



TERMS AND CONDITIONS OF THE SALE OF GOODS

1 DEFINITION

- 1.1 **"Buyer"** means the person who buys or agrees to buy the Goods from the Seller.
- 1.2 **"Conditions"** means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller or its duly authorised employee.
- 1.3 **"Contract"** means the contract for the purchase and sale of the Goods.
- 1.4 **"Goods"** means the articles (including any instalment or any parts of them) which the Buyer agrees to buy from the Seller.
- 1.5 **"Force Majeure"** means any cause whatsoever that is beyond the Seller's control including but not limited to an act of God, war, civil disturbance, terrorism, requisitioning, governmental or parliamentary restrictions, prohibitions or enactments of any kind, import or export regulations, strike lock-out or trade dispute (whether involving its own employees or those of any other person), difficulties in obtaining workmen or materials, breakdown of machinery, fire or accident.
- 1.6 **"Intellectual Property Rights"** means all and any industrial and intellectual property rights including, without limitation, any copyright, patent, registered design, design right, or trademark (whether registered or unregistered).
- 1.7 **"Order"** means the Buyer's order for the Goods.
- 1.8 **"Manufacturer"** means the manufacturer engaged by the Seller from time to time to produce the Goods.
- 1.9 **"Quotation"** means the Seller's written quotation for the supply of the Goods to the Buyer.
- 1.10 **"Price"** means the price for the Goods excluding carriage, packing, insurance and VAT.
- 1.11 **"Seller"** means JWF Process Solutions Ltd (company number SC038002)

2 BASIS OF SALE

- 2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any Quotation which is accepted by the Buyer or any Order which is accepted by the Seller, subject in either case to these Conditions, which shall govern all Contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all and any other terms and conditions including (without limitation) any terms or conditions which the Buyer may purport to apply under any acceptance of a Quotation or under any Order or similar document.
- 2.2 All Orders shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.
- 2.3 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller and no other action on the part of the Seller (whether delivery of the Goods or otherwise) shall be construed as an acceptance of any other conditions.
- 2.5 These Conditions (as modified in accordance with Condition 2.4) embody the entire understanding of the parties and supersede any prior promises, representations, undertakings or implications.
- 2.6 The Seller's engineers are authorised to agree Prices with the Buyer in writing. Otherwise, the Seller's employees and agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. The Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

3 ORDERS AND CANCELLATION

- 3.1 No Order shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller. If the Seller agrees to enter into any verbal Contract with the Buyer, such Contract will, in any event, be subject to these Conditions in accordance with Condition 2.1.
- 3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any Order (including any applicable specification), 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 Buyer may cancel any Order before acceptance by the Seller or within 24 hours after the Seller's acceptance by giving written notice to the Seller. Otherwise, no Order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller (at its sole discretion) and on condition that the Buyer shall indemnify the Seller in full against all loss, costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.
- 3.4 The Seller reserves the right to cancel any Contract at any time before delivery by notice to the Buyer. The Seller shall have no liability to the Buyer in the event of any such cancellation save to refund any deposit already paid.

4 THE PRICE AND PAYMENT

- 4.1 The Price shall be the price detailed in the Quotation or such other sum as shall have been agreed in writing between the parties. All Quotations are valid for the period specified in the Quotation only or until earlier acceptance by the Buyer. The Price is exclusive of VAT which shall be due at the rate ruling on the date of the Seller's invoice.

- 4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of any Goods to reflect any increases in cost to the Seller due to:
 - 4.2.1 any factor beyond the Seller's control including, but not limited to foreign exchange fluctuations; increases in taxes and duties; increases in labour, materials and other manufacturing costs.
 - 4.2.2 any request by the Buyer to change the delivery date(s), quantities of Goods ordered, or the specification of the Goods ordered.
 - 4.2.3 any delay caused by any instructions of the Buyer or failure of the Buyer to provide the Seller with accurate or timely information or instruction on request.
- 4.3 The Seller reserves the right to require payment of its invoice for either part or full payment (as determined by the Seller in its sole discretion) before commencing work on any Contract.
- 4.4 Unless stated in writing by the Seller to the contrary, Prices stated do not include packing, insurance and delivery which will be charged extra.
- 4.5 Payment of the Price and VAT shall be due within 30 days of the date of the Seller's invoice.
- 4.6 If the Buyer fails to make a payment due to the Seller under the Contract by the due date, then interest on overdue invoices shall accrue from the date when payment comes due from day to day until the date of payment at a rate of 4% above Bank of England base rate from time to time in force and shall accrue at such rate after as well as before any judgment.
- 4.7 Where any sum owed by the Buyer to the Seller under this or any other contract is overdue, or if at any time the credit standing of the Buyer has in the opinion of the Seller been impaired for any other reason, the Seller may withhold any deliveries of Goods due to be made under this Contract until arrangements as to payment or credit have been established which are satisfactory to the Seller.

