

## Terms and Conditions of Sale - Cirteq Limited

### 1 Interpretation

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

<b>Conditions</b>	- these terms and conditions
<b>Customer</b>	- the person or firm who purchases the Goods from the Supplier.
<b>Contract</b>	- the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.
<b>Goods</b>	- any goods (including any part or parts of them) set out in the Order.
<b>Order</b>	- the Customer's order for the Goods, as set out in the Customer's purchase order form
<b>Supplier</b>	- Cirteq Limited, Hayfield Colne Road, Glusburn, Keighley, BD20 8QP a registered company in England and Wales under company number 03062174.

### 2 Construction

2.1 In these Conditions, the following rules apply:

2.1.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

2.1.2 A reference to a party includes its personal representatives, successors or permitted assigns.

2.2 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted.

2.3 A reference to writing or written includes faxes and e-mails.

### 3 Application Of Terms

3.1 Subject to any variation under condition 3.5, these conditions are the only conditions upon which the Supplier is prepared to deal with the Customer and they shall govern the Contract to the entire exclusion of all other terms or conditions which the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3.2 Each Order for Goods by the Customer from the Supplier shall be deemed to be an offer by the Customer to purchase the Goods subject to these conditions. The Customer shall ensure that the terms of the Order and any relevant specification are complete and accurate.

3.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.

3.4 No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Customer waives any right which it otherwise might have to rely on such terms and conditions.

3.5 The Contract constitutes the entire agreement between the parties and any variation to these conditions shall have no effect unless expressly agreed in writing and signed by a director of the Supplier.

3.6 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 30 business days from its date of issue.

### 4 Order Process

4.1 When the Customer wishes to place an order for Goods, it shall send an Order form to the Supplier.

4.2 An Order shall be treated as an offer by the Customer to contract with the Supplier, but shall not be binding on the Customer until accepted by the Supplier in accordance with clause 3.3. The Supplier may, at its sole discretion, accept amendments to an Order after acceptance in writing

4.3 The Supplier shall apply an order reference to each Order received from the Customer and inform the Customer of the order reference as soon as reasonably practicable. Each party shall use the order reference to identify each Order from the time at which the order reference is known to it.

4.4 The Supplier shall, at its discretion, accept the Order using an Order confirmation and such Order confirmation shall be treated as acceptance of the Customer's Order.

4.5 The Supplier shall arrange delivery of the Goods in accordance with the Customer's instructions on the Order form and the provisions of this agreement, provided that the Customer shall be liable to pay for all expenses incurred by the Supplier in complying with such instructions. Such expenses shall be included on the invoice for the relevant Goods.

4.6 If the Customer cancels the Order within 60 days of any agreed delivery date the Supplier may, at its absolute discretion, charge the Customer, as compensation for costs incurred by the Supplier:

4.6.1 a sum equal to 30% of the agreed purchase price of the Goods; or

4.6.2 in the case of bespoke Goods, the agreed purchase price of the Goods in full.

## 5 Delivery

5.1 The Supplier shall ensure that:

- 5.1.1 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable) and, special storage instructions (if any); and
  - 5.1.2 if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Such returns of packaging materials shall be at the Supplier's expense.
- 5.2 The Supplier 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 Supplier notifies the Customer that the Goods are ready.
- 5.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 5.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.5 If the Supplier fails to deliver the Goods on a specified date or a reasonable time where no delivery date is specified, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- 5.6 If the Customer fails to accept delivery of the Goods within 3 business days of the Supplier notifying the Customer that the Goods are ready, then the following terms will apply, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:
- 5.6.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third business day following the day on which the Supplier notified the Customer that the Goods were ready; and
  - 5.6.2 the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 5.7 If after 10 business days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage insurance and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall between the amount obtained for the Goods and the price of the Goods to have been paid by the Customer.
- 5.8 The Customer shall not be entitled to reject the Goods if the Supplier delivers a quantity that is between 90% and 110% of the quantity of Goods actually ordered, but a pro rata adjustment shall be made to the invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- 5.9 The Supplier may at its election 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 Customer to cancel any other instalment.
- 5.10 Where the Supplier and Customer agrees in writing to make delivery by instalments a key term of the Contract it shall be construed as a single contract in respect of each instalment. Nevertheless failure by the Supplier to deliver any one instalment shall entitle the Customer at its option to treat the whole Contract as repudiated.

