

SINCLAIR AND RUSH LIMITED

CONDITIONS OF SALE

These Conditions of Sale shall govern the supply of goods by Sinclair and Rush Limited.

1. INTERPRETATION

1.1 In these Conditions:

- (a) "Buyer" means the person whose order for the Goods is accepted by the Seller or who accepts a quotation of the Seller for the sale of the Goods;
- (d) "Conditions" means the standard terms and conditions of sale set forth herein and, unless the context otherwise requires, includes any other terms and conditions mutually agreed upon in Writing by the Buyer and the Seller;
- (c) "Contract" means the contract for the purchase and sale of the Goods; and
- (d) "Goods" means the goods which the Seller is to supply in accordance with these Conditions;
- (e) "Seller" means Sinclair and Rush Limited;
- (f) "Writing" includes facsimile transmission and any comparable means of communication.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

2. BASIS OF THE SALE

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller that is accepted by the Buyer, or any written order of the Buyer that is accepted by the Seller, subject in either case to these Conditions, which Conditions shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

2.2 No variation to these Conditions shall be binding unless mutually agreed upon in Writing between the authorised representatives of the Buyer and the Seller.

3. ORDERS AND SPECIFICATIONS

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specifications) submitted by the Buyer, 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 quantity, quality and description of and any specification for the Goods shall be those set forth in the Seller's quotation (if accepted by the buyer) or the Buyer's order (if accepted by the Seller).

3.4 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 losses, damages, costs and expenses awarded against or incurred by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results directly or indirectly from the Seller's use of the Buyer's specifications.

3.5 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 requirement or, where the Goods are to be supplied to the Seller's specifications, which do not materially alter their quality or performance.

3.6 No order which has been accepted by the Seller may be cancelled by the Buyer unless:

- (i) the prior written approval of the Seller has been obtained; and
- (ii) the Buyer has agreed in Writing to indemnify the Seller against all losses (including loss of profits), costs (including the costs of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of such cancellation.

4. PRICE OF THE GOODS

4.1 Any price quoted by Seller for the Buyer's purchase of Goods is only valid for a thirty (30) day period or until earlier acceptance thereof by the Buyer.

4.2 Where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay any and all charges incurred by the Seller for transport and insurance.

4.3 The price charged will be the price listed by Seller at the date of despatch plus value added tax and any other Government duty or tax which is applicable. The Seller reserves the right to alter prices to cover any changes in cost caused by circumstances beyond the Seller's control including but not limited to:

- (a) Changes to the design or specification made by the Buyer.
- (b) Changes in the cost of materials.
- (c) Changes in any other costs including labour costs.
- (d) Insufficient or defective instructions from the Buyer or the absence of instructions from the Buyer.

5. TERMS OF PAYMENT

5.1 Unless otherwise agreed in Writing by the Buyer and the Seller, payment shall be due thirty (30) days from the date of invoice. The price shall be paid in full without any deduction and the Buyer shall not be entitled to withhold the price or any part thereof on account of any claim to a set-off or counterclaim, whether arising out of this or any other transaction. All sums due to the Seller under this or any other

contract shall be paid on the due date and if the Buyer is in default as regards payment under this or any other contract with the Seller, the Seller may suspend deliveries under this Contract so long as the default continues.

