



Total Protection (UK) Limited

Standard Terms and Conditions of Sale

1. Interpretation

1.1 In these **Conditions**:

"BUYER" means the person named as the Buyer in the Contract;

"GOODS" means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these **Conditions**;

"SELLER" means Total Protection (UK) Limited.

"**CONDITIONS**" means the **standard terms and conditions of sale** set out in this document and (unless the context otherwise requires) includes any special **terms and conditions** agreed in writing between the Buyer and the Seller;

"**CONTRACT**" means the contract for the purpose and **sale** of the Goods;

"**WRITING**" includes telex, cable, facsimile transmission and 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.

1.3 The headings in these **Conditions** are for convenience only and shall not affect their interpretation.

2. Basis of the Sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with the written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these **Terms and Conditions**, which shall govern the Contract to the exclusion of all other **terms and conditions** including the **terms** of the Client's Purchase Order (if any) shall be superseded and excluded by the **terms and conditions** of this Agreement.

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

2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of 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's authorised representative. Such order is to be subject exclusively to these **Terms and Conditions**.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the specification of any order (including any applicable specification) 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 the said specification.

3.3 The quantity, quality and description of and any specification for the Goods shall be those set out 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 loss, damages, costs and expenses awarded against or incurred by the Seller in connection with paid or agreed to be paid 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 from the Seller's use of the Buyer's specification.

3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform to any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

3.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on **terms** that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs, (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

4. Price of the Goods

4.1 The price of the Goods shall be the Seller's quoted price. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

4.2 Except as otherwise stated under the **terms** of any quotation of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.

4.3 The price is exclusive or any applicable Value Added Tax, which the Buyer shall be additionally liable to pay to the Seller.

5. Equipment Hire

5.1 The **terms and conditions** under which we hire are industry standard and place on the hirer the obligation to pay us compensation if a machine is lost or damaged for any reason other than fair wear. Consumers should be aware that normal household policies DO NOT cover this risk and we strongly advise that you check this before commencing any hire. We will provide an insurance value for any item on request.

5.2 All hires are transacted under our trade association Contract **terms** that are printed clearly on the reverse of the hire document. Hirers should read these before signing the contract. Responsibility for loss and deliberate damage passes to the hirer once the equipment is in his possession and whereas a business hirer will normally insure this risk small individual traders and consumers may not have access to a suitable policy (household policies do not normally provide such cover but it is worth checking with your insurers). Total Protection (UK) Limited can offer to provide cover against the two most potentially costly risks for a small surcharge based on the hire/rental value. The following risks are covered: Total or partial theft of the equipment whilst on hire; and Criminal damage whilst on hire.

In both cases each and every claim must be reported to the police and a crime/incident reference obtained by the hirer.

5.3 All other **terms** of the Contract between us remain in force. In particular hirers should be aware that this cover does not extend to unreasonable damage caused to our equipment through reckless or inexperienced operation. Nor is accidental damage caused to other property covered. If you intend using the hired equipment on property belonging to some one else we advise that you take specialist advice regarding third party liability. Please be advised that before using any equipment that excavates below ground level you are responsible for checking for the location of all underground utility services, damage to which can be very expensive.

6. Terms of Payment

6.1 Subject to any special **terms** agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price 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.

6.2 The Buyer shall pay the price of the Goods (without any deduction) within 30 days of the date of the Seller's invoice, notwithstanding that delivery may not have taken place and 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. Receipts for payment will be issued only upon request.

6.3 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:

6.3.1 Cancel the Contract or suspend any further deliveries to the Buyer;

6.3.2 Appropriate 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 think fit (notwithstanding any purported appropriation by the Buyer); and

6.3.3 Charge the Buyer interest (both before and after any judgment) on the amount unpaid at the rate of 3% per annum above Bank of England 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).

7. Delivery

7.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.

7.2 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 however 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.

7.3 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 Contract as a whole as repudiated.

7.4 If the Seller fails to deliver the Goods for any reason other than 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 the cost to the Buyer (in the cheapest available market) of similar Goods to replace those not delivered over the price of the Goods.

7.5 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 or 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:

7.5.1 Store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

7.5.2 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 over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

8. Risk and Property

8.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

8.1.1 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; or

8.1.2 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.

8.2 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.

8.3 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 the bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of **sale** or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

8.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), 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. This condition being additional to the Seller's rights in law both statutory or otherwise to seek redress including where appropriate injunctive remedies.

8.5 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, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

9. Intellectual Property and Confidentiality

9.1 For the avoidance of doubt nothing in this Contract shall be construed as affecting the ownership of Background Intellectual Property rights in existence prior to or generated after the commencement of the Contract.

9.2 All rights to Intellectual Property in the Goods shall remain the property of the Seller.

9.3 The Buyer hereby undertakes to preserve the confidentiality of any such Background or Foreground intellectual property whether in tangible or visible form or whether communicated orally.

9.3.1 This obligation of confidentiality shall not apply to any information:

9.3.1.1 In the public domain at the time it was disclosed or which thereafter enters the public domain without breach or the **terms** of this Contract;

9.3.1.2 Already known by the Receiving Party at the time of disclosure by the Disclosing Party;

9.3.1.3 Which becomes known from a source other than the Disclosing Party without breach of the **terms** of this Contract;

9.3.1.4 Independently developed by an employee of the Receiving Party to whom no disclosure of any such disclosed information has been made; or

9.3.1.5 Which is required to be disclosed by Court Order but only to the extent required by the Order on condition that the Disclosing Party is informed promptly of the Court Order.

9.3.2 The obligations of confidentiality contained in this clause shall expire seven (7) years after the date of completion of the order.

10. Warranties

10.1 Subject to the **conditions** set out below the Seller warrants that the Goods will correspond with their specification and their normal standards of quality of manufacture at the time of delivery.

