

## **CONDITIONS OF SALE**

### **1. DEFINITIONS**

- "COMPANY" means TOE Solutions Ltd (Company number 04182285).
- "CONDITIONS" means the terms and conditions of sale set out in this document.
- "CONTRACT" the contract between the Company and the Customer for the sale and purchase of the Goods in accordance with these Conditions.
- "CUSTOMER" means the person, firm or company who purchases the Goods from the Company.
- "DELIVERY LOCATION" has the meaning given in clause 5.1.
- "FORCE MAJEURE EVENT" means an event or circumstance beyond a party's reasonable control.
- "GOOD INDUSTRIAL PRACTICE" means in relation to manufacture of the Goods the adoption of methods and practices of the kind that would be expected to be adopted by a competent and experienced manufacturer operating in the same industry as that in which the Company operates.
- "GOODS" means the goods (or any part of them) set out in the Order.
- "NORMAL DEFECT RATE" means (i) the number of items of the Goods which may be normally expected to be faulty, as stated in the Order Confirmation whether expressed as a percentage or otherwise; or (ii) if no such number is specified, the number of items of the Goods among 1,000,000 units of identical goods of a similar kind to the Goods, which may normally be expected to be defective although the same have been properly manufactured using approved and appropriate methods in accordance with Good Industrial Practice.
- "ORDER" the Customer's order for the Goods, as set in the Customer's purchase order form, the Customer's written acceptance of the Company's quotation, or overleaf, as the case may be.
- "ORDER CONFIRMATION" means a written acceptance of an Order issued by the Company.
- "SPECIFICATION" any specification for the Goods, including any related plans and drawings, agreed in writing by the Customer and the Company.
- "SPECIFIED" will be construed accordingly as referring to part or all of a Specification.

### **2. BASIS OF CONTRACT**

- 2.1 The Conditions apply to the Contract to the exclusion of any other terms which the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing, and replaces any other previous terms, conditions or contracts.
- 2.2 The Order shall constitute an offer by the Customer to purchase Goods pursuant to these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Company issues the Order Confirmation, at which point the Contract shall come into existence.
- 2.4 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Customer's acceptance of these Conditions.
- 2.5 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Company.
- 2.6 Any advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.7 A quotation for the Goods given by the Company shall not constitute an offer.

### **3. THE PRICE AND PAYMENT**

- 3.1 The Price of the Goods shall be the price stated in the Order as accepted (or corrected) by the Order Confirmation.
- 3.2 The price of the Goods:
- 3.2.1 excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Company at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- 3.2.2 unless otherwise stated in the relevant Order Confirmation includes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 3.3 The Customer shall pay the Price, VAT and any other amounts invoiced by such date stated in the Order Confirmation (due date).
- 3.4 The Company may, by giving notice to the Customer 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:
- 3.4.1 any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour materials and other manufacturing costs);
- 3.4.2 any request by the Customer to change the delivery date(s) quantities or types of Goods ordered, or the Specification; or
- 3.4.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate or accurate information or instructions.
- 3.5 If the Customer fails to make any payment by the due date then without prejudice to any of the Company's other rights the Company may:-
- 3.5.1 cancel or suspend deliveries of any Goods due to the Customer;
- 3.5.2 appropriate any payment made by the Company to such of the Goods (or Goods supplied under any other contract between the Company and the Customer) as the Company may think fit; and
- 3.5.3 charge interest on the amount unpaid (both before and after any judgement) at the rate of 4% per annum above Barclays Bank plc's base rate from time to time until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 3.6 The Company reserves the right to charge the Customer and the Customer will pay for technical advice and/or administrative support requested by the Customer and which the Company agrees to provide to the Customer from time to time. The time spent by the Company preparing, providing and delivering the same will be charged at the Company's standard hourly rates in force from time to time and the cost of any materials used or consumed by the Company in doing so will be charged to the Customer in addition.
- 3.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Company may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.

