



## TERMS AND CONDITIONS FOR THE SALE OF GOODS

### 1 INTRODUCTION

**KDM SHOPFITTING LIMITED**, a company incorporated under the Companies Act with registered number SC202669 and having its registered office at 3 Castle Court, Carnegie Campus, Dunfermline, Fife, KY11 8PB (the “**Company**”) shall supply the Goods to the Buyer and the Buyer hereby agrees to purchase such Goods in accordance with these Conditions.

### 2 DEFINITIONS

2.1 In these Conditions, the following words shall have the following meanings:

“**Acknowledgement**” means a formal acknowledgement in writing issued by the Company in accordance with clause 3.4 confirming an order for Goods;

“**Business Day**” means any day from Monday to Friday on which the Company is open for business;

“**Buyer**” means the company, partnership, business or individual who/which purchases the Goods from the Company shown on the Quotation;

“**Conditions**” means these terms and conditions;

“**Contract**” means the Quotation for the sale and purchase of the Goods, and these Conditions together with the Acknowledgement agreed between the Buyer and the Company;

“**Delivery Point**” means the place where delivery of the Goods is to take place under clause 5;

“**Goods**” means any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them);

“**Price**” the price for the Goods as stated in the Company’s Quotation unless varied by the Acknowledgement; and

“**Quotation**” means the quotation provided by the Company.

2.2 Clause headings are for ease of reference only and shall not affect the construction or interpretation of any clause.

2.3 References to “clause” within these Conditions means a clause of these Conditions and a reference to “party” means either the Company or Buyer (as applicable).

2.4 Words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders.

2.5 References to statutes, any statutory instrument, regulation, or order shall be construed as a reference to such statute, statutory instrument, regulation, or order as amended or re-enacted from time to time.

### 3 APPLICATION OF TERMS

3.1 Unless otherwise agreed in writing by the Company, these Conditions are the only conditions upon which the Company is prepared to supply the Goods to the Buyer. These Conditions shall constitute the whole agreement between the Company and the Buyer and shall govern the Contract to the entire exclusion of all other terms or

conditions (including the Buyer’s terms and conditions or those implied by trade, custom or practice).

3.2 No terms or conditions endorsed on, delivered with or contained in the Buyer’s purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

3.3 Each order or acceptance of a Quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase the Goods subject to these Conditions.

3.4 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of the order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.

3.5 Any Quotation is given on the basis that no contract shall come into existence until the Company despatches an acknowledgement of the order to the Buyer. Any Quotation is valid for a period of 60 days only from its date, provided the Company has not previously withdrawn it.

3.6 These Conditions apply to all the Company’s sales and any variation to these Conditions and any representation about the Goods shall have no effect unless expressly agreed in writing and signed by an authorised representative of the Company.

3.7 The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company, which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company’s liability for fraudulent misrepresentation.

### 4 DESCRIPTION

4.1 The quantity and description of the Goods shall be as set out in the Company’s Quotation, unless varied by the Company’s Acknowledgement.

4.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company’s catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of this Contract and this is not a sale by sample.

4.3 The Company reserves the right (but does not assume the obligation) to make any changes in the design, specification, or component parts of the Goods which are required to conform with any applicable legislation or, where the Goods are to be supplied to the Buyer’s specification, which do not materially affect their quality or performance unless varied by the Order or Acknowledgement.

### 5 DELIVERY

5.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Buyer’s place of business.



