

FIEGER LIMITED TERMS AND CONDITIONS OF SALE

The Buyer's attention is drawn in particular to the provisions of clause 10.

1. Interpretation

1.1 In these Terms and Conditions:

- "Business Day" means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;
- "Buyer" means the person(s) or company that purchases the Goods from FIEGER;
- "Contract" means any contract between FIEGER and the Buyer for the sale and purchase of the Goods, incorporating these Terms and Conditions;
- "FIEGER" means Fieger Limited a company incorporated in England under number 6092433 with registered office at 399-401, Strand, London, WC2R 0LT;
- "Force Majeure Event" means an event, circumstance or cause beyond a party's reasonable control;
- "Goods" means any goods agreed in the Contract to be supplied to the Buyer by FIEGER (including any part or parts of them); and
- "Terms and Conditions" means the terms and conditions set out in this document as amended from time to time in accordance with clause 2.3.
- 1.2 In these Terms and Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.
- 1.3 In these Terms and Conditions headings are for convenience only and do not affect the construction of these Terms and Conditions.
- 1.4 A reference to writing or written includes e-mail.

2. Application of terms

- 2.1 Subject to any variation under clause 2.3, the Contract will be on these Terms and Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document or which are implied by law, trade custom, practice or course of dealing).
- 2.2 No terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These Terms and Conditions apply to all FIEGER's sales and any variation to these Terms and Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by the Managing Director of FIEGER.
- 2.4 Each order for Goods by the Buyer from FIEGER shall be deemed to be an offer by the Buyer to purchase Goods subject to these Terms and Conditions.
- 2.5 No order placed by the Buyer shall be deemed to be accepted by FIEGER until a written acknowledgement of order is issued by FIEGER or (if earlier) FIEGER delivers the Goods to the Buyer, at which point the Contract shall come into existence.
- 2.6 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.7 Any quotation is given on the basis that no contract will come into existence until FIEGER despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 1 calendar month only from its date, provided that Fieger has not previously withdrawn it.

3. Description

- 3.1 The description of the Goods shall be as set out in FIEGER's quotation.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by FIEGER and any descriptions or illustrations contained in FIEGER'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 nor have any contractual force.
- 3.3 To the extent that the Goods are to be manufactured in accordance with a specification supplied by the Buyer, the Buyer shall indemnify FIEGER against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by FIEGER in connection with any claim made against FIEGER for actual or alleged infringement of a third party's intellectual property arising out of or in connection with FIEGER's use of the specification. This clause 3.3 shall survive termination of the Contract.
- 3.4 FIEGER reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

4. Delivery

- 4.1 FIEGER shall ensure that:
- (a) each delivery of the Goods is accompanied by a delivery note that shows the date of the order, the contract number, the type and quantity of the Goods (including the cost number of the Goods where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (b) if FIEGER requires the Buyer to return any packaging materials to FIEGER, that fact is clearly stated on the delivery note. The Buyer shall make any such packaging materials available for collection at such times as FIEGER shall reasonable request. Returns of packaging materials shall be at FIEGER's expense.
- 4.2 Unless otherwise agreed in writing by FIEGER delivery of the Goods shall take place at the Buyer's place of business at any time after FIEGER notifies the Buyer that the Goods are ready.
- 4.3 The Buyer will pay the full costs of delivery of the Goods from FIEGER's warehouse in Germany to the Buyer's place of business.
- 4.4 Any dates specified by FIEGER for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time. FIEGER shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide FIEGER with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 FIEGER may at its discretion deliver the Goods by instalments and in any sequence but will use its reasonable endeavours to deliver the Goods in accordance with any schedule provided by the Buyer. FIEGER does not accept liability for any delay caused by its failure to deliver the Goods in accordance with such schedule. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.
- 4.6 If for any reason the Buyer will not accept delivery of any of the Goods when they are ready for delivery, or FIEGER is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations, except where such failure or delay is caused by a Force Majeure Event or FIEGER's failure to comply with its obligations under the Contract:

