



Terms and Conditions of Sale

In these Terms and Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time.

Contract: the contract between you and us for the sale and purchase of the Goods in accordance with these Conditions.

Force Majeure Event: has the meaning given in clause 9.

Goods: the goods (or any part of them) set out in the Order.

Order: your order for the Goods, as set out in your written acceptance of our quotation (whether in the form of a purchase order or otherwise).

Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing between you and us.

We/us: AKP Limited (registered in England and Wales with company number 9863738).

You: the person or firm who purchases the Goods from us.

- A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- A reference to a party includes its personal representatives, successors or permitted assigns.

- 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.
- Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- A reference to **writing** or **written** includes faxes and e-mails.

1. BASIS OF CONTRACT

- 1.1. These Conditions apply to the Contract to the exclusion of any other terms that you may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.2. The Order constitutes an offer by you to purchase the Goods in accordance with these Conditions. You are responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 1.3. The Order shall only be deemed to be accepted when we issue a written acknowledgement of the Order, at which point the Contract shall come into existence.
- 1.4. The Contract constitutes the entire agreement between the parties. You acknowledge that you have not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of us which is not set out in the Contract.
- 1.5. Any samples, drawings, descriptive matter, or advertising produced by us are produced for the sole

purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

- 1.6. A quotation for the Goods given by us shall not constitute an offer. A quotation shall only be valid for a period of 5 Business Days from its date of issue or as otherwise stated on the quotation.

2. GOODS

- 2.1. The Goods are manufactured in accordance with the Specification.

- 2.2. We may in our sole discretion assist or give our opinions on the formulation of the Specification but for the avoidance of doubt, you remain solely responsible for the accuracy of the Specification and in particular its compliance with any software/hardware that we use.

- 2.3. You will indemnify us 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 professional costs and expenses) suffered or incurred by us in connection with any claim made against us for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with our use of the Specification. This clause shall survive termination of the Contract.

3. DELIVERY

- 3.1. We will ensure that:

- (a) each delivery of the Goods is accompanied by a delivery note which shows all relevant reference numbers, the type and quantity of the Goods and special storage instructions (if any); and
- (b) if we require you to return any packaging materials to us, that fact is clearly stated on the delivery note. You will make any such packaging materials available for collection at such times we shall reasonably request. Returns of packaging materials shall be at our expense.

- 3.2. Unless stated otherwise, we shall deliver the Goods to the location set out in the Order or such other location as you and us may agree (**Delivery Location**).

- 3.3. If we agree that delivery will be on a collection basis, you will collect the Goods from our premises at Units 1&2 Enterprise Court, Gapton Hall Road, Great Yarmouth, NR31 0ND or such other location as may be advised by us prior to delivery (**Delivery Location**) within 3 Business Days of us notifying you that the Goods are ready.

- 3.4. Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

- 3.5. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. We will not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 3.6. Subject to clause 3.5 above, if we fail to deliver the Goods, our liability shall be limited to the costs and expenses incurred by you in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.

- 3.7. If you fail to accept delivery of the Goods on the date and time and at the place agreed by us then, except where such failure or delay is caused by a Force Majeure Event or our failure to comply with our obligations under the Contract:

- (a) delivery of the Goods shall be deemed to have been completed on that day; and
- (b) we will store the Goods until delivery takes place, and charge you for all related costs and expenses (including carriage and insurance).

- 3.8. If you fail to take delivery of the Goods within a further 10 Business Days after the agreed delivery date, we may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to you for any excess over

the price of the Goods or charge you for any shortfall below the price of the Goods.

3.9. You shall not be entitled to reject the Goods if we deliver up to and including 5% less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from you that the wrong quantity of Goods was delivered.

3.10. If agreed, we may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment.

4. QUALITY

4.1. We warrant that, on delivery, the Goods shall:

- (a) conform with the Specification;
- (b) be free from material defects in material and workmanship; and
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

4.2. Subject to clause 4.3, if:

- (a) you give us notice in writing within a reasonable time of discovery (and in any event, no later than 10 working days after delivery) that some or all of the Goods do not comply with the warranty set out in clause 4.1;
- (b) we are given a reasonable opportunity of examining such Goods; and/or
- (c) you (if asked to do so by us and at our cost) return such Goods to our place of business,

then we shall refund the price of the defective Goods in full or, at our option, repair or replace the defective Goods.

