

TERMS AND CONDITIONS OF SALE OF GOODS

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

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

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Charges: the charges payable by the Buyer for the Goods as specified in the Order Confirmation.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 11.4.

Contract: the contract between the Seller and the Buyer for the sale and purchase of the Goods in accordance with these Conditions, the Order Confirmation and any applicable Specification.

Buyer: the person or firm who purchases the Goods from the Seller as set out in the Order Confirmation.

Delivery Location: has the meaning given in clause 4.2.

Force Majeure Event: an event, circumstance or cause beyond a party's reasonable control.

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

Order: the Buyer's order for the Goods.

Order Confirmation: the document or email or other communication issued by the Seller to the Buyer that sets out the key commercial terms for the supply of Goods from the Seller to the Buyer. For the avoidance of doubt, the Order Confirmation forms part of the Contract.

Request for Quotation (RfQ): the Buyer's request for the Seller to provide a quotation for the supply of Goods made either in writing, over the telephone or otherwise communicated by the Buyer to the Seller.

Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Buyer and the Seller.

Seller: Lamotte Europe Limited incorporated and registered in England and Wales with company number 08364850 whose registered office is at Highdown House, 11 Highdown Road, Leamington Spa, CV31 1XT.

Warranty Period: has the meaning given in clause 5.1.

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** excludes fax and email.

2. Basis of contract

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

2.2 Each Contract shall be agreed in the following manner:

- (a) from time to time the Buyer may submit an RfQ to the Seller. The Buyer shall, as part of such RfQ, provide the Seller with as much information as the Seller reasonably requests in order for the Seller to prepare a quotation for the Goods requested;
- (b) following receipt of the information requested from the Buyer, the Seller shall, as soon as reasonably practicable, either:
 - (i) inform the Buyer that it declines to provide the requested goods; or
 - (ii) provide the Buyer with a quotation;
- (c) if the Seller provides the Buyer with a quotation pursuant to clause (b)(i), the Seller and the Buyer shall, where required, discuss and agree the commercial terms of such quotation;

- (d) any quotation provided by the Seller shall not constitute an offer, and is only valid for a period of seven (7) days from its date of issue;
- (e) once the quotation has been agreed, the Buyer may issue an Order for the Goods to the Seller (which constitutes an offer by the Buyer to purchase Goods from the Seller subject to these Conditions and the agreed terms of the quotation); and
- (f) the Buyer's Order shall only be deemed to be accepted when the Seller issues an Order Confirmation in response to the Buyer's Order, at which point and on which date the Contract shall come into existence between the parties.

2.3 The Buyer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.4 Any samples, drawings or advertising produced by the Seller are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

3. Goods

3.1 The Goods are described on the Seller's website and in the Specification.

3.2 The Seller reserves the right to amend the Order Confirmation or the Specification if required by any applicable statutory or regulatory requirement, and the Seller shall notify the Buyer in any such event.

4. Delivery

4.1 The Seller shall ensure that each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

4.2 The Seller shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Seller notifies the Buyer that the Goods are ready.

4.3 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.

4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Seller shall not be liable for any delay in delivery of the Goods

that is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 4.5 If the Seller fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the Charges that would have been payable for the Goods. The Seller shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If the Buyer fails to accept delivery of the Goods within three Business Days of the Seller notifying the Buyer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Seller's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Seller notified the Buyer that the Goods were ready; and
 - (b) the Seller shall store the Goods until actual delivery takes place, and charge the Buyer for all related costs and expenses (including insurance).
- 4.7 If ten Business Days after the day on which the Seller notified the Buyer that the Goods were ready for delivery the Buyer has not accepted actual delivery of them, the Seller may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Buyer for any shortfall below the price of the Goods.
- 4.8 The Seller may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

5. **Quality**

- 5.1 The Seller warrants that on delivery, and for a period of 12 months from the date of delivery (**Warranty Period**), the Goods shall:
- (a) conform with their description and any applicable Specification;
 - (b) be free from material defects in design, material and workmanship; and
 - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

- 5.2 The Warranty Period in clause 5.1 shall be extended for a further 12 month period to a total of 24 months in respect of electrical Goods where specified in the Order Confirmation.
- 5.3 Subject to clause 5.4, if:
- (a) the Buyer gives notice in writing to the Seller during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1 or clause 5.2 (as applicable);
 - (b) the Seller is given a reasonable opportunity of examining such Goods; and
 - (c) the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Seller's cost.

the Seller shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

- 5.4 The Seller shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 or clause 5.2 (as applicable) if:
- (a) the Buyer makes any further use of such Goods after giving notice in accordance with clause 5.3;
 - (b) the defect arises because the Buyer failed to follow the Seller's oral or written instructions 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 Seller following any drawing, design or specification supplied by the Buyer;
 - (d) the Buyer alters or repairs such Goods without the written consent of the Seller;
 - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - (f) the Goods differ from their description and any applicable Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.5 Except as provided in this clause 5, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 5.1 or clause 5.2 (as applicable).
- 5.6 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.