- (a) risk in the Goods will pass to the Buyer (including for loss or damage caused by FIEGER's negligence);
- (b) the Goods will be deemed to have been delivered at 9.00 am on the third Business Day after the day on which FIEGER notified the Buyer that the Goods were ready; and
- (c) FIEGER may store the Goods until delivery when the Buyer will be liable for all related costs and expenses (including insurance).
- 4.7 If ten Business Days after the day on which FIEGER notified the Buyer that the Goods were ready for delivery the Buyer has not accepted actual delivery of them, FIEGER may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Buyer for any excess over the price of the Goods or charge the Buyer for any shortfall below the price of the Goods.
- 4.8 The Buyer will provide at its expense at the place where delivery takes place adequate and appropriate equipment and manual labour for unloading the Goods.
- 4.9 If FIEGER delivers to the Buyer a quantity of Goods of up to 5% more or less than the quantity accepted by FIEGER 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 Contract rate.

5. Non-delivery

- 5.1 The quantity of any consignment of Goods as recorded by FIEGER upon despatch from FIEGER'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.
- 5.2 FIEGER shall not be liable for any non-delivery of Goods (even if caused by FIEGER's negligence) unless written notice is given to FIEGER within 7 days of the date when the Goods would in the ordinary course of events have been received.
- 5.3 Any liability of FIEGER 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.
- 5.4 Should the Buyer, for any reason, delay the dispatch of Goods, then FIEGER will store the Goods for a period of 10 Business Days free of charge. Subsequent storage will be charged at £200 per week plus VAT.

6. Risk and title

- 6.1 The Goods are at the risk of the Buyer from the time of delivery (i.e. from the time when unloading begins).
- 6.2 Ownership of the Goods shall not pass to the Buyer until FIEGER has received in full (in cash or cleared funds) all sums due to it in respect of:
- (a) the Goods; and
- (b) all other sums which are or which become due to FIEGER from the Buyer on any account; or
- (c) the Buyer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.
- 6.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:
- (a) hold the Goods on a fiduciary basis as FIEGER's Bailee;
- (b) store the Goods (at no cost to FIEGER) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as FIEGER's property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition insured on FIEGER's behalf for their full price against all risks to the reasonable satisfaction of FIEGER. On request the Buyer shall produce the policy of insurance to FIEGER;
- (e) hold the proceeds of the insurance referred to in clause 6.3 (d) on trust for FIEGER and not mix them with any other money, nor pay the proceeds into an overdrawn bank account;
- (f) notify FIEGER immediately if it becomes subject to any of the events listed in clause 11.1 (b) to 11.1 (d) (inclusive); and
- (g) give FIEGER such information as FIEGER may require from time to time relating to the Goods and the ongoing financial position of the Buyer.
- 6.4 Subject to clause 6.5, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before FIEGER receives payment for the Goods. However, if the Buyer resells the Goods before that time:
- (a) it does so as principal and not as FIEGER's agent; and
- (b) title to the Goods shall pass from FIEGER to the Buyer immediately before the time at which resale by the Buyer occurs.
- 6.5 At any time before title to the Goods passes to the Buyer, FIEGER:
- (a) may by notice in writing, terminate the Buyer's right to under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and
- (b) require the Buyer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Buyer fails to do so promptly, enter any premises of the Buyer or any third party where the Goods are stored in order to recover them.

7. Price

- 7.1 The price of the Goods shall be the price set out in FIEGER's quotation.
- 7.2 FIEGER may, by giving notice to the Buyer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond FIEGER's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the specification; or
- (c) any delay caused by any instructions of the Buyer or failure of the Buyer to give FIEGER adequate or accurate information or instructions.
- 7.3 The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to delivery, which shall be invoiced to the Buyer.
- 7.4 Where FIEGER is unable to obtain credit insurance at a premium acceptable to FIEGER in respect of any order made by the Buyer, FIEGER may require 50% of the price for the Goods to be paid within 14 days of its acceptance of the Buyer's order. The remaining 50% must be paid to FIEGER prior to delivery of the Goods.

