevocably licenses the Supplier, its officers, employees and agents, to enter any premises of the Customer (including with vehicles), in order to satisfy itself that the Customer is complying with the obligations in clause 7.3, and to recover any Goods in which property has not passed to the Customer.

7.5 The Supplier may at any time after delivery elect to transfer title in the Goods to the Customer, in which case the Customer shall immediately pay the Price to the Seller.

8. Product recall

8.1 If the Customer is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw any Goods from the market or use (**Recall Notice**) it shall immediately notify the Supplier in writing enclosing a copy of the Recall Notice.

8.2 Unless required by law, the Customer may not undertake any recall or withdrawal without the written permission of the Supplier and only then in strict compliance with the Supplier's instructions as to the process of implementing the withdrawal.

9. Price and payment

9.1 The Customer shall pay for Goods in accordance with this clause 9.

9.2 The Price excludes:

- (a) the costs of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer in addition to the Price; and
- (b) amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate (if applicable), subject to the receipt of a valid VAT invoice.

9.3 The Supplier may invoice the Customer for the price of Goods plus VAT at the prevailing rate (if applicable) on or at any time after commencement of delivery or despatch. The Supplier shall ensure that the invoice includes the date of the Order, the invoice number, the Contract Number, the Customer's order number, the Supplier's VAT registration number, and any supporting documentation that the Customer may reasonably require.

9.4 The Customer shall pay invoices in full in cleared funds within 30 Days of the invoice date. Payment shall be made electronically to the bank account nominated in writing by the Supplier and not by any other means.

9.5 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then, without limiting the Supplier's remedies under clause 11:

- (a) the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- (b) the Supplier may suspend all further deliveries of Goods until payment has been made in full.

9.6 The Customer shall pay all amounts due under the contract in full without set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any of its other rights or remedies, set off any amount owing to it against any amount payable by the Supplier to the Customer.

10. Limitation of liability

10.1 Nothing in this Contract shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) defective products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

10.2 Subject to clause 10.1:

- (a) the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Supplier's total liability to the Customer for all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to £5m.

11. Termination

11.1 Without limiting its other rights or remedies, either party may terminate this Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

11.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.

11.3 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination.

11.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

12. General

12.1 **Force majeure.** Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for 12 weeks, the party not affected may terminate this Contract by giving 30 days' written notice to the affected party.

12.2 Assignment and other dealings.

- (a) The Customer shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.
- (b) The Supplier may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under this agreement.

12.3 Confidentiality.

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of its Group, including but not limited to information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers (**Confidential Information**), except as permitted by clause 13.3(b).
- (b) Each party may disclose the other party's Confidential Information:
 - (i) to its employees, officers, agents and consultants (**Representatives**) who need to know such information for the purposes of carrying out the party's obligations under this agreement, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this clause 16 as though they were a party to this agreement and in the case of the Customer it shall procure the signature of a non-disclosure agreement in such terms as the Supplier may require from time to time. The disclosing party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Each party reserves all rights in its Confidential Information and in its Intellectual Property. No rights or obligations in respect of a party's Confidential Information or Intellectual Property other than those expressly stated in this agreement are granted to the other party or to be implied from this agreement. In particular, no licence or assignment is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other Intellectual Property Rights held, made, obtained or licensable now or in the future.

12.4 Entire agreement.

- (a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

12.5 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12.6 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

- (a) waive that or any other right or remedy; nor
- (b) prevent or restrict the further exercise of that or any other right or remedy.

- 12.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 12.8 **Notices.**
- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, email.
 - (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.8(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
 - (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 12.9 **Third party rights.** No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.
- 12.10 **Governing law.** This Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of England and Wales.
- 12.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.