

Conditions of sale of goods

1. Interpretation

In these Conditions the following rules of interpretation and definitions apply

"Acknowledgement of Order" means the order acknowledgement provided by the Seller to the Purchaser pursuant to the Purchaser's acceptance of the Quotation and the submission of a Purchase Order by the Purchaser to the Seller.

"Contract" means the agreement between the Seller and the Purchaser (both as defined below) for the sale by the Seller and purchase by the Purchaser of the Products (as defined below) on the terms set out in the Seller's Acknowledgement of Order and these Conditions and any amendment, modification or variation of the aforementioned.

"Delivery Location" means the Seller's premises at which the Products are placed at the Purchaser's disposal for loading.

"Products" means the products described in the Seller's Acknowledgement of Order.

"Purchaser" means the person, firm, company, partnership, limited liability partnership or other legal entity which places a Purchase Order with the Seller.

"Purchase Order" means the order for the supply of Products placed by the Purchaser with the Seller and any amendment thereof and any specification or other items sent therewith or referred to therein.

"Quotation" means the quotation provided by the Seller to the Purchaser.

"Seller" means Osco Limited, a company registered in England and Wales with company registration number 03114420.

(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 or permitted assigns.

(c) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

(d) Any phrase introduced by the terms including, includes, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

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

(f) The headings in these Conditions are for the purpose of convenience only and shall not be deemed to be part thereof or to restrict or in any way affect the interpretation or construction of these Conditions.

2. Conditions

1 The Products are sold or supplied by the Seller to the Purchaser solely on these Conditions and the terms of the Acknowledgement of Order.

2 The Acknowledgement of Order and these Conditions constitute the entire agreement between the parties and supersede all previous promises, agreements, arrangements, assurances, warranties, representations and understandings (if any) whether written or oral.

3 Each party acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) whether oral or written, express or implied other than those contained and set out or expressly referred to in the Contract.

4 Any conditions or provisions in the Purchase Order or any other document which conflict with or modify or are in addition to the Acknowledgement of Order and these Conditions shall not apply to the supply by the Seller of the Products.

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

6 No amendment, modification or variation of the Acknowledgement of Order and these Conditions shall be binding on the Seller unless signed by a director with the requisite authority to bind the Seller.

3. Price

3.1 All quotations are for payment in accordance with Condition 6 unless otherwise stated, and are exclusive of Value Added Tax ("VAT") or any similar taxes, levies or duties.

3.2 Quotations are valid for thirty days after issue.

3.3 Notwithstanding Condition 3.2 the Seller reserves the right to increase its prices to take account of variations in labour, materials, currency exchange, import surcharge, excise duty, air and ocean freight charges or other costs before the date of delivery of the Products and the Purchaser shall pay any such increase in addition to the price in the Acknowledgement of Order.

3.4 The Contract is based on and incorporates any drawings and specifications indicated in the Acknowledgement of Order; any changes to applicable drawings, specifications or descriptions shall only be binding on the Seller if accepted by the Seller in writing and signed on behalf of the Seller by a director with the requisite authority to bind the Seller and in that event the Seller reserves the right to amend any price set out in the Acknowledgement of Order to take account of such changes.

3.5 All prices are "ex-works" of the Seller; if the Seller agrees to arrange freight or delivery of the Products on behalf of the Purchaser any duty and/or freight or delivery charges (and any applicable VAT or other charges thereon) will be charged by the Seller and paid by the Purchaser under the same terms of payment as apply to the Products under these Conditions.

3.6 Where delivery of the Products is made by instalments, payment shall become due in respect of each instalment and the Conditions shall apply thereto as if the same represented a separate Purchase Order.

4. Cancellation

4.1 The Seller shall be under no obligation to agree to the cancellation or suspension of any Acknowledgement of Order but if the Seller, at the Purchaser's request, agrees to such cancellation or suspension or part thereof, then without prejudice to any other rights the Seller may have:

(a) the Purchaser shall be liable to reimburse the Seller in full for any costs or expenses incurred by the Seller as a result of such cancellation or suspension within 2 working days of receipt of a statement from the Seller of the same;

(b) where cancellation charges apply in accordance with condition 4.1(a), the same shall not exceed the price of the item(s) cancelled;

(c) cancellation or suspension is effective only upon the Seller's acceptance in writing signed by a director with authority to bind the Seller (the effective date being the date of such acceptance) and any such acceptance is conditional upon payment by the Purchaser in accordance with condition 4.1(a) (time is of the essence in respect of such obligation of the Purchaser); and

(d) notwithstanding the date of such acceptance the Seller may continue processing the Products to the point (determined by the Seller in its sole discretion) at which the processing can be halted with the least inconvenience to the Seller.