5 THE GOODS

- 5.1 The quantity, quality and description of and any specification for the Goods shall be as set out in the Quotation (if any) or the Order (if accepted by the Seller) and, in either case, in any of the Seller's accompanying engineering data sheets or otherwise as agreed in writing by the Seller.
- 5.2 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 claims, proceedings, loss, damages, costs and expenses awarded against or incurred by the Seller in complying with the Buyer's specification.
- 5.3 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or which do not materially affect their quality or performance.
- 5.4 To the extent that the Goods are to be manufactured in accordance with a specification supplied by the Buyer, the Buyer shall indemnify the Seller 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 reasonable professional costs and expenses) suffered or incurred by the Seller in connection with any claim made against the Seller for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Seller's use of the specification. This Condition 5.4 shall survive termination of these Conditions.

6 DELIVERY

- 6.1 Unless otherwise stated in our Quotation or our Order acknowledgement, delivery shall be arranged under the Delivered at Place (DAP) INCOTERM 2020.
- 6.2 Short delivery or damage in transit requires to be notified to the Seller within 48 hours of delivery. This requirement does not affect potential specification or warranty claims.
- 6.3 Any delivery times specified by the Seller are business estimates only and time shall not be of the essence for delivery of the Goods. Once an Order is placed, a more precise delivery time will be provided. The Seller will not be liable to the Buyer for any loss or damage sustained by the Buyer as a result of the Seller's failure to comply with such delivery times.
- 6.4 The Seller shall be entitled to store the Goods (or any of them) at its own premises or elsewhere, at the Buyer's expense if:
 - 6.4.1 where the Goods are to be collected from the Seller's premises, the Buyer fails to take delivery at the specified time; or
 - 6.4.2 where the Goods are to be delivered by the Seller's transport, either the Seller is unable to despatch the Goods by reason of any act or omission on the part of the Buyer or the Seller has despatched the Goods but the Buyer fails to take delivery.
- 6.5 The expenses that the Seller may reclaim from the Buyer include all reasonable costs incurred by the Seller (whether by way of storage, insurance or otherwise) in respect of the Goods and it is expressly declared that it shall be reasonable for the Seller to effect insurance in respect of the Goods notwithstanding that the risk in them has passed to the Buyer.

7 TITLE AND RISK

- 7.1 The Goods shall be at the Buyer's risk as from delivery in accordance with Condition 6.1 or from such time as delivery would have been so effected had the Buyer duly taken delivery or collected the Goods.
- 7.2 In spite of delivery having been made and/or risk in the Goods passing to the Buyer and/or any other provision of these Conditions, title in the Goods shall not pass from the Seller until:
 - 7.2.1 the Buyer shall have paid the Price plus VAT in full and cleared funds to the Seller; and
 - 7.2.2 no other sums whatever shall be due from the Buyer to the Seller under this

or any other contract.

- 7.3 Until title in the Goods passes to the Buyer in accordance with Condition 7.2, the Buyer shall hold the Goods and each of them on a fiduciary basis on behalf of the Seller. The Buyer shall properly store the Goods (at no cost to the Seller) separately from all other goods in its possession and protect, insure and mark the Goods in such a way that they are clearly identified as the Seller's property.
- 7.4 Notwithstanding that the Goods (or any of them) remain the property of the Seller, the Buyer may sell or use the Goods in the ordinary course of the Buyer's business. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until title in the Goods passes from the Seller, the proportion of the proceeds of sale or otherwise of the Goods equivalent to the sums due to the Seller shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Seller's money.

- 7.5 The Seller shall be entitled to recover the Price (plus VAT and any other sums due) notwithstanding that title in any of the Goods has not passed from the Seller.
- 7.6 Until such time as title in the Goods passes from the Seller, the Buyer shall upon request deliver up to the Seller such of the Goods as remain in their control or on their premises. If the Buyer fails to do so forthwith, the Seller may enter upon any premises owned, occupied or controlled by the Buyer or any third party where the Goods are situated and repossess the Goods. On the making of such request the rights of the Buyer under Condition 7.4 shall cease.
- 7.7 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so all sums whatever owing by the Buyer to the Seller (without prejudice to any other right or remedy of the Seller) shall forthwith become due and payable.
- 7.8 The Buyer shall insure and keep insured the Goods to the full Price against all risks to the reasonable satisfaction of the Seller until title in the Goods passes from the Seller, and shall whenever requested by the Seller produce a copy of the policy of insurance. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

