

## **TERMS & CONDITION OF SALE**

### **1. Interpretations**

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 and any goods supplied in substitution for or in replacement of or in addition to such goods.

“Seller” means Remsons Industries Limited, a company incorporated under the Indian Companies Act, 1956, with corporate identification number L51900MH1971PLC015141, having its registered office at 401 Gladdiola, Hanuman Road Vile Parle (E) Mumbai 400057, Maharashtra, India.

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

“Contract” means the contract for the purchase and sale of the Goods.

“Writing” includes letter, cable, facsimile transmission, email 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.

### **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 that 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 by the Seller's authorised representative.

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 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer the Buyer shall indemnify the Seller against all loss damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim of infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

3.5 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, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

3.6 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 the Buyer shall indemnify the Seller in full against all loss (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 any cancellation.

#### **4. Price of the goods**

4.1 The price of the Goods shall be as per the purchase order.

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, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture) or to 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 purchase order, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller are exclusive of carriage charges.

4.4 The price is exclusive of any applicable taxes that the Buyer shall be additionally liable to pay to the Seller.

## **5. Terms of payment**

5.1 The terms of payment shall be as per the purchase order.

5.2 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.

5.3.1 cancel the Contract or suspend any further deliveries to the Buyer;

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

5.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 18 per cent per annum, 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 In the event that the Seller cancels the contract under Clause 5.3.1 above, the Buyer shall indemnify and hold the Seller harmless in full against all loss (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 such cancellation. Without prejudice to the generality of the foregoing, at the option of the Seller, the Seller shall be entitled to require the Buyer to pay to the Seller by way of liquidated damages an amount equivalent to 50% of the invoice value of the contract so cancelled. In the event of the Seller so requiring, the Buyer shall pay such amount to the Seller (without any deduction) within seven days of receiving from the Seller written notification of the amount required to be paid. The Seller and the Buyer hereby agree that such amount represents a genuine pre-estimate of the monetary value of the loss and damage likely to be suffered by the Seller as a result of such cancellation.

## **6. 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 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. The Seller shall be entitled to make part delivery of the Goods at any time.

6.3 Where the Goods are 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 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 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 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.

## **7. Title and risk**

7.1 Risk in the goods shall pass to the Buyer on completion of delivery.

7.2 Notwithstanding delivery and the passing of risk in the Goods, title to the Goods shall not pass to the Buyer until the earlier of:

(i) the Seller has received payment in full (in cash or in cleared funds) for the Goods; and

(ii) the Seller has received payment in full (in cash or in cleared funds) of all sums due from the Buyer to the Seller whether under the Contract or by virtue of any other liability of the Buyer to the Seller, in which case title to the Goods shall pass at the time of payment of all such sums.

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

(i) store the Goods separately from all other Goods held by it so that they remain readily identifiable as the Seller's property;

(ii) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(iii) maintain the Goods in satisfactory condition and keep them insured against all risk for their full price from the date of delivery;

(iv) notify the Seller immediately if it becomes subject to any of the events listed in clause 9;

(v) give the Seller such information relating to the Goods as the Seller may require from time to time;

(vi) at the request of the Seller deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, the Seller shall be entitled to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

7.4 If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 9, then, without limiting any other right or remedy the Seller may have, the Seller may at any time:

(i) require the Buyer to deliver up all Goods in its possession that have not been

resold, or irrevocably incorporated into another product; and

(ii) if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

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) become immediately due and payable.

7.6 For the avoidance of doubt, nothing contained in this Clause 7 shall entitle the Buyer to return any of the Goods to the Seller save as expressly provided in these terms and conditions or as expressly agreed in writing between the Seller and the Buyer.

## **8. Warranties and liability**

8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification subject to such tolerances as are reasonable and as are normally accepted in the trade and will be free from defects in material and workmanship at the time of delivery.

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 Goods 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 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 30 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.

8.4 Any claim by the Buyer which is based on short delivery or non-delivery shall be notified to the Seller in Writing (in the case of short delivery) within 7 days of delivery and (in the case of non-delivery) within 30 days of receipt by the Buyer of the Seller's Invoice for the goods which the Buyer claims have not been delivered. If the Buyer does not notify the Seller accordingly the Buyer shall not be entitled to reject any goods that have been delivered and the Seller shall have no liability for such short delivery or non-delivery.

8.7 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods or (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. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

- 8.9.1 Act of God, explosion, flood, tempest, fire, accident or pandemics;
- 8.9.2 war or threat of war, sabotage, insurrection, civil disturbance, or requisition;
- 8.9.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 8.9.4 import or export regulations or embargoes;
- 8.9.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
- 8.9.6 difficulties in obtaining raw materials labour, fuel, parts or machinery;
- 8.9.7 power failure or breakdown in machinery, disruption of transport channels.

## **9. Insolvency of buyer**

9.1 This clause applies if:

- 9.1.1 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 if an application is admitted by a court to commence insolvency resolution process against the Buyer; or
- 9.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- 9.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
- 9.1.4 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.

9.2 If this clause **REYSONS INDUSTRIES LIMITED** 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.

## **10. Export terms**

10.1 In these Conditions 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

10.2 Where the Goods are supplied for export from India, the provisions of this clause 10 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply, notwithstanding any other provisions of these conditions.

10.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and notifying to the Seller the requirements of any such legislation or regulations requiring action on the part of the Seller and for the payment of any duties in connection with the Goods.

10.4 Unless otherwise agreed in Writing between the Buyer and the Seller the Goods shall be delivered FOB from the air or sea port of shipment.

10.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of damage during transit.

10.6 Payment of all amounts due to the Seller shall be made in such manner as shall be agreed between the Seller and the Buyer in Writing.

## **11. General**

11.1 Any notice required or permitted 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 at the relevant time have been notified pursuant to this provision to the party given the notice

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 The Contract shall be governed by the laws of India and subject to the foregoing the courts of Mumbai shall have jurisdiction in respect of the contract or these Conditions. Any dispute or difference arising out of or in connection with these Conditions or the Contract shall be referred to arbitration by a sole arbitrator mutually acceptable to the Buyer and the Seller. The arbitration shall be conducted in accordance with the Arbitration and Conciliation Act, 1996 (as amended). In the event the parties fail to agree on the appointment of a sole arbitrator within 30 days of the dispute being referred to arbitration, the arbitrator shall be appointed in accordance with the Arbitration and Conciliation Act, 1996 (as amended). The seat of arbitration shall be Mumbai.