5. Delivery

5.1 All deliveries shall be made "ex-works" of the Seller and completion of delivery shall take place when the Products are placed at the Purchaser's disposal at the Delivery Location (being the Seller's premises at which the Products are placed at the Purchaser's disposal for loading).

5.2 The Seller may make and the Purchaser shall accept partial deliveries of the Products as per the terms of the Acknowledgement of Order, each delivery shall be considered to be the subject of a separate Contract and failure to make any one delivery shall not vitiate the Contract as to others.

5.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.

5.4 Notwithstanding Condition 5.3 above the Seller shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure event as detailed in Condition 14 or for the Purchaser's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.

6. Payment

6.1 The purchase price is set out in the Acknowledgement of Order.

6.2 Payment of the purchase price for the Products together with VAT and any other tax due thereon shall be made no later than 30 days after the date of the Seller's invoice. The Seller may invoice the Purchaser on or at any time before or after the completion of delivery under these Conditions.

6.3 Notwithstanding Condition 6.2 above, the Seller reserves the right to require payment in full for the Products in a manner satisfactory in its discretion and prior to delivery of the Products.

6.4 Time shall be of the essence in respect of payment of the purchase price.

6.5 In the event the Purchaser fails to make any payment due under the Contract when due the Seller shall be entitled (without prejudice to any other rights it may have against the Purchaser):

(a) to charge interest on any overdue sum at the rate of two per cent (2%) per calendar month and interest shall accrue from day to day on the basis of a year of 365 days and shall be compounded quarterly in arrears;

(b) to notify the Purchaser that all amounts invoiced to the Purchaser for payment under this or any other contract with the Purchaser (but in respect of which such 30 day period shall not have expired) are due and payable forthwith;

(c) to suspend any or all further deliveries of any Products under this or any other contract with the Purchaser;

(d) to cancel or repudiate the Contract or any other contract with the Purchaser in whole or in part and to recover damages for breach of contract by the Purchaser; and/or

(e) to enter the Purchaser's premises by its servants or agents to recover the Products which are the subject of the relevant Contract.

6.6 The Purchaser shall not be entitled to withhold or set off, counterclaim, or deduct the whole or any part of the payment for the Products for any reason whatsoever (except for any deduction or withholding required by law). The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Purchaser against any amount payable by the Seller to the Purchaser.

7. Termination

7.1 If the Purchaser becomes subject to any of the events listed in Condition 7.2, the Seller may terminate the Contract and require payment of the whole of the purchase price then outstanding with immediate effect by giving written notice to the Purchaser.

7.2 For the purposes of Condition 7.1, the relevant events are:

(a) the Purchaser suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

(b) the Purchaser commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

(c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Purchaser, other than for the sole purpose of a scheme for a solvent amalgamation of the Purchaser with one or more other companies or the solvent reconstruction of the Purchaser;

(d) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Purchaser;

(e) (being a company) the holder of a qualifying floating charge over the Purchaser's assets has become entitled to appoint or has appointed an administrative receiver;

(f) a person becomes entitled to appoint a receiver over the Purchaser's assets or a receiver is appointed over the Purchaser's assets;

(g) (being an individual) the Purchaser is the subject of a bankruptcy petition or order;

(h) a creditor or encumbrancer of the Purchaser attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

(i) any event occurs, or proceeding is taken, with respect to the Purchaser in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Condition 7.2(a) to Condition 7.2(h) (inclusive);

(j) the Purchaser suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;

(k) the Purchaser's financial position deteriorates to such an extent that in the Seller's opinion the Purchaser's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and

(l) (being an individual) the Purchaser dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

7.3 Without limiting its other rights or remedies, the Seller may suspend provision of the Products under the Contract or any other contract between the Purchaser and the Seller if the Purchaser becomes subject to any of the events listed in Condition 7.2(a) to Condition 7.2(l) (inclusive), or the Seller reasonably believes that the Purchaser is about to become subject to any of them, or if the Purchaser fails to pay any amount due under this Contract on the due date for payment.

7.4 On termination of the Contract for any reason the Purchaser shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest.

7.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

7.6 Conditions which expressly or by implication survive termination of the Contract shall continue in full force and effect.

8. Passing of risk

8.1 The Products shall be at the sole risk of the Purchaser as soon as the Products are placed at the Purchaser's disposal at the Delivery Location (being the Seller's premises at which the Products are placed at the Purchaser's disposal for loading).