- 5.2 If the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, the Seller shall be entitled to invoice the Buyer for the price of the Goods at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods. The Buyer shall thereafter pay the price of the Goods within thirty (30) days of the date of any invoice sent by the Seller notwithstanding that delivery may not have taken place as contemplated by Section 5.1 hereof and/or that the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract.
- 5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- (a) cancel the contract or suspend any further deliveries to the Buyer;
 - (b) apportion any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may choose in its sole discretion, notwithstanding any purported appropriation by the Buyer;
 - (c) charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of four per cent per annum above Natwest Bank plc base rate in effect from time to time, until payment in full is made; and/or
 - (d) repossess the Goods sold under the contract as provided for Section 7.4 hereof.
6. DELIVERY
- 6.1 Delivery of the Goods shall be made by the Seller delivering the Goods to the Buyer unless in any particular case it is agreed that delivery shall be by the Buyer collecting the goods at the Seller's premises.
- 6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the entire contract as repudiated.
- 6.4 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of
- (a) the Buyer's cost (in the least expensive available market) of similar goods to replace those Goods not delivered; over
 - (b) the price of the Goods which the Seller has failed to deliver.
- 6.5 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
- (a) store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - (b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess received over the price due to the Seller under the Contract, or charge the Buyer for any shortfall incurred below the price due to the Seller under the Contract.
- 6.6 The Seller shall be notified in writing of non-receipt of the Goods, or damage to the Goods in transit, or any defect in the Goods within 3 days of the Buyer's actual receipt of the Goods, failing which the Seller shall be under no liability whatsoever to the Buyer, who shall nevertheless hold the Seller indemnified against any loss arising or damage suffered through failure to inform carriers or insurers within the required time limits. Any such notice must specify the particular defect or alleged damage and must afford the Seller reasonable opportunity to inspect the Goods in question. If the Goods are agreed by the Seller to be damaged, defective or faulty, the Seller will (at its option) either rectify the damage, defect or fault, replace any such Goods or credit the invoice value of the Goods and such rectification, replacement or credit will be in full satisfaction of any claim by the Buyer. Batches with less than 2% rejects are not returnable and shall be accepted by the Buyer. The Buyer shall not be entitled to reject any Goods supplied by the Seller:
- (a) by reason only of a slight variation in colour shade between one batch and another;
 - (b) if the Goods are defective solely by reason of faulty components having been supplied by the Buyer or a third party nominated by the Buyer; or
 - (c) if the Goods are defective solely by reason of faulty design for which the Buyer was responsible nor shall the Seller be under any liability in respect of any such variation or defect.
- 6.7 The Contract shall be deemed to have been fulfilled by the Seller upon delivery of a quantity not less than 90 percent and not more than 110 percent of the quantity specified, and the Buyer shall accept and pay for the actual quantity delivered.
- 6.8 Any preliminary samples or colour samples supplied by the Seller shall be accepted by the Buyer as supplied solely for information purposes. The supplying of such samples by the Seller shall not give rise to any express or implied conditions or warranties as to the quality, description, colour, fitness for purpose or merchantability of the Goods subsequently delivered by the Seller.
- 6.9 Any Goods sold as sub-standard or surplus stock shall be accepted by the Buyer in their actual state and condition and neither the obligation accepted by the Seller in Clause 8 hereof nor any other condition or warranty expressed or implied, whether statutory or otherwise, will apply thereto.
- 6.10 For the purposes of s35 (1) and (2) of the Sale of Goods Act as amended the Buyer agrees that it is reasonable to examine all Goods purchased within 3 days of delivery or collection and shall be deemed to have done so and unless it notifies the Seller in writing otherwise by the end of the working day following such delivery or collection shall by its silence to have intimated to the Seller that it has accepted Goods purchased
7. RISK AND PROPERTY

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
- (a) in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods; or
 - (b) in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection;
 - (c) in the case of Goods to be collected by the Buyer or its agent, at the time of collection or, if the Buyer wrongfully fails to collect of the Goods, the time when the Seller has arranged collection of the Goods; or
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due. In the event of the Seller being liable for loss of or damage to Goods damages shall in any event be limited to the price paid by the Buyer
- 7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the goods as the Seller's fiduciary agent and bailee.
- 7.4 Until such time as the property in the Goods passes to the Buyer, the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer, or any third party where the Goods are stored, and repossess the Goods.
- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller; provided however, if the Buyer pledges or in any way charges any such Goods, all monies owed by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) become immediately due and payable.
- 8 WARRANTIES AND LIABILITY
- 8.1 Subject to the conditions set forth below, the Seller warrants that the Goods will correspond with their specification at the time of delivery.
- 8.2 The above warranty is given by the Seller subject to the following conditions:
- (a) the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
 - (b) The Seller shall be under no liability in respect of any defect arising from normal wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval; and
 - (c) The Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee), if the total price for the Goods has not been paid by the due date for payment.
- 8.3 Except as otherwise expressly provided herein, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent by law.
- 8.4 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, or for any other reasons, for any consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agent or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.
- 8.5 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control.
- 9 INSOLVENCY OF BUYER
- 9.1 This clause applies if:
- (a) 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 amalgamation or reconstruction); or
 - (b) an encumbrancer takes possession of, or a receiver is appointed over, any of the property or assets of the Buyer; or
 - (c) the Buyer ceases, or threatens to cease, to carry on business; or
 - (d) 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.
- 9.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller,
- (a) the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer;
 - (b) if the Goods have been delivered and not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement made by the Seller and the Buyer; and/or
 - (c) the Seller may repossess the Goods as provided for by Clause 7.4 above.
- 10 DIES AND TOOLS.
- 10.1 Dies and tools will be invoiced at part cost only and payment thereof will be due as follows:
- One third with order
 - One third on the completion of manufacture
 - One third on approval of samples, prior to production quantities.
- Dies and Tools will be designed as component parts of the Seller's plant to comply with its particular methods of production and they shall not normally be removed from its works and shall remain the property of the Seller at all times. Dies and tools will be stored and maintained throughout their normal useful life at the Seller's expense. All reasonable care will be taken in maintenance but the Seller does not undertake to replace worn out dies or tools, In the event of the Buyer ordering less of the Goods than the quantity specified in

