

## Conditions of Sale

### Interpretation

- 1 (A) 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 Steatite Limited (registered in England and Wales under company number 4403746) whose registered office is at: *2 Ravensbank Business Park, Hedera Road, Redditch, Worcestershire, B98 9EY*.  
“**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 telex, cable, facsimile transmission and comparable means of communication.  
(B) 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.  
(C) The headings in these Conditions are for convenience only and shall not affect their interpretation.

### Basis of the sale

- 2 (A) The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written order of the Buyer which is accepted by the Seller, subject to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions (whether express or implied by trade custom, course of dealing or otherwise) subject to which any such order is made or purported to be made, by the Buyer.  
(B) A quotation by the Seller does not constitute an offer, and the Seller reserves the right to withdraw or amend any quotation at any time.  
(C) No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.  
(D) 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 in Writing.  
(E) 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 in Writing.  
(F) 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 (A) 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.  
(B) 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.  
(C) The quantity, quality and description of and any specification for the Goods shall be those set out in the Buyer’s order (if accepted by the Seller).  
(D) 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 for 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.  
(E) The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or, where the Goods are to be supplied to the Seller’s specification, which do not materially affect their quality or performance.  
(F) 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 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 cancellation.

Steatite Limited Conditions of Sale\_v2012\_11\_06\_rev2

### **Price of the Goods**

- 4 (A) 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 acceptance of the order. Where the Goods are supplied for export from the United Kingdom, the Seller's published export price list shall apply. All prices quoted are valid for 30 days only, unless otherwise specified by the Seller, or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.
- (B) 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), 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.
- (C) 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.
- (D) 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 (A) 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 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.
- (B) The Seller's invoice may specify that the price is to be payable on a currency other than sterling in which case the applicable rate of exchange shall be the relevant sterling spot exchange rate in force at commencement of business on the date of the invoice.
- (C) The Buyer shall pay the price of the Goods (less any discount to which the Buyer is entitled as evidenced in writing, but without any other deduction) within 30 days of the date of the Seller's invoice, and the Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time for payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- (D) 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:-
- (i) cancel the Contract or suspend any further deliveries to the Buyer;
  - (ii) 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
  - (iii) charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 2 per cent per annum above HSBC Bank base rate in force 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).

### **Reservation of Title**

- 6 (A) Notwithstanding delivery, the goods sold shall remain the absolute property of the seller until payment of all amounts invoiced by the seller to the buyer and outstanding from time to time or until the goods are re-sold by the buyer, whichever is the earlier.
- (B) The buyer has power to sell the goods to independent third parties in arms-length sales in the ordinary course of business even though, pursuant to clause 7.1, the property has not passed to the buyer. Any such sale shall be by the buyer as principal (as between the buyer and the third party) but as agent as between the buyer and the seller.
- (C) Where the buyer uses the goods in the manufacture of, or to form part of, other products, the absolute property in such products shall pass to the seller from the time when the goods are so used until payment of all amounts invoiced by the seller to the buyer and outstanding from time to time or until the products are sold by the buyer, whichever is the earlier.
- Until title passes the seller reserves the right, at any time after failure of the buyer to pay any of the amounts referred to in clause 7.1 on or by their due date, to deal with the goods in such manner as the seller in its absolute discretion thinks fit and for the purpose of repossessing the goods to enter upon the premises of the buyer with such transport as may be necessary and to repossess any goods or products to which it has title.
- (D) Until the seller has received payment for the full purchase price of the goods and for all other amounts due under any other contract between the buyer and the seller the buyer shall (a) hold all unsold goods or products as bailee for the seller and shall keep them separately marked, insured and identified as the seller's property and (b) hold any proceeds of sale thereof in a separate bank account and in a fiduciary capacity for the account of the seller.

## **Delivery**

- 7 (A) Delivery of the Goods shall be made by the Buyer (or the Buyer's carrier) 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 delivering the Goods to that place.
- (B) 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.
- (C) The Seller reserves the right to deliver up to 10 per cent more or 10 per cent less than the quantity ordered provided that the price shall be adjusted pro rata for any such excess or shortfall and the quantity so delivered shall be deemed to be the quantity ordered.
- (D) Subject to 6 (C) above, the Buyer shall notify the Seller of any shortfall in the quantity of Goods delivered or (in the case of Goods delivered by the Seller) any loss or damage suffered by the Goods during carriage from the Seller's premises to the place of delivery, within 7 days of delivery. In such cases of shortfall, or loss or damage during transit, the Seller's liability shall be limited to the replacement, or the refunding to the Buyer the invoice value, of the Goods in question. The Seller shall have no liability for any shortfall in or loss or damage to the Goods suffered in transit, which is not so notified by the Buyer.
- (E) 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.
- (F) If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate deliver instructions at the time stated for delivery (otherwise 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:-
- (i) store the Goods (at the Buyer's risk) until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
  - (ii) 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.