### **4. THE GOODS**

- 4.1 The Goods are described in the Order Confirmation.
- 4.2 The Company reserves the right to amend any Specification if required by any applicable statutory or regulatory requirements or where such modification will not affect the performance of the Goods or their suitability for use for any purpose which has been communicated to and agreed to by the Company.
- 4.3 The Goods will be manufactured in accordance with a Specification supplied by the Customer. Accordingly, the Customer shall indemnify the Company 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 the Company in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising

out of or in connection with the Company's use of the Specification. This clause 4.3 shall survive termination of the Contract.

## 5. DELIVERY

- 5.1 Delivery of the Goods shall be made by the Company delivering the Goods to the place specified in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Company notifies the Customer that the Goods are ready.
- 5.2 Delivery is completed on the completion of unloading of the Goods at the Delivery Location or, where delivery is ex-works, in accordance with Incoterms 2020 on completion of loading of the Goods onto the Customer's or its courier's vehicles at the Company's works.
- 5.3 Any dates quoted for delivery of the Goods are approximate only and the time of delivery is not of the essence. The Company shall not be liable for any delay in delivering the Goods (or any of them) that is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.4 If the Company fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.5 If the Customer fails to take or accept delivery of the Goods (unless such failure is caused by a Force Majeure Event or the Company's failure to comply with its obligations under the Contract) then the Company may (without affecting its other rights or remedies):-
- 5.5.1 store the Goods until actual delivery takes place and charge the Customer for all related costs and expenses (including insurance); or
- 5.5.2 resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling expenses, account to the Customer for the excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

## 6. CUSTOMER WARRANTY

- 6.1 The Customer warrants to the Company that it has fully disclosed to the Company and there are included in the Order details of:
- 6.1.1 all safety and performance characteristics and all features which it expects or requires of the Goods;
- 6.1.2 all other the Customer's requirements of any kind in relation to the Goods, their function and the performance expected from the Goods;
- 6.1.3 all information that it is relevant for the Company to know in relation to the purpose for which and the environment and environmental conditions in which the Goods will be used; and
- 6.1.4 all other information, which it is relevant for the Company to know in order to assist it in complying with its obligations under the Contract and to manufacture and deliver the Goods and otherwise fulfil its obligations under the Contract.
- 6.2 The Customer will indemnify and keep indemnified the Company in respect of any breach of the warranties given in clause 6.1.

## 7. CHANGES TO THE SPECIFICATION

- 7.1 In the event that the Company considers that the Specification is, or may be, flawed or defective, the Company may contact the Customer to discuss the potential flaws and/or defects in the Specification provided and may make suggestions in accordance with ISO or other recognised standards, processes.
- 7.1.1 If the Customer chooses to proceed with the Specification otherwise than in accordance with the with the Company's recommendations, it does so at its own risk and the Company shall not be liable for the Goods' failure to comply with the warranty set out in clause 8.2.