## 6 Import and Export Licences

- 6.1 The Customer is responsible for obtaining, at its own cost, such import licences and other consents in relation to the Goods as are required from time to time and, if required by the Supplier, the Customer shall make those licences and consents available to the Supplier prior to the relevant shipment.
- 6.2 Any tax, duty, custom, import or other fee of any nature shall be paid by the Customer to the relevant authority in addition to the price quoted or invoiced.

## 7 Quality and Defect

7.1 The Supplier warrants to the extent that it is reasonably able that on delivery the Goods shall:

- 7.1.1 conform in all material respects with their description;
- 7.1.2 be free from material defects in design, material and workmanship; and
- 7.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- 7.1.4 be fit for any purpose expressly communicated in writing by the Supplier.

7.2 Subject to clause 7.3, if:

- 7.2.1 the Customer gives notice in writing to the Supplier within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 7.1; and
- 7.2.2 the Supplier is given a reasonable opportunity of examining such Goods; and
- 7.2.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost,
- 7.2.4 the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

- 7.3 The Supplier shall not be liable for Goods' failure to comply with the warranty set out in clause 7.1 if:
- 7.3.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 7.2; or
  - 7.3.2 the defect arises because the Customer failed to follow the Supplier'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; or
  - 7.3.3 the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer; or
  - 7.3.4 the Customer alters or repairs such Goods without the written consent of the Supplier; or
  - 7.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.
- 7.4 Except as provided clause 14.1, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 7.1.
- 7.5 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 7.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 7.7 The Goods are not intended for use in aviation, aerospace and radiation segments.

## 8 Risk and Title

- 8.1 The risk in the Goods shall pass to the Customer on completion of Delivery.
- 8.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:
- 8.2.1 the Goods; and
  - 8.2.2 any other goods or services that the Supplier has supplied to the Customer in respect of which payment has become due.
- 8.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 8.3.1 hold the Goods on a fiduciary basis as the Supplier's bailee;
  - 8.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
  - 8.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 8.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - 8.3.5 notify the Supplier immediately if it becomes subject to any of the events listed in clause 10; and
  - 8.3.6 give the Supplier such information relating to the Goods as the Supplier may in writing require from time to time.
- 8.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 10, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 8.5 In the event that the Supplier is required to enter any premises of the Customer or of any third party in exercise of its right of recovery of the Goods under clause 8.4, the Customer shall within [14] days of such action being taken, pay to the Supplier, as compensation for any expenses incurred by the Supplier, a sum equal to 30% of the price of the Goods recovered.
- 8.6 In the event that any Goods are delivered up by the Customer to the Supplier or otherwise recovered by the Supplier in exercise of its right under clause 8.4, and where such goods are in the reasonable opinion of the Supplier, no longer sellable to another customer, the Customer shall reimburse the Supplier the full price of the Goods as set out in the Order, in addition to any other amounts that may be payable under this clause 8. Further notwithstanding the payment of compensation under this condition the Supplier shall be under no further obligation to supply the Goods to the Customer.

## 9 Price and Payment

- 9.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.
- 9.2 The Supplier may at its discretion, by giving notice to the Customer at any time up to 7 business days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- 9.2.1 any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - 9.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or
  - 9.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 9.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be paid by the Customer when it pays for the Goods.
- 9.4 The price of the Goods is exclusive of amounts in respect of value added tax ("VAT"). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

- 9.5** The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 9.6** The invoice shall be due on presentation and in any event be paid in full and in cleared funds within 20 business days of the date of the invoice failing which the Supplier shall in addition to its remedies in these conditions serve a statutory demand for payment. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.
- 9.7** Without prejudice to any other right or remedy, the Supplier reserves the right to set off any amount owing at any time from the Customer to the Supplier against any amount payable by the Customer to the Supplier under the Contract.
- 9.8** If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment ("due date"), then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclay's Bank Plc base lending rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 9.9** The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 9.10** The provisions of this clause 9 shall be dependant upon the Supplier obtaining and maintaining an approved credit limit for the Customer from the Supplier's credit insurer. In the event that the credit limit be refused or withdrawn at any time, any amounts due at that point to the Supplier shall become immediately payable and any further deliveries shall only be made if paid for by the Customer on placing the Order.

## **10 Customer's Insolvency**

- 10.1** If the Customer is unable to pay its debts as they fall due or the financial position of the Customer deteriorates to such an extent that in the opinion of the Supplier the capability of the Customer adequately to fulfil its obligations under the Contract has been placed in jeopardy, or the Supplier reasonably believes that the Customer is about to become subject to any insolvency procedures and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

## **11 Confidentiality**

- 11.1.1** Each party undertakes to the other to keep confidential all information (written or oral) concerning the business and affairs of the other which it has obtained or received as a result of this contract.

