

Tensator Limited – Terms and Conditions of Sale

**1 DEFINITIONS**

1.1 In these conditions these words have the following meanings:  
**"the Company"** Tensator Limited  
**"Contract"** any contract under which the Company sells goods and/or provides services to the Customer  
**"Credit Account"** means a credit account, if provided to the Customer by the Company, to be used by the Customer for its purchase of goods and/or services  
**"the Customer"** you  
**"due date"** the date referred to in clause 8.2  
**"the Relevant Date"** means the date on which either (a) the Customer takes delivery of any consignment of the goods at the Company's premises or (b) the Company dispatches any consignment of the goods or (c) the Customer defaults in his obligations under clause 5.1 whichever shall first occur or (d) (in the case of services) the services are carried out  
**"goods"** the whole or any part of the goods (including any parts for them) which the Company is to supply in accordance with these conditions  
**"services"** the whole or any part of the services which the Company is to carry out in accordance with these conditions  
**"supply"** includes (but is not limited to) any supply under a Contract  
**"international supply contract"** a contract as is described in section 26(3) of the unfair contract terms act 1977

1.2 References to clauses (except where the context otherwise requires) are references to the clauses set out below

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

**2 CONTRACT**

2.1 All quotations may be withdrawn or varied by the Company at any time without notice and unless otherwise specified shall be deemed to be withdrawn automatically at the expiry of one calendar month from the issue date

2.2 The Contract will only come into existence once the Company has given notice of acceptance of the Customer's order

2.3 The Contract is subject to these Tensator Limited – Terms and Conditions of Sale. Except as provided in clause 2.4, a representative or agent of the Company does not have authority to agree to any term or make representation which is inconsistent with these terms and conditions or to enter into any Contract except on the basis of them

2.4 Any terms or representation inconsistent with these conditions will only bind the Company if it is writing and signed by one of its directors. The words "unless otherwise agreed in writing by the Company" in these conditions means unless otherwise agreed in writing and signed by a director of the Company

2.5 Unless otherwise agreed in writing by the Company, these terms and conditions will override any terms or conditions stipulated or referred to by the Customer in their order or pre-Contract negotiations

2.6 Any description, illustration or specification contained in the Company's catalogues, samples, price lists, or other advertising material is intended merely to present a general picture of the goods and/or services and will not form a representation or be part of the Contract

2.7 Where the Company has not acknowledged the Customer's order in writing (which includes email), these conditions will apply to the Contract

2.8 The Company reserves the right to correct clerical or typographical errors made by its employees at any time

**3 SPECIFICATION**

3.1 Goods or services carried out to the customer's specification, instruction or design will be at the Customer's risk only. The Customer will indemnify the Company against any infringement of any patent, design, right, design right, trade mark, trade name, copyright or other intellectual property right (whether registered or unregistered) and any loss, damage or expenses it may incur because of any such infringement in any country. The Customer will also indemnify the Company against any loss, damage or expense in respect of any liability arising under the Consumer Protection Act 1987 by reason of the Customer's specification or design of the goods or services

3.2 The Company reserves the right to make any changes in the specification of the goods and/or services are required to conform with any applicable safety or other statutory requirements. Where the goods and/or services are to be supplied to the Customer's specification the Company reserves the right to make any changes in the specification of the goods and/or services which do not materially affect the quality or performance of the goods and/or services

3.3 The Customer will pass on to all third parties to whom it may supply the goods, all information as to the use and safe handling of the goods which has been provided to the Customer by the Company

**4 PRICES**

4.1 Unless otherwise agreed in writing by the Company, the Company's quotations for the goods and/or services are provisional and may be altered at any time for any reason without notice

4.2 Prices charged will be those current at the time of delivery of the goods or completion of the services. The Company may increase its prices at any time to take account of any increase in the cost of the Company purchasing goods or materials or manufacturing, working on or supplying the goods and/or services. The Company may also increase its prices at any time to take account of any error or inadequacy in any specification, instruction or design provided by the Customer or any modification carried out by the Company at the Customer's request.

4.3 All prices quoted are exclusive of VAT and the Customer shall pay any and all duties, taxes or charges payable in respect of the goods and/or services

4.4 The cost of pallets and returnable containers will be charged to the Customer in addition to the price of the goods.

**5 DELIVERY OR COMPLETION OF SERVICES**

5.1 Unless otherwise agreed in writing by the Company, the Customer will take delivery of the goods at the Company's premises within twenty-eight days of receiving notification that they are ready;

5.2 Unless otherwise agreed in writing by the Company, if the Company agrees to deliver the goods to a site other than at its premises the Customer will give the Company all necessary instructions and off-loading will be at the Customer's risk and expense.