8 QUALITY

- 8.1 The Seller engages the Manufacturer to manufacture the Goods.
- 8.2 The Buyer shall be entitled to the benefit of any warranty or guarantee given by the Manufacturer to the Seller in respect of the following (if transferable):
- 8.2.1 that the Goods will at the time of delivery correspond to the description given by the Seller / Manufacturer.
- 8.2.2 that all Goods are guaranteed against defects in workmanship and material for twelve (12) months from date of delivery or the date on which the Buyer is informed that goods are ready for delivery, whichever is the earlier.
- 8.3 The above warranty and guarantee are conditional upon:
- 8.3.1 the Goods having been used in accordance with installation, operating and maintenance instructions;
- 8.3.2 no modification or repair work having been carried out on the Goods by the Buyer or any other party;
- 8.3.3 the Buyer giving written notice to the Seller of the alleged defects in the Goods within ten days of the time when the Buyer discovers or ought to have discovered the defects and, in any event, within one year in relation to the warranty and the guarantee period; and
- 8.3.4 the Buyer making no further use of the Goods that are alleged to be defective after the time at which the Buyer discovers or ought to have discovered that they are defective.
- 8.4 In the event of a valid claim under the above warranty or guarantee, the Seller will, at its option, repair or replace the relevant Goods or take back the relevant Goods and refund the appropriate part of the Price provided, in each case, that the relevant Goods are returned carriage paid and securely packed to the Seller's premises. If, at the Buyer's request, the Seller undertakes to repair any Goods on site or to investigate any suspected fault the Seller reserves the right to charge for the time and expense of the personnel involved.
- 8.5 Subject to Condition 8.2, the performance of any one of the above options shall constitute an entire discharge of the Seller's liability under the above warranty and guarantee.

9 LIMITATION OF LIABILITY

- 9.1 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977 or the Unfair Terms in Consumer Contracts Regulations 1999), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law. Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.
- 9.2 Nothing in this Contract or these Conditions shall exclude or limit in any way the Seller's liability for death or personal injury caused by its fault or negligence or the fault or negligence of its employees, agents or contractors and which liability shall be unlimited.

- 9.3 Subject to Condition 9.2, the Seller's liability to the Buyer, whether under the warranty, guarantee, for breach of contract, negligence / delict, breach of statutory duty or otherwise shall in no event exceed the total Price of the relevant Contract.
- 9.4 Subject to Condition 9.2, the Seller shall in no event be liable to the Buyer for any indirect, consequential or special loss or damage including, without limitation, any loss of profits, business, business opportunity or goodwill.

10 REMEDIES OF BUYER

- 10.1 Where the Buyer rejects any Goods then the Buyer shall have no further rights whatever in respect of the supply to the Buyer of such Goods or the failure by the Seller to supply Goods which conform to the Contract.
- 10.2 Where the Buyer accepts or has been deemed to have accepted any Goods then the Seller shall have no liability whatever to the Buyer in respect of those Goods, save for the guarantee at Condition 8.2.
- 10.3 The Seller shall not be liable to the Buyer for late delivery or short delivery of the Goods save to make good any short delivery agreed by the Seller.

11 INSOLVENCY OF BUYER

- 11.1 This Condition applies if:
- 11.1.1 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 a bona fide amalgamation or reconstruction); or
- 11.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- 11.1.3 the Buyer ceases, or threatens to cease, to carry on business; or 11.1.4 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.
- 11.2 If this Condition applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

12 HEALTH AND SAFETY INDEMNITY

The Buyer will on or before delivery of the Goods, if so requested by the Seller, enter into a written undertaking to take such steps as may be specified to the Buyer by the Seller, and set out in such undertaking relating to the safe and proper use of the Goods without risk to health. The Buyer shall indemnify the Seller in respect of any liability, monetary penalty, or fine in respect of, or in connection with, the Goods incurred by the Seller under the Health and Safety at Work Act 1974 or any regulations, orders or directions made thereunder.

13 FORCE MAJEURE

The Seller shall not be liable for any loss or damage caused by delay in the performance or non-performance of any of its obligations hereunder where the same is occasioned by any cause of Force Majeure. Should any such event occur the Seller may cancel or suspend this Contract without incurring any liability for any loss or damage thereby occasioned.

14 GENERAL

- 14.1 The Seller is a member of the group of companies whose holding company is JWF Group Holdings Ltd, and accordingly 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 member shall be deemed to be the act or omission of the Seller.
- 14.2 A person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 14.3 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.
- 14.4 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 14.5 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.

15 LAW OF CONTRACT AND JURISDICTION

This Contract is subject to Scots Law and the courts of Scotland shall have the exclusive jurisdiction to resolve any disputes arising.