## 8. QUALITY

- 8.1 The Customer acknowledges that the Company gives no assurance that the Goods will perform in a manner that is different to or inconsistent with the Specification and confirms that it has no expectation that they will do so. The Customer will not use or permit use of any Goods in:
- 8.1.1 a manner that requires them to perform in a manner that is outside or inconsistent with their Specification;
- 8.1.2 a manner, which is likely to place greater stress upon or make greater demands upon the Goods than those contained in their Specification; or
- 8.1.3 an environment, which is in any way different from or incompatible with the environmental conditions specified as those in which the Goods will be used.
- 8.2 Subject to clause 8.3, the Company warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Goods shall:
- 8.2.1 conform in all material respects with their description and any applicable Specification; and
- 8.2.2 be free from material defects in design, material and workmanship.
- 8.3 The Company will not be in breach of the warranty given in clause 8.2 and will have no liability in relation to faults or defects in a proportion of Goods whose incidence is no greater than the Normal Defect Rate. In this regard, the parties confirm and acknowledge that it is normal in the industry and expected that an incidence of faulty Goods may occur in any consignment, even where this has been manufactured by an experienced and competent producer of goods of the same kind as the Goods in accordance with Good Industrial Practice. Any incidence of faulty or defective Goods that is no greater than the Normal Defect Rate will not give rise to any liability on the Company's part and the Company will not be deemed to have failed to comply with the warranty given under clause 6.1. Accordingly, the Customer acknowledges that, to the extent it considers necessary and appropriate in relation to its use of the Goods, it is responsible for monitoring and checking the Goods and not using any such faulty Goods. Where the incidence of faulty items among the Goods does not exceed the Normal Defect Rate, the Goods amongst which they occur will not be deemed to be defective or faulty for any purpose.
- 8.4 Subject to clause 8.5, if:
- 8.4.1 the Customer gives notice in writing to the Company during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 8.2;
- 8.4.2 the Company is given a reasonable opportunity of examining such Goods; and
- 8.4.3 the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business,
- 8.4.4 the Company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 8.5 The Company shall not be liable for the Goods' failure to comply with the warranty set out in clause 8.2, in any of the following events:
- 8.5.1 the Customer makes use of such Goods after taking delivery when the Customer knew or suspected or ought reasonably to have known or suspected that they are or may be defective;
- 8.5.2 the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same; or
- 8.5.3 the defect arises as a result of the Company following any drawing, design or Specification supplied or approved by the Customer;
- 8.5.4 the defect arises as a result of improper use of the Goods by the Customer;
- 8.5.5 the Customer alters or repairs such Goods without the written consent of the Company;

- 8.5.6 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- 8.5.7 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory, regulatory requirements with ISO or other recognised standards.
- 8.6 Except as provided in this clause 8, the Company shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 8.2.
- 8.7 This clause 8.7 applies where the Customer has informed the Company that any Goods are defective or faulty in any way and where on examining and/or investigating such Goods the Company finds either that such Goods are not so or any fault or defect in the Goods has arisen to any extent by reason of any of the matters referred to in clauses 8.5.2. to 8.5.7 inclusive. Where this clause 8.7 applies, the Company will be entitled to invoice the Customer in respect of (i) the time spent by it in carrying out such examination and/or investigation on the basis of its standard hourly rates applicable from time to time; (ii) the cost of any materials used in doing so; (iii) any travel costs incurred if visiting the Customer's premises; and (iv) the costs of collection and return to the Customer of the Goods in question.
- 8.8 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.
- 8.9 These Conditions shall apply to any repaired or replacement Goods supplied by the Company.

## 9. RISK AND TITLE

- 9.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 9.2 Title to the Goods shall not pass to the Customer until the Company receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Company has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 9.3 Until Title in the Goods has passed to the Customer, the Customer shall hold the Goods on a fiduciary basis as bailee for the Company.
- 9.4 The Customer shall:
- 9.4.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
- 9.4.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 9.4.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- 9.4.4 notify the Company immediately if it becomes subject to any of the events listed in clause 10.1; and
- 9.4.5 give the Company such information relating to the Goods as the Company may require from time to time.
- 9.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 10.1, then without limiting any other right or remedy, the Company may at any time require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## 10. TERMINATION

- 10.1 Without limiting its other rights or remedies, the Company may terminate this Contract with immediate effect by giving written notice to the Customer if:
- 10.1.1 the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 5 days of that party being notified in writing to do so;

- 10.1.2 the Customer 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), 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;
- 10.1.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- 10.1.4 the Customer's financial position deteriorates to such an extent that in the Company's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 10.2 Without limiting its other rights or remedies, the Company may suspend provision of the Goods under the Contract or any other contract between the Customer and the Company if the Customer becomes subject to any of the events listed in clause 10.1 or the Company reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 10.3 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 10.4 On termination of the Contract for any reason the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest.
- 10.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 10.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