8.2 In the event that freight or delivery of any of the Products is arranged by the Seller pursuant to Condition 3.5, the Seller shall act as the agent of the Purchaser in making any such arrangements and the Purchaser undertakes to indemnify and hold harmless the Seller from and against any and all costs, claims, demands, damages, liabilities or expenses it may suffer or incur as a result thereof.

8.3 The Purchaser shall be responsible for making all necessary verifications of the Products on receipt and the making of all necessary claims to the relevant carriers or others within any applicable time limits.

8.4 Once the risk has passed to the Purchaser notwithstanding any other provision, such risk shall be incapable of being passed back to the Seller.

9. Title

9.1 Title to the Products shall not pass to the Purchaser until the whole of the purchase price has been paid and until any other monies owing by the Purchaser to the Seller under any other contract have been paid.

9.2 Until title to the Products passes to the Purchaser the Purchaser shall:

(a) store the Products separately from all other goods held by the Purchaser so that they remain readily identifiable as the Seller's property;

(b) not remove, deface or obscure any identifying mark or packaging relating to the Products;

(c) maintain the Products 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 Condition 7.2; and give the Seller such information relating to the Products as the Seller may require from time to time.

(e) In the event that any third party may seize or attempt or purport to seize the Products or any part thereof the Purchaser shall give notice thereof to the Seller immediately in writing within two working days.

9.3 Until the Seller has received the whole of the payments referred to in Condition 9.1 the relationship of the Purchaser to the Seller shall be fiduciary in respect of any proceeds of sale of the Products.

9.4 If the Products are sold by the Purchaser prior to the making of the whole of payments referred to in Condition 9.1:

(a) the Seller shall have the right to trace the proceeds of the sale of the Products; and

(b) the Purchaser shall in any event pay such proceeds of sale into a separate bank account denominated "Osco Limited Trust Account" and monies standing to the credit of such account shall be held on trust by the Purchaser;

(c) as to an amount equal to the payments referred to in Condition 9.1 for the Seller; and

(d) as to the balance after payment of such amount from such account for the Purchaser.

10. Liability

10.1 Nothing in the Contract shall exclude or restrict any legal liability of the Seller for death or personal injury resulting from the negligence of the Seller, its employees, agents or sub-contractors or exclude or restrict any of the Seller's legal obligations under Section 12 of the Sale of Goods Act 1979 and all other provisions of the Contract shall be construed subject to this Condition.

10.2 The Seller shall not be liable for:

(a) economic loss, which shall include, without limitation, loss of profits, reputation, goodwill, business use, use of interest, services of employee or agent, anticipated savings, expenses rendered futile by the breach and expenses caused by the breach;

(b) any other consequential or indirect loss or damage; or

(c) any claim made against the Purchaser by and other party, howsoever such loss, damage or claim was caused and howsoever arising, whether by reason of the Seller's negligence or otherwise, even if such loss damage or claim was, or ought reasonably to have been, in the parties' contemplation at the date of the Contract as being likely to occur.

10.3 The Seller's total liability to the Purchaser arising under or in connection with the Contract or Conditions, whether in contract or tort (including negligence), breach of statutory duty or otherwise shall in no circumstances exceed the total price paid for the Products.

11. Warranty

11.1 The Seller warrants the Products against material defects in design, workmanship or material which become apparent during the period of one month from the date of delivery of the Products to the Purchaser ("the Warranty Period").

11.2 The Seller's obligations under this warranty are limited to, at its option, repairing, replacing on an exchange basis or refunding the purchase price of any Products which are delivered with or develop such defects under normal and proper use or storage during the Warranty Period.

11.3 If the Purchaser becomes aware of a defect in the Products during the Warranty Period it shall promptly supply the Seller with written particulars of such defect and provide all necessary access and all information required to enable the Seller to ascertain or verify the nature and cause of the defect claimed and carry out its warranty obligations.

11.4 The warranty shall not apply, in the Seller's sole opinion:

(i) to any defect which results from normal wear and tear;

(ii) to any defect which is wholly or partially caused by any alteration or addition to the Products other than by the Seller;

(iii) by use of the Products in a manner considered to be improper or for purposes for which the Products were not designed;

(iv) by accident, neglect or events beyond the Seller's control occurring after physical delivery of the Products to the Purchaser; or

(v) if the Purchaser does not take the Seller's advice as to the best way to make the Products.

11.5 Where any defective Products are replaced on an exchange basis or repaired the provisions of this Condition shall also apply to the replacement or repaired Products.