5.3 If the Contract is an international supply contract, it will be deemed to incorporate the latest edition of "Incoterms" current at the date of Contract. If there is any inconsistency between "Incoterms" and any express term of the Contract the latter will prevail. The Company will be under no obligation to give the Customer the notice specified in Section 32(3) of the Sale of Goods Act 1979.

5.4 The Company will try to deliver the goods or complete the services by any agreed date or within any agreed period but such dates or periods are estimates only given in good faith and the Company will not be liable for a failure to deliver by such date or within such periods. The Company may defer delivery or completion until any payments due from the Customer have been received. The goods may be delivered by the Company in advance of any agreed date upon giving reasonable notice to the Customer.

5.5 If the Company is delayed from delivering the goods or carrying out the services due to war, governmental or parliamentary restrictions, strike, lock-outs, fire, floods, explosions, labour disturbances, trade disputes, damage to or destruction of the goods, breakdown of machinery shortages of labour or of raw materials or Act of God or due to any other cause beyond the reasonable control of the Company, the Company may cancel or suspend the Customer's order without incurring any liability for loss or damage

5.6 The Company will try to comply with reasonable requests by the Customer for the postponement of delivery but shall not be under any obligation to do so. Where delivery is postponed otherwise than due to the Company's default, the Customer shall pay costs and expenses of the delay including a reasonable charge for storage and transportation.

**6 CANCELLATION OR DEFERRAL**

6.1 The Company may defer any deliveries of goods or performance of services and treat the Contract as determined if the Customer fails to make any payment when it becomes due or enters into any composition or arrangement with its creditors or has a winding-up order made against it or has an administrative receiver or administrator appointed or passes a resolution for winding-up or a court makes an order to that effect or it breaches any of these conditions

6.2 Without prejudice to the Company's right to the full purchase price for the goods/services, the Company will be entitled to damages for any consequential loss due to the determination of the Contract described in Clause 6.1

6.3 Cancellation of a Contract by the Customer will only be accepted at the discretion of the Company. Acceptance of the cancellation will only be binding on the Company if in writing and signed by a director. Any costs or expenses incurred by the Company up to the date of the cancellation and all loss or damage resulting from the cancellation will be paid by the Customer to the Company forthwith whether or not formally demanded

**7 DEFECTIVE GOODS OR SERVICES**

7.1 The Customer will carefully examine the goods upon receipt and notify the Company of any damage or shortage within 48 hours from delivery.

7.1.1 The quantity of any consignment of goods as recorded by the Company upon despatch from the Company's premises shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary

7.1.2 If the goods and/or the packaging is visibly damaged, the Customer shall sign for the goods as 'damaged'. If the goods need to be returned, the Customer shall call the Company to obtain returns reference number. Any orders returned without a reference number may result in a credit note/refund not being given.

7.2 The Company's liability under any Contract, if any, will be limited to replacing, or (at its option) repairing, such goods and in any event will not exceed the individual Contract value.

7.3 The Company will not be liable to the Customer for consequential loss arising as a result of damage, loss or shortage.

7.4 The Company will only be liable to the Customer in respect of the matters set out in clause 7.2 provided that the customer informs the Company of the defect as soon as is reasonably practicable and in any event the defect is notified to the Company within forty-eight (48) hours of the delivery of the goods or completion of

the services. At the Company's request, the Customer will provide authority for the Company's servants or agents to inspect such goods

7.5 Where the Company agrees to repair or replace goods, any time specified for delivery under the Contract will be extended for such period as the Company thinks fit

7.6 Except for the terms implied in the Contract by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982, all conditions, warranties and other terms expressed or implied, statutory or otherwise, are expressly excluded, save insofar as they are contained in these terms and conditions or otherwise expressly agreed by the Company in writing. If any legislation makes it unlawful to exclude or purport to exclude any term from the Contract this clause will not apply to such term

**8 PAYMENT**

8.1 Unless otherwise agreed by the Company in writing, the price for the goods and/or services shall be the price set out in the Company's price list published on the date of delivery/deemed delivery and shall be exclusive of any value added tax and all costs or charges in relation to loading, unloading carriage and insurance all of which amounts the Customer shall pay in addition when it is due to pay the goods and/or services according to this clause 8.

8.2 The full and timely payment by the Customer of all sums due to the Company is of the essence and shall be as follows:

8.2.1 If the Customer holds a Credit Account, the Customer shall pay each invoice in full and in cleared funds to the Company no later than thirty days from the date of the invoice or such other period as may be set by the Company in writing from time to time.