the Seller's quotation, or failing to take delivery of such full quantity within the period stated on the quotation, the Seller shall be entitled to charge to the Buyer the whole or a proportionate part as may be appropriate of the cost of making the die or tool, taking into account the part cost stated in the quotation.

11. DEVELOPMENT CHARGE.

11.1 In cases where a tooling charge is not appropriate, a charge may be made for development work carried out by the Seller. Development charges will be invoiced and payment thereof will be due as follows:

One third with order

One third on completion of development

One third on approval of samples, prior to production quantities.

Any tooling, machinery, material and equipment developed by the Seller, in carrying out such development work, remains the sole property of the Seller, and neither the issue by the Seller of any invoice in respect of development charges, nor the payment thereof by the Buyer shall be deemed to effect or to be evidence of a sale of such tooling, machinery, material or equipment. In the event of the Buyer ordering less of the Goods than the quantity specified in the Seller's quotations or failing to take delivery of such full quantity within the period stated on the quotation, the Seller shall be entitled to charge to the Buyer the whole or a proportionate part as may be appropriate of the cost of development work, taking into account the development cost stated in the quotation.

12. CUSTOM MADE GOODS

If the Buyer orders specialised, non-stock sizes or colours, or custom made Goods from the Seller, then the Buyer will be provided with final samples of the Goods and an Initial Sample Inspection Report ("ISIR"). Upon the Buyer's inspection of such final samples and submission to the Seller of a signed ISIR, the Seller will proceed to manufacture and deliver such Goods to the Buyer. If the Buyer thereafter fails to take delivery or provide payment for such specialised, non-stock sizes or colours, or custom made Goods for any reason whatsoever, the Seller shall, without prejudice to any other right or remedy available to the Seller, be entitled to receive full payment of the contract price for the Goods since both the Seller and the Buyer agree that they are not saleable to third parties.

13. PRODUCT LITERATURE.

13.1 The Seller hereby gives notice to the Buyer that the Seller has available information and product literature concerning the conditions necessary to ensure that the Goods supplied hereunder will be safe and without risks to health when properly used. If the Buyer is not already in possession of such literature or requires any information or advice in connection with the safe use of the Goods at work, the Buyer should immediately contact the Seller.

14. EXPORT TERMS

14.1 In these conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these conditions, the provisions of these Conditions shall prevail.

14.2 Where the Goods are supplied for export from the United Kingdom or the United States, the provisions of this Clause 13 shall apply (subject to any special terms agreed in writing between the Buyer and the Seller) notwithstanding any other provisions of these Conditions.

14.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.

14.4 For the purposes of Section 32(2) of the Sale of Goods Act 1979 the Buyer hereby authorises the Seller to contract with such carrier or carriers as it may decide at its absolute discretion and without liability thereto

14.5 Unless otherwise agreed in writing between the Buyer and the Seller, the Goods shall be delivered FOB the air or sea port of shipment, and the Seller shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979.

14.5 Prior to any shipment or delivery of the Goods, the Buyer shall arrange for testing and inspection of the Goods. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is discovered after shipment or in respect of any damage during transit.

14.6 The Buyer undertakes not to offer the goods for resale in any country notified by the Buyer to the Seller at or before the time the Buyer's order is accepted by the Seller or to sell the Goods to any person if the Buyer knows or has reason to believe such person intends to resell the Goods in any such country.

15. GENERAL

(a) Any specifications, plans or other technical information relating to the Goods shall remain the property of the Seller and shall be kept secret and confidential by the Buyer and its employees, agents, and representatives.

(b) 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 to such other address which may have been notified (pursuant to this provision) to the party giving the notice.

(c) 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.

(d) 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 provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

(e) The Contract shall be governed by the Laws of England.

SINCLAIR & RUSH LIMITED REGISTERED OFFICE: UNITS 11-13 SPECTRUM WEST 20-20 MAIDSTONE BUSINESS ESTATE ST LAWRENCE AVENUE, MAIDSTONE KENT ME16 0LL Company No. 00679110