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- 5.2 The Buyer shall take delivery of the Goods within 30 days of the Company giving it notice that the Goods are ready for delivery.
- 5.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be of the essence. If no dates are specified, delivery will take place within a reasonable time.
- 5.4 Subject to the other provisions of these Conditions the Company will not be held liable for any direct, indirect or consequential loss, or any costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless the delay exceeds 180 Business Days.
- 5.5 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations from the date of failed delivery:
- 5.5.1 risk in the Goods shall pass to the Buyer;
- 5.5.2 the Goods shall be deemed to have been delivered; and
- 5.5.3 the Company may store the Goods for the Buyer and the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 5.6 The Buyer shall provide at the Delivery Point, at the Buyer's expense, adequate and appropriate equipment and manual labour for loading the Goods.
- 5.7 If the Company delivers to the Buyer a quantity of Goods of up to 5% more or less than the quantity accepted by the Company, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Price (as applicable). The Buyer shall provide the Company with notice of any claims for damage or discrepancy in the quantity or quality of the Goods at the time of delivery and the Buyer shall be deemed to have accepted the condition, quality and quantity of the Goods if the Buyer does not provide the Company with any such notice at the time of delivery.
- 5.8 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions herein.
- 5.9 Each instalment shall be a separate contract and no cancellation or termination of any one contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other contract or instalment.
- 6 NON-DELIVERY**
- 6.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 6.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless written notice is given to the Company within 48 hours of the date when the Goods would, in the ordinary course of events, have been received.
- 6.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.
- 7 RISK/TITLE**
- 7.1 The Goods are at the risk of the Buyer from the time that the Goods are delivered to the Buyer's premises whether signed for or not by the Buyer and subject to clause 5.5.
- 7.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- 7.2.1 the Goods; and
- 7.2.2 all other sums which are or which become due to the Company from the Buyer on any account in respect of the Contract or any other contracts or projects entered into between the Company and the Buyer or any of the Buyer's holding companies or subsidiaries (as defined in the Companies Act 2006).
- 7.3 Until ownership of the Goods passes to the Buyer, the Buyer shall:
- 7.3.1 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
- 7.3.2 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 7.3.3 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request, the Buyer shall produce the policy of insurance to the Company.
- 7.4 The Buyer can only resell the Goods before ownership has passed to it solely on the following conditions:
- 7.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
- 7.4.2 any such sale proceeds shall be held on trust and paid to the Company on demand to the extent that any monies are owed by the Buyer to the Company on any account of the Buyer, For the avoidance of doubt, the Buyer shall not be the agent of the Company in relation to any resale.
- 7.5 The Buyer's right of possession of the Goods shall terminate immediately if:
- 7.5.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in



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force for the relief of insolvent debtors, or convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or as a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder, or a resolution is passed, or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer;

7.5.2 the Buyer suffers any diligence or execution to be levied, on his/its property or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or

7.5.3 the Buyer encumbers or in any way charges any of the Goods.

7.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

7.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are being stored in order to inspect them, or, where the Buyer's rights to possession has terminated, to recover them.

### 8 PRICE AND PAYMENT

8.1 Unless otherwise agreed in the Contract (whether by the Quotation or the Acknowledgement), the Price shall be payable 28 days from the date of delivery of goods to the Buyer.

8.2 The Price for the Goods shall be exclusive of any value added tax which will be payable by the Buyer in addition. All sums are to be paid in Pounds Sterling (£).

8.3 The Company may suspend the delivery of Goods until payment terms in clause 8.1 is agreed in writing. No payment will be deemed to have been received until the Company has received cleared funds.

8.4 If the Buyer fails to pay the Company any sum due pursuant to the Contract:

8.4.1 the Buyer shall pay interest to the Company on such sum from the due date of payment, for the period from that due date to the date of actual payment at five (5) per cent per annum above the base lending rate of the Royal Bank of Scotland plc from time to time. The Buyer shall pay the interest together with the overdue amount; and

8.4.2 any sums which have been invoiced or which have been agreed but not yet invoiced for or otherwise delivered in respect of any other contracts or projects entered into between the Company and the Buyer or any of the Buyer's holding companies or subsidiaries (as defined in the Companies Act 2006) shall become immediately payable (notwithstanding any payment terms to the contrary), and interest agreed to be payable on late payments shall become immediately payable from the revised due date of payment until actual payment by the Buyer.