8.2.2 If the Customer does not hold a Credit Account, the Customer shall pay for the goods and/or services supplied under the Contract in full and in cleared funds to the Company on a "proforma basis" at the time that the order for the goods and/or services is made. Such goods and/or services will not be delivered to the Customer until such payment is received by the Company.

8.3 Without prejudice to any other rights of the Company, interest will be payable on all overdue sums due to the Company at Lloyds TSB base rate plus 4%. For the purpose of clauses 6.2 and 11 the full purchase price of the goods and/or services will include any interest payable under this clause

8.4 Non-payment on a due date will entitle the Company to demand payment of all outstanding balances whether due or not and/or cancel all outstanding orders

8.5 The Customer shall make all payments due to the Company in full and without any retention or deduction of any kind, whether such retention or deduction is by way of security for defects, set-off, counterclaim, discount, abatement or otherwise

8.6 The Company will have the right to suspend performance of its obligations if it reasonably believes that the Customer will not make payment in accordance with this clause 8

8.7 The Company reserves the right to adjust or withdraw the Customer's Credit Account at any time and for any reason. Should the Company withdraw the Customer's Credit Account or terminate any Contract for any reason, all outstanding invoices shall be due and payable immediately, despite any other provision.

**9 RETENTION OF TITLE**

The following provisions shall apply to all goods supplied under any Contract (save for international supply contracts). No termination of a Contract shall prejudice limit or extinguish the Company's rights under this clause 9

(a) Upon delivery of the goods, the Customer shall hold the goods as sole bailee for the Company and the goods shall remain the property of the Company until such time as the Customer shall have paid the Company the full purchase price of all goods and services supplied under the Contract or any other contract. Until such time, the Company shall be entitled to recover the goods or any part thereof and for the purpose of exercising such rights, the Company, its employees and agents with appropriate transport may enter upon the Customer's premises and any other location where the goods are situated

(b) Before payment in full is made the Customer shall be entitled to use the goods in the normal course of its business

(c) Before payment in full is made the Customer shall have the power to resell the goods and the proceeds of sale thereby belonging accordingly to the Company and being held by the Customer as trustee and agent for the Company

(d) The Customer shall maintain all appropriate insurance in respect of the goods from the relevant until full payment has been received by the Company in respect of such goods. In the event of any loss or damage occurring during this period the Customer shall immediately on receipt of any insurance monies remit to the Company the full purchase price of the goods lost or damaged less any part thereof which has already been paid and, until such amount has been so remitted, shall hold such amount as trustee and agent for the Company. The liability of the Customer is not in any way negated as a result of it holding insurance in relation to goods.

(e) The licenses granted under sub paragraphs (b) and (c) above shall be terminated forthwith at anytime upon notice by the Company to the customer

**10 INSTALLATION, TESTING OR SERVICING**

10.1 If under any Contract the installation testing or servicing of any equipment is to be carried out by or under the supervision of the Company, the Customer warrants and represents that it will make all necessary preparation of the site by such date as may be specified in the Contract or reasonably required by the Company; and furthermore commits that it will provide suitable access to and use of the site, suitable protection of goods from the time of delivery and all facilities required to enable the Company to perform its obligations.

10.2 The Company will indemnify the Customer in respect of any direct damage to property caused directly in the course of installation testing servicing or repair by the negligence of the Company or the negligence or wilful default of its servants or agents provided that the Company's liability hereunder shall not exceed the price payable under the Contract

10.3 The Company reserves the right to sub-contract the installation of goods or the performance of any other services required under the Contract

**11 RISK**

11.1 Except for international supply contracts and unless otherwise agreed in writing by the Company, the risk in the goods will pass to the customer on the relevant date or, if delivery is postponed at the Customer's request, when the goods are ready for despatch

11.2 The Company will not be liable for any loss of or damage to any goods left with the Company. This provision will apply whether or not the loss or damage is attributable to the Company's or its servants or agent's negligence or wilful default

**12 LIEN**

12.1 The Company shall in respect of all overdue accounts have a general lien upon any goods of the Customer in the Company's possession and shall after the expiration of 14 days notice to the Customer be entitled to dispose of such goods as it deems fit and apply the proceeds towards such overdue accounts

**13 LIMITATION OF LIABILITY**

13.1 The following provisions of this clause 13 set out the entire financial liability of the Company to the Customer in respect of any breach of these terms and conditions and any representation, statement or tortious act or omission including negligence arising out of or in connection with the Contract.

13.2 Nothing in these terms and conditions excludes or limits the liability of the Company for death or personal injury caused by negligence, fraud or fraudulent misrepresentation or any other liability which cannot be legally limited or excluded.

13.3 Subject to clause 13.2, the Company's total liability in contract, tort, misrepresentation or otherwise arising in connection with a Contract shall be limited to the price payable under