8. Payment

- 8.1 FIEGER may invoice the Buyer for the Goods on or at any time after the completion of delivery. Payment for the Goods is due within 30 days of the date of FIEGER's invoice.
- 8.2 Time for payment shall be of the essence.
- 8.3 No payment shall be deemed to have been received until FIEGER has received cleared funds to a bank account nominated in writing by FIEGER.
- 8.4 All payments payable to FIEGER under the Contract shall become due immediately upon termination of this Contract despite any other provision.

8.5 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by FIEGER to the Buyer.

8.6 If the Buyer fails to pay FIEGER any sum due under the Contract by the due date then:
(a) the Buyer will be liable to pay interest to FIEGER on such sum from the due date for payment at the rate set by order of the Secretary of State from time to time for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998 accruing on a daily basis until payment is made, whether before or after any judgment; and
(b) FIEGER may, without prejudice to any available remedy and without prior notice to FIEGER, re-sell any Goods that have been appropriated to the Contract and which FIEGER has not paid for.

9. Quality

9.1 Where FIEGER is not the manufacturer of the Goods, it will use reasonable endeavours to transfer to the Buyer the benefit of any warranty or guarantee given to FIEGER.

9.2 Where FIEGER is the manufacturer of the Goods it warrants that (subject to the other provisions of these Terms and Conditions) upon delivery, and for a period of 12 months from the date of delivery, the Goods will:

- conform in all material respects with their description;
- be free from material defects in design, material and workmanship;
- be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
- be reasonably fit for any particular purpose for which the Goods are being bought if the Buyer has made known that purpose to FIEGER in writing and FIEGER has confirmed in writing that it is reasonable for the Buyer to rely on the skill and judgement of FIEGER.

9.3 Subject to clause 9.4, if:

(a) the Buyer gives written notice of the defect to FIEGER during the warranty period, and (if the defect is as a result of damage in transit) to the carrier, within 7 days of the time when the Buyer discovers or ought to have discovered that some or all of the Goods do not comply with the warranty set out in clause 9.2 the defect; and

(b) FIEGER is given a reasonable opportunity, after receiving the notice, of examining such Goods; and

(c) the Buyer (if asked to do so by FIEGER) returns such Goods to FIEGER's place of business at the Buyer's cost for the examination to take place there, FIEGER shall, at its option, repair or replace the defective Goods (or defective part), or refund the price of the defective Goods in full at the pro rata Contract rate provided that, if FIEGER so requests, the Buyer shall, at the Buyer's expense, return the Goods or the part of such Goods which is defective to FIEGER.

9.4 FIEGER shall not be liable for a breach of any of the warranties in clause 9.2 if:

(a) the Buyer makes any further use of such Goods after giving such notice in accordance with clause 9.3 (a); or

(b) the defect arises because the Buyer failed to follow FIEGER's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice regarding the same; or

(c) the Buyer alters or repairs such Goods without the written consent of FIEGER; or

(d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

(e) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

9.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluding from the Contract.

9.6 If FIEGER complies with clause 9.3 it shall have no further liability for a breach of any of the warranties in clause 9.2 in respect of such Goods.

9.7 Any Goods repaired or replaced will be guaranteed on these terms for the unexpired portion of the 12 month period.

10. Limitation of liability

10.1 FIEGER has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £10 million per annum for product liability claims and £10 million per claim for public liability claims. The limits and exclusions in this clause reflect the insurance cover FIEGER has been able to arrange and the Buyer is responsible for making its own arrangements for the insurance of any excess loss.