8.5 All payments due to the Company by the Buyer under this Contract shall become due and payable immediately on its termination or expiry howsoever arising. Payments due under this clause 8.5 shall include all sums due under this Contract and also any other contracts or projects entered into between the Company and the Buyer or any of the Buyer's holding companies or subsidiaries (as defined in the Companies Act 2006) and in both respects shall include work in progress committed to by the Company.

8.6 This clause 8 is without prejudice to any right to claim for interest under the law or under this Agreement.

### 9 WARRANTY

The Company will warrant all goods supplied for a period of 12 months from the date of receipt of goods by the Buyer or otherwise implied by statute, common law or otherwise (limited to satisfactory quality and fitness for purpose).

### 10 LIMITATION OF LIABILITY

10.1 Neither party excludes or limits its liability to the other party for death or personal injury caused by any negligent act or omission, or wilful misconduct or breach of duty of such party.

10.2 The Company shall, in no circumstances, be liable to the Buyer in respect of any of the following losses or damage (whether such losses or damages were foreseen, foreseeable, known or otherwise):

10.2.1 special, indirect or consequential loss or damage;

10.2.2 loss of profits, salary, business revenue, goodwill, or anticipated savings, loss of business opportunity; or

10.2.3 loss which could have been avoided by the Buyer through reasonable conduct.

10.3 In the event that, notwithstanding any of these Conditions, the Company is found liable to the Buyer, such liability for actual damages for any cause whatsoever shall be limited to the Price already paid by the Buyer to the Company in relation to provision of the Goods.

### 11 TERM AND TERMINATION

11.1 The Company may terminate the Contract with immediate written notice if the Buyer fails to pay the Price in accordance with clause 8.



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11.2 Notwithstanding termination of the Contract for any reason the Buyer will continue to be liable for that proportion of the Price attributable to those Goods supplied up until the date of termination under the terms of these Conditions. In the case of payment in advance by the Buyer, the Company shall deliver the Goods paid for to the Buyer.

11.3 This Contract shall automatically expire upon fulfilment of the obligations of both the Buyer and the Company.

### 12 RETURNS

12.1 Subject to clauses 4.1 and 5.7, in the event that the Goods purchased are faulty, the Buyer must return such Goods, as sold, to the Company's place of business within 20 Business Days of delivery of the Goods.

12.2 The Company reserves the right to inspect repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Price.

12.3 The undertakings in this clause do not cover faults caused by accident, neglect, misuse or normal wear and tear of the Buyer which shall be the sole responsibility of the Buyer. The cause of such fault shall be determined by the Company in their sole discretion.

12.4 Notwithstanding the foregoing, the Buyer's statutory rights are not affected.

### 13 ASSIGNATION

13.1 The Company may at any time sub-contract or assign the Contract or any of its rights or obligations under it.

13.2 The Buyer shall not, and shall not purport to assign or otherwise transfer the Contract or any rights or obligations under it without the Company's prior written consent. Any such consent shall not excuse the Buyer from performance of any obligations on its part to be performed.

### 14 SEVERABILITY

If and in so far as any part or provision of these clauses is or becomes void or unenforceable it shall be deemed not to be or never to have been or formed a part of the Contract and the remaining provisions of the Contract shall continue in full force and effect.

### 15 FORCE MAJEURE

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in carrying on its business by acts, events, omissions or accidents beyond its reasonable control including, without limitation, strikes, lock-outs, or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for 90 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

### 16 VARIATION

Any variation to the Contract shall only be effective if in writing and signed by authorised representatives of both parties.

### 17 WAIVER

The failure of either party to exercise or enforce any right conferred on that party by the Contract shall not be deemed to be a waiver of any such right or operate to bar the exercise or enforcement thereof at any time or times thereafter.

### 18 THIRD PARTY RIGHTS

Save to the extent expressly set out in the Contract, the Contract is not intended nor shall it create any rights, entitlement, claims or benefits enforceable by any person that is not a party to it.

### 19 GOVERNING LAW

The Contract shall be governed by and construed in accordance with Scots law and the parties hereby submit to the exclusive jurisdiction of the Scottish courts.