4.3. We shall not be liable for Goods' failure to comply with the warranty set out in clause 4.1 in any of the following events:

- (a) You make any further use of such Goods after giving notice in accordance with clause 4.2;

(b) the defect arises because you failed to follow our oral or written instructions as to the storage of the Goods or (if there are none) good trade practice regarding the same;

(c) the defect arises as a result of us following any drawing, design or Specification supplied by you or agreed by us in advance;

(d) you attempt to alter or repair such Goods without our written consent;

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

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

4.4. Except as provided in this clause 4, we shall have no liability to you in respect of the Goods' failure to comply with the warranty set out in clause 4.1.

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

4.6. These Conditions shall apply to any repaired or replacement Goods supplied by us.

5. TITLE AND RISK

5.1. The risk in the Goods shall pass to you on completion of delivery.

5.2. Title to the Goods shall not pass to you until we receive payment in full (in cash or cleared funds) for the Goods.

5.3. Until title to the Goods has passed to you, you shall:

(a) store the Goods separately from all other goods held by you so that they remain readily identifiable as our property;

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

- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify us immediately if you become subject to any of the events listed in clause 7.2; and
- (e) give us such information relating to the Goods as we may require from time to time.

5.4. If before title to the Goods passes to you, you become subject to any of the events listed in clause 7.2, then, without limiting any other right or remedy we may have, we may at any time:

- (a) require you to deliver up all Goods in your possession which have not been resold, or irrevocably incorporated into another product; and
- (b) if you fail to do so promptly, enter any premises yours or of any third party where the Goods are stored in order to recover them.

6. PRICE AND PAYMENT

- 6.1. The price of the Goods shall be the price set out in the Order and confirmed in our acknowledgment.
- 6.2. We may increase the price of the Goods to reflect any increase in the cost of the Goods that is due to any request by you to change the delivery date, quantity or type of Goods ordered or the Specification.
- 6.3. The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to you.
- 6.4. The price of the Goods is exclusive of amounts in respect of value added tax (VAT). You will, on receipt of a valid VAT invoice from us, pay to us such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 6.5. We may invoice you for the Goods on or at any time after the completion of delivery.

6.6. You shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice or as otherwise stated on our quote. Payment shall be made to the bank account nominated in writing by us. Time of payment is of the essence.

6.7. If you fail to make any payment due to us by the due date for payment, then you will pay interest on the overdue amount at the rate stipulated by the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. You will pay the interest together with the overdue amount.

7. TERMINATION AND SUSPENSION

7.1. If you become subject to any of the events listed in clause 7.2 we may terminate the Contract with immediate effect by giving written notice to you.

7.2. For the purposes of clause 7.1, the relevant events are:

- (a) you suspend, or threatens to suspend, payment of your debts, or are unable to pay your debts as they fall due or admit inability to pay your debts, or (being a company or limited liability partnership) are deemed unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) are deemed either unable to pay your 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) have any partner to whom any of the foregoing apply;
- (b) you enter into any voluntary arrangement with your creditors or any insolvency or bankruptcy proceedings are commenced (whether by you voluntarily or against you)
- (c) you suspend or cease, or threaten to suspend or cease, all or a substantial part of your business;

- (d) (being an individual) you die or, by reason of illness or incapacity (whether mental or physical), are incapable of managing your own affairs or become a patient under any mental health legislation.
- 7.3. On termination of the Contract for any reason you shall immediately pay to us all of our outstanding unpaid invoices and interest and we shall not be obliged to deliver any further Goods to you.

8. LIMITATION OF LIABILITY

8.1. Nothing in these Conditions shall limit or exclude our liability for:

- (a) death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) defective products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for us to exclude or restrict liability.

8.2. Subject to clause 8.1:

- (a) we shall under no circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) our total liability to you in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the Goods.

9. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the

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

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

extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

10. GENERAL

10.1. Assignment and other dealings.

- (a) We may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of our rights or obligations under the Contract.
- (b) You may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of your rights or obligations under the Contract without our prior written consent.

10.2. **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the

minimum extent necessary to make it valid, legal and enforceable.

- 10.3. **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 10.4. **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by us
- 10.5. **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 10.6. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).