## **12 Intellectual Property Rights**

- 12.1** The Customer acknowledges that:
- 12.1.1** the Intellectual Property Rights are the Supplier's (or its licensor's) property;
  - 12.1.2** nothing in this agreement shall be construed as conferring any licence or granting any rights in favour of the Customer in relation to the Intellectual Property Rights. The Supplier asserts its full rights to control the use of its trade marks within the EEA and the Customer shall assist the Supplier as required in preventing parallel importers from diluting the Supplier's rights; and
  - 12.1.3** any reputation in any trade marks affixed or applied to the Goods shall accrue to the sole benefit of the Supplier or any other owner of the trade marks from time to time.
- 12.2** The Customer shall not repackage the Goods and/or remove any copyright notices, confidential or proprietary legends or identification from the Goods save for any removal which is a necessary result of a manufacturing process of which the Supplier has been previously notified in writing by the Customer.
- 12.3** The Customer shall not use (other than pursuant to this agreement) or seek to register any trade mark or trade name (including any company name) which is identical to, confusingly similar to or incorporates any trade mark or trade name which the Supplier claims rights in anywhere in the world.
- 12.4** If at any time it is alleged that the Goods infringe the rights of any third party or if, in the Supplier's reasonable opinion, such an allegation is likely to be made, the Supplier may at its option and its own cost:
- 12.4.1** modify or replace the Goods without reducing the overall performance of the Goods in order to avoid the infringement; or
  - 12.4.2** procure for the Customer the right to continue using the Goods; or
  - 12.4.3** repurchase the Goods at the price paid by the Customer, less depreciation at the rate the Supplier applies to its own equipment.
- 12.5** The Customer agrees (at the Supplier's request and expense) to do all such things as may be reasonably required to assist the Supplier in taking or resisting any proceedings in relation to any infringement.
- 12.6** The Supplier shall not be liable for infringements to the extent that they arise out of or in connection with modifications to the Goods made by anyone except the Supplier or its authorised representative, or out of use or combination of the Goods with products or third party materials not specified or expressly approved in advance in writing by the Supplier, or where the claim, proceeding or suit arises from the Supplier's adherence to the Customer's requested changes to the Specification or from infringing items of the Customer's origin, design or selection.

### 13 Returns Policy

13.1 Without prejudice to clause 4.6 or clause 7, the Customer may return Goods to the Supplier if:

13.1.1 such Goods are defective by virtue of their failure to comply with the warranty set out in clause 7.1; and

13.1.2 the Customer has notified the Supplier within 30 days of taking delivery of the Goods that it wishes to return the Goods; and

13.1.3 **the Supplier has, in its absolute discretion, provided written confirmation to the Customer that it will accept a return of the Goods.**

13.2 Where the Supplier has given written confirmation under clause 13.1.3:

13.2.1 the Customer shall return the Goods to the Supplier's place of business at the Customer's cost.; and

13.2.2 the Supplier shall, in the case of non-bespoke Goods, refund the price paid for the Goods, having deducted a sum equal to 30% of the price paid by the Customer for the Goods in consideration of the Supplier's handling costs.

13.3 For the avoidance of doubt, no refund will be made under this clause 13 in the case of bespoke Goods

### 14 Limitation of Liability

14.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

14.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

14.1.2 fraud or fraudulent misrepresentation; or

14.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or

14.1.4 defective products under the Consumer Protection Act 1987; or

14.1.5 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

14.2 Subject to clause 14.1:

14.2.1 the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or indirect or consequential loss arising under or in connection with the Contract (including any losses that may result from a deliberate breach of the Contract by the Supplier, its employees, agents or subcontractors); and

14.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, including losses caused by a deliberate breach of the Contract by the Supplier, its employees, agents or subcontractors shall not exceed the price of the Goods.

### 15 Force Majeure

15.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A "Force Majeure Event" means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

### 16 General

16.1 Assignment and subcontracting.

16.1.1 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

16.1.2 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.

### 17 Notices

17.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, commercial courier, fax or e-mail.

17.1.1 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 16.1; if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second business day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one business day after transmission.

17.1.2 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

**18 Severance**

18.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

18.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

**19 Waiver**

19.1 A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

**20 Third Party Rights**

20.1 A person who is not a party to the Contract shall not have any rights under or in connection with it.

**21 Variation**

21.1 Any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by a director of the Supplier.

**22 Governing Law and Jurisdiction**

22.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.