10.2 The restrictions on liability in this clause 10 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

10.3 Nothing in this Contract limits any liability which cannot legally be limited, including liability for:

(a) death or personal injury caused by negligence;

(b) fraud or fraudulent misrepresentation;

(c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or

(d) defective products under the Consumer Protection Act 1987.

10.4 Subject to clause 10.3, FIEGER's total liability to the Buyer shall not exceed the amount paid by the Buyer to FIEGER during the 12 month period immediately preceding the date of the claim.

10.5 Subject to clause 10.3, the following types of loss are wholly excluded:

(a) loss of profit;

(b) loss of sales or business;

(c) loss of agreements or contracts;

(d) loss of anticipated savings;

(e) loss of use or corruption of software, data or information;

(f) loss of or damage to goodwill; and

(g) indirect or consequential loss.

10.6 This clause 10 shall survive termination of the Contract.

11. Termination

11.1 Without limiting its other rights or remedies, FIEGER may terminate this Contract with immediate effect by giving written notice to the Buyer if:

(a) the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;

(b) the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

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

(d) the Buyer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

11.2 Without limiting its other rights or remedies, FIEGER may suspend provision of the Goods under the Contract or any other contract between the Buyer and FIEGER if the Buyer becomes subject to any of the events listed in clause 11.1 (b) to 11.1 (d), or FIEGER

reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.

11.3 Without limiting its other rights or remedies, FIEGER may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.

11.4 On termination of the Contract for any reason the Buyer shall immediately pay to FIEGER all of FIEGER's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, FIEGER shall submit an invoice, which shall be payable by the Buyer immediately on receipt.

11.5 Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

11.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

12. Assignment

12.1 The Buyer shall not be entitled to assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner which any or all of its rights or obligations under the Contract or any part of it without the prior written consent of FIEGER.

12.2 FIEGER may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract or any part of it to any person, firm or company.

13. Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 90 Business Days, the party not affected may terminate the Contract by giving 14 Business Days' written notice to the affected party.

14. Communications

14.1 All communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post:

(a) (in case of communications to FIEGER) to its registered office or such changed address as shall be notified to the Buyer by FIEGER; or

(b) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of this Contract or such other address as shall be notified to FIEGER by the Buyer.

14.2 Communications shall be deemed to have been received:

(a) if sent by pre-paid first class post, at 9.00 am on the second Business Day after posting (exclusive of the day of posting);

(b) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and

(c) if sent by e-mail, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 14.2 (c), business hours means 9.00 am to 5.00 pm on a Business Day in the place of receipt.

14.3 Communications addressed to FIEGER shall be marked for the attention of the Managing Director.

14.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

15. Right to cancel

15.1 If the Buyer is not acting in the course of business when it buys the Goods at a distance it has the right to cancel its order with FIEGER without charge by notice in writing to FIEGER within 7 working days of delivery of the Goods. This right may not apply where the Buyer purchases from FIEGER bespoke Goods made to the Buyer's order. The Buyer must, however, take reasonable care of the Goods and return them to FIEGER at its own cost.

15.2 If the Buyer is not acting in the course of business when it buys the Goods at a distance FIEGER agrees to reimburse the Buyer, free of charge within 30 days of notification of cancellation, the purchase price paid for the Goods. FIEGER reserves the right to charge the Buyer for the cost of recovering any Goods that the Buyer does not return (which will be by deduction from the purchase price).

16. Entire Agreement

16.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

16.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

17. General

17.1 Each right or remedy of FIEGER under the Contract is without prejudice to any other right or remedy of FIEGER whether under the Contract or not.

17.2 If any provision or part provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

17.3 No failure or delay by FIEGER in enforcing or partially enforcing any provision of the Contract or by law will not be construed as a waiver of any of its rights under the Contract. Any waiver by FIEGER of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

17.4 Any person, firm or company that is not a party to the Contract may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

17.5 All aspects of the Contract and these Terms and Conditions shall be governed by English law and the parties irrevocably submit to the exclusive jurisdiction of the English courts.