5.7 These Conditions shall apply to any repaired or replacement Goods supplied by the Seller.

6. Title and risk

6.1 The risk in the Goods shall pass to the Buyer on completion of delivery.

6.2 Title to the Goods shall not pass to the Buyer until the earlier of:

- (a) the Seller receives payment in full (in cash or cleared funds) for the Goods; and
- (b) the Buyer resells the Goods, in which case title to the Goods shall pass to the Buyer at the time specified in clause 6.4.

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

- (a) store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller'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 Seller immediately if it becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d); and
- (e) give the Seller such information as the Seller may reasonably require from time to time relating to:
 - (i) the Goods; and
 - (ii) the ongoing financial position of the Buyer.

6.4 Subject to clause 6.5, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Seller receives payment for the Goods. However, if the Buyer resells the Goods before that time the Goods shall pass from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs.

6.5 At any time before title to the Goods passes to the Buyer, the Seller may:

- (a) by notice in writing, terminate the Buyer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and
- (b) require the Buyer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and 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. Price and payment

- 7.1 The Charges for the Goods shall be as set out in the Order Confirmation.
- 7.2 The Seller may, by giving reasonable notice to the Buyer at any time before delivery, increase the Charges for the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond the Seller's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - (c) any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions.
- 7.3 The Charges for the Goods:
- (a) Shall be as set out in the Order Confirmation or as otherwise confirmed by the Seller to the Buyer at the time of the Order;
 - (b) excludes amounts in respect of value added tax (**VAT**), which the Buyer shall additionally be liable to pay to the Seller at the prevailing rate, subject to the receipt of a valid VAT invoice; and
 - (c) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Buyer.

The Seller shall invoice the Buyer for the Goods specified in the Order Confirmation upon issue of the Order Confirmation.

Charges for the Goods must be paid upon receipt of the invoice in full and clear funds to a bank account nominated in writing by the Seller, unless the Buyer makes payment for the Goods in accordance with any credit terms agreed by the Seller and confirmed in writing to the Buyer.

Time for payment shall be of the essence of the Contract.

- 7.4 If the Buyer fails to make a payment due to the Seller under the Contract by the due date, then, without limiting the Seller's remedies under clause 9, the Buyer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.4 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

7.5 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8. Limitation of liability

8.1 References to liability in this clause 8 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

8.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979.

8.3 Subject to clause 8.2, the Seller's total liability to the Buyer shall not exceed the Charges paid or payable by the Buyer under the Contract.

8.4 Subject to clause 8.2, the following types of loss are wholly excluded:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

8.5 This clause 8 shall survive termination of the Contract.

9. Termination

9.1 Without limiting its other rights or remedies, the Seller may terminate this Contract with immediate effect by giving written notice to the Buyer if:

- (a) the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
- (b) the Buyer 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), obtaining a moratorium, 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;

- (c) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the Buyer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

9.2 Without limiting its other rights or remedies, the Seller may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d), or the Seller reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.

9.3 Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.

9.4 On termination of the Contract for any reason the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Seller shall submit an invoice, which shall be payable by the Buyer immediately on receipt.

9.5 Termination of the Contract, however arising, 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 the Contract which existed at or before the date of termination.

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

10. Force majeure

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from a Force Majeure Event. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for one (1) month, the party not affected may terminate the Contract by giving one (1) week's written notice to the affected party.

11. General

11.1 Assignment and other dealings.

- (a) The Seller may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Buyer may not assign, transfer, mortgage, charge, subcontract, delegate, 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 Seller.

11.2 Confidentiality.

- (a) Each party undertakes that it shall not [at any time OR at any time during the Contract and for a period of [two] years after termination [or expiry] of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.2; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

11.3 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

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

11.5 Waiver.

- (a) A waiver of any right or remedy is only effective if given in writing.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

11.6 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 11.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

11.7 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by email to the address (or an address substituted in writing by the party to be served) as set out in the Order.
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) 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; or
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

11.8 Third party rights. The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

11.9 Governing law. The 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.

11.10 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 the Contract or its subject matter or formation.

LAMOTTE EUROPE LTD