11.6 Defective Products replaced shall become the Seller's property.

12. Purchaser's rights and remedies

12.1 As the Products are used in conjunction with other goods which are not designed or manufactured by the Seller, the Purchaser accepts that it is reasonable that if and insofar as the Seller may be held to be legally liable to the Purchaser, the Purchaser's right of redress against the Seller shall be limited as expressly provided for in these Conditions.

12.2 If the Seller's legal liability is established notwithstanding Conditions 10, 11 and 12 the Seller shall be under no obligation to pay damages arising from loss or damage of any type referred to in those Conditions.

12.3 For the purposes of the Contract "legal liability" shall include the legal liability of the Seller, its employees, agents or sub-contractors as found by any court or competent authority and shall include (without limitation):

(i) breach of any contractual obligation by virtue of the express or implied terms of the Contract;

(ii) any fundamental breach of or breach of fundamental term;

(iii) negligence arising by virtue of any act or omission which amount to a failure to take reasonable care or exercise skill;

(iv) any misrepresentation or mis-statement made by or on behalf of the Seller; and

(v) any other breach of duty.

12.4 This condition shall not confer any rights or remedies on the Purchaser to which the Purchaser would not otherwise be entitled.

13. Damage to physical property

The Seller shall not be liable in respect of any loss or damage of whatsoever kind or howsoever caused to premises, plant or other physical property.

14. Events beyond the Seller's control

14.1 The Seller shall not be liable under the Contract wherever and to the extent to which the fulfilment of its obligations are prevented, frustrated, impeded and/or delayed as a consequence of any Force Majeure Event.

14.2 A "Force Majeure Event" means any circumstances whatsoever and howsoever arising beyond the Seller's reasonable control including (without limitation) act of God, explosion, flood, tempest, fire or accident, war or threat of war, sabotage, insurance, civil disturbance or requisition, acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of the government, parliamentary or local authority, import or export regulations or embargoes, strikes, lock-outs or other industrial action or trade disputes (whether involving employees of the Seller or of a third party), default of a sub-contractor, inability to obtain materials, unavailability of raw material components, delay in or shortage of transport, power failure or breakdown in machinery or communications.

14.3 The Seller undertakes to use its reasonable endeavours to overcome any such difficulties but reserves the right to cancel, suspend or vary its obligations under the Contract including (without limitation) extending the period for completion of the performance of its obligations by such period (not limited to the length of the delay) as it may reasonably require.

15. Indemnity

To the extent that Products are to be manufactured pursuant to detailed designs or specifications provided by the Purchaser to the Seller, the Purchaser shall indemnify the Seller against all liabilities, costs, damages, expenses and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other 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 such designs or specifications. This clause 15 shall survive termination of the Contract.

16. Sub-contracting

The Seller reserves the right to sub-contract the manufacture or supply of all or any part of the Products.

17. Assignment

17.1 The Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract and Conditions.

17.2 The Purchaser may not assign, transfer, mortgage, charge, declare trust over or deal in any other manner with any or all of its rights or obligations under the Contract and Conditions without the prior written consent of the Seller signed by a person with the requisite authority to bind the Seller.

18. No waivers: remedies cumulative

18.1 The rights and remedies provided by these Conditions are save as expressly referred to herein in addition to and not in substitution for any rights or remedies provided by law.

18.2 No time or indulgence afforded by either party to the other shall constitute a waiver of any right or remedy available to such party and no single or partial exercise of any right or remedy shall preclude any further or other exercise of such right or remedy.

18.3 A waiver of any right or remedy under the Contract or Conditions is only effective if given in writing and signed by an individual with the requisite authority to bind the relevant party.

19. Notices

19.1 Any notice required to be given hereunder shall be in writing and shall be delivered or sent to or left at, in the case of notice to the Seller, the address shown overleaf, or in the case of the Purchaser, to the address given by the Purchaser for such purpose or its registered office for the time being or its last known address.

19.2 A notice shall be deemed to have been received; if delivered personally, when left at the address in accordance with 19.1; if sent by pre-paid first class post or other next working day delivery service at 9am on the second business day after posting; if delivered by other commercial courier, on the date and at the time that the courier's delivery receipt is signed; or if sent by fax or email one business day after the transmission time.

20. Severance

If any provision or part-provision of the Contract or Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Condition shall not affect the validity and enforceability of the rest of the Contract and Conditions.

21. Third Party Rights

A person who is not a party to the Contract or Conditions shall not have any rights to enforce their terms.

22. Applicable law

Each party irrevocably agrees that the Contract and Conditions and any dispute arising out of or in connection with them or their subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales and the Courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract and Conditions or their subject matter or formation.

I accept your terms and conditions as above

Company Name _____

Name _____

Position _____

Date _____