## 11. LIMITATION OF LIABILITY

- 11.1 The Customer confirms that:
- 11.1.1 it has no expectation and there is no requirement that the Goods will or should perform otherwise than in accordance with or have any quality, feature or capability not included in their Specification; and
- 11.1.2 subject always to clause 11.2, the Company will have no liability to the Customer in relation to any Goods in relation to which the Customer is in breach of the warranties given by it pursuant to clause 6.1.
- 11.2 Nothing in these Conditions shall limit or exclude the Company's liability for:
- 11.2.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 11.2.2 fraud or fraudulent misrepresentation;
- 11.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- 11.2.4 any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.
- 11.3 Subject only to clause 11.2:
- 11.3.1 the Company shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:
- (i) any loss of profit;
  - (ii) loss of sale or business;
  - (iii) loss of agreements or contracts;
  - (iv) loss of anticipated savings;
  - (v) loss of or damage to goodwill; or
  - (vi) any indirect or consequential loss,

(vii) arising under or in connection with the Contract; and

11.3.2 the Company's total liability to the Customer 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 the invoice value of the Order of which such faulty Goods form part.

## 12. SUBCONTRACTORS & THIRD PARTY WORKING

12.1 In this clause 12, the term "**Sub-Contractor**" means any sub-contractor appointed by the Company whether at the Customer's request or as mentioned in clause 12.5.

12.2 The Customer may request the Company to use a Sub-Contractor to carry out specified processes or work to the Goods:

12.2.1 before the Company has completed its work in relation to such Goods in which event the Sub-Contractor will return the Goods to the Company after it has carried out its work or processes so the Company may continue its work in relation to the Goods;

12.2.2 after the Company has completed its work in relation to the Goods, in which event the Sub-Contractor may be instructed to deliver the Goods to the Customer or return the same to the Company for onward delivery as the Company decides; or

12.2.3 in order to carry out work or a process, which the Customer has required be carried out and which is either not part of the Specification applicable for the Company or comprises goods or services which the Company does not wish to carry out.

12.3 The Customer may appoint a third party to carry out a process or other work to Goods after the Company has completed its work in relation to them. If it does so, the Customer may require the Company to deliver the Goods to such third party. The Company will do so if such third party or its premises is designated as the Delivery Location. For the avoidance of doubt, it is confirmed that the Company will have no responsibility or liability in relation to the acts or omissions of anything done to the Goods by such third party so that any processes or work such third party carries out to the Goods and the impact thereof upon the Goods will be entirely at the Customer's risk.

12.4 If the Customer has requested the Company to use a Sub-Contractor as provided in clause 12.2 then whether or not the Customer has nominated the Sub-Contractor, the Company:

12.4.1 makes no recommendation and gives no assurance of any kind in relation to such Sub-Contractor or anything done by it;

12.4.2 gives no assurance regarding the performance of such Sub-Contractor or the quality of anything it does;

12.4.3 will, subject always to clause 11.2, have no liability in relation to the acts or omissions of that Sub-Contractor.

12.5 The Company may also of its own volition appoint one or more Sub-Contractors to fulfil any or all its obligations under the Contract and where it does so, unless any of clauses 12.2.1 to 12.2.3 apply to such appointment, the Company shall be liable to the Customer in respect of such Sub-Contractor's acts and omissions.

12.6 The terms of any agreement, arrangement or contract between the Company and any Sub-Contractor will be in the Company's sole discretion.

12.7 This clause 12 shall survive termination of the Contract.

## 13. FORCE MAJEURE

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for 6 weeks, the party not affected may terminate this Contract by giving 1 week's written notice to the affected party.

## 14. GENERAL

### 14.1 Assignment and other dealings:

14.1.1 The Company 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.

14.1.2 The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Company.

### 14.2 Entire agreement:

14.2.1 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.

14.2.2 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 this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

14.3 **Variation:** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14.4 **Waiver:** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14.5 **Notices:** Any notice by either party to the other shall be in writing addressed to the other party at its registered office or principal place of business or such other address as either party may at the relevant time notify the other.

14.6 **Severance:** Any provisions of the Conditions which is or may be void or unenforceable in whole or in part shall not affect the validity or enforceability of the remaining provisions.

14.7 **Third Party Rights:** No one other than a party to this Contract shall have any right to enforce any of its terms.

## 15. LAW AND JURISDICTION

The Law of England and Wales shall apply and the parties hereby agree to submit to the exclusive jurisdiction of the courts of England and Wales.