10.2 The above warranty is given by the Seller subject to the following **conditions**:

10.2.1 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;

10.2.2 The above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

10.3 Any claim by the Buyer which is based on any defect in the quality or **conditions** of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within seven (7) days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure.

10.4 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or **conditions** of the Goods or their failure to meet specification is notified to the Seller in accordance with these **conditions**, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.

11. Liability

11.1 In this clause, the following expressions shall bear the following meanings:

"Liability" means any and all legal liability howsoever arising, whether for breach of contract (including this Contract), tort, breach of statutory duty or otherwise howsoever;

"Damage" included:

11.1.1 Any physical damage or loss of any kind whatsoever, whether to property of the Buyer, its customers or any third party; and

11.1.2 Any financial loss of any kind whatsoever (including, but not limited to expenses incurred, loss of diminution of profits or revenue, loss of opportunity, loss of use, loss of contracts, failure to

achieve anticipated savings and damage to goodwill) suffered by the Buyer, its customers or any third party, whether or not such financial loss is caused by or consequent upon any physical damage or loss.

11.2 The Seller, its employees, servants and agents shall have no liability to the Buyer for any damage caused directly or indirectly by any breach of any of the **terms** of this Contract, or without prejudice to the generality of the foregoing by:

11.2.1 Any defect in the manufacture of the Goods;

11.2.2 Any non-performance or delay in delivery of the Goods;

11.2.3 Any failure of the Goods to comply with the **terms, conditions** and warranties of this Contract or of any other agreement relating to the Goods;

11.2.4 Any inaccuracies, defects or omissions in any work performed, information provided or advice given pursuant to, in connection with or as a result of the specification and manufacture of the Goods; or

11.2.5 The use by any person of any information, advice, results, product, process or system supplied or provided by the Seller pursuant to the manufacture of the Goods or of any adaptation by any person of any information, advice, results, product, process or system.

11.3 Further and in any event of the Seller's total liability in respect of all breaches of this Contract and/or the matters set out in paragraph 11.2 above shall in no circumstances exceed the sum of £2 million in aggregate.

11.4 Nothing in this clause shall be taken to exclude or restrict any liability of the Seller for death or personal injury resulting from the negligence of the Seller or its employees, servants or agents or to exclude or restrict any other liability of the Seller which cannot by law be excluded or restricted.

11.5 The Seller does not give any express or implied representations and this Contract does not contain any express or implied **terms, warranties** or **conditions** as to:

11.5.1 The quality or fitness for a particular purpose of any Goods (or of any design, workmanship, materials or parts used in connection therewith) or as to their correspondence with any description or sample; or

11.5.2 The accuracy, sufficiency or completeness of any work performed, information provided or advice given pursuant to, in connection with or as a result of the use of the Goods.

11.6 In particular, there are hereby expressly excluded all **conditions, warranties** and other **terms** which might otherwise be implied (whether by common law, by statute or otherwise) as to any of the matters set out in paragraphs 11.5.1 and 11.5.2 above. Without prejudice to the generality of the foregoing, there are hereby expressly excluded any **terms, conditions** or warranties which would otherwise be implied by sections 13 to 15 of the **Sale of Goods Act 1979** (as amended) or by sections 3 to 5 of the **Supply of Goods and Services Act 1982** (as amended), or by any statutory modifications, amendments or re-enactments thereof.

12. Force Majeure

12.1 Except for payment of money due, neither Party shall be liable for failure to perform its obligations under this Contract, nor give rise to any claim for compensation or damage nor be deemed to be in breach of this Contract, if and to the extent that such failure arises from an occurrence or circumstances reasonably beyond the control of that Party (Force Majeure).

12.2 If either Party is affected by Force Majeure that Party shall give written notice without delay to the other Party of the nature and extent of the circumstances and the date and anticipated duration of the suspension.

12.3 If such Force Majeure causes a delay of sixty (60) days or more and such delay may reasonably be anticipated to continue, then either Party may terminate this Contract forthwith.

12.4 The Party serving notice pursuant to Clause 12.1 shall notify the other in writing as soon as the performance of its obligations is no longer affected by Force Majeure and the parties shall resume the performance of their respective obligations each to the other with effect from the date so notified.

13. Indemnity

13.1 If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:

13.1.1 The Seller is given full control of any proceedings or negotiations in connection with any such claim;

13.1.2 The Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;

13.1.3 Except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld); or

13.1.4 The Buyer shall do nothing which would or might invalidate any policy of insurance of insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);

13.1.5 The Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of such claim; and

13.1.6 Without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

14. Insolvency of Buyer

14.1 This clause applies if:

14.1.1 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

14.1.2 An encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

14.1.3 The Buyer ceases, or threatens to cease, to carry on business; or

14.1.4 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.

14.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

15. Non-Assignment

Neither Party may assign, transfer or otherwise dispose of this Contract in whole or in part of any interest therein without the prior written consent of the other Party such consent not to be unreasonably withheld or delayed.

16. Severability

The various provisions of this Agreement are severable and if any provision hereof shall be held to be invalid or unenforceable shall not affect the enforceability of the remaining provisions of this Agreement.

17. Notices

Any notice required or permitted to be given by either Party to the other under these **Conditions** shall be in Writing addressed to that Party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the Party giving the notice.

18. Waiver

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.

19. Law

The Contract shall be governed by the laws of England and the parties shall submit to the non exclusive jurisdiction of the English courts.

20. Rights of Third Parties

Notwithstanding anything to the contrary elsewhere in the Contract, no right is granted to any person who is not a party to the Contract to enforce any term of the Contract in his own right and the parties to the Contract declare that they have no intention to grant any such right.