## **Risk and property**

- 8 (A) Risk of damage to or loss of the Goods shall pass to the Buyer:-
- (i) 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
  - (ii) 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.
- (B) 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 the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- (C) 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.
- (D) 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.
- (E) 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 liability**

- 9 (A) Subject to the conditions set out below the Seller warrants that the Goods
- (i) 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;
  - (ii) will at the time of delivery be fit for the specific purpose made known in writing by the Buyer to the Seller prior to the date of the Contract, provided that the Buyer has at the same time provided the Seller with full details and specifications of the specific uses intended by the Buyer and of any equipment in which the Goods will be utilised.
- (B) The above warranty is given by the Seller subject to the following conditions:-
- (i) 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;
  - (ii) 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;
  - (iii) 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;

- (iv) the above warranty does not extend to Goods, 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.
- (C) Subject as expressly provided in these Conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- (D) Where any valid claim is made in respect of any of the Goods for breach of the warranty contained in Condition 8 (A) above, or for defects in quality or condition of the Goods, the Seller's liability shall be limited to the value of goods ordered by the Buyer from the Seller during the 3 calendar months preceding the date of the invoice for the Goods.
- (E) 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 agent 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.
- (F) 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:-
- (i) Act of God, explosion, flood, tempest, fire or accident;
  - (ii) war or threat of war, sabotage, insurrection, civil disturbance or requisition;
  - (iii) acts, restrictions, regulations, bye-laws, prohibitions or measures of any Monarch on the part of any governmental parliamentary or local authority;
  - (iv) import or export regulations or embargoes;
  - (v) strikes, locks-out or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
  - (vi) difficulties in obtaining raw materials, labour, fuel, parts or machinery;
  - (vii) power failure or breakdown in machinery.

### **Indemnity**

- 10 The Buyer hereby indemnifies the Seller and undertakes to keep the Seller indemnified against all costs, charges, liabilities or expenses, including legal costs reasonably incurred by the Seller in exercising any of its rights contained in these conditions or making any claim against the Buyer in the event that the Buyer fails to pay any sums due to the Seller under the terms of the Contract on their due dates.

### **Insolvency of Buyer**

- 11 (A) This clause applies if :-
- (i) 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 purpose of amalgamation or reconstruction); or
  - (ii) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
  - (iii) the Buyer ceases, or threatens to cease, to carry on business; or
  - (iv) 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.
- (B) 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.

### **Export terms**

- 12 (A) In these Conditions ' Incoterms' means the international rules for 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 these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- (B) Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 11 shall (subject to any special terms agreed in Writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.
- (C) 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.
- (D) Unless otherwise agreed in Writing between the Buyer and the Seller, the Goods shall be delivered f.o.b. the air or sea port of shipment and the Seller shall be under no obligation to give notice under section 32 (3) of the Sale of Goods Act 1979.
- (E) 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 any damage during transit.
- (F) 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 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 at sight to the order of the Seller at such branch of HSBC Bank in England as may be specified in the bill of exchange.

(G) The Buyer undertakes not to offer the Goods for resale in any country notified by the Seller to the Buyer at or before the time the Buyer's order is placed, or to sell the Goods to any person if the Buyer knows or has reason to believe that that person intends to resell the Goods in any such country.

#### **General**

13 (A) The Seller is a member of the group of companies whose holding company is Solid State Supplies Plc. The Seller may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other company shall be deemed to be the act or omission of the Seller.

(B) 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 giving the notice.

(C) 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.

(D) 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 provisions in question shall not be affected thereby.

(E) Any dispute arising under or in connection with these Conditions or the sale of the Goods shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Law Society.

(F) The Contract shall be governed but the laws of England and the Seller and the Buyer hereby submit themselves to the non-exclusive jurisdiction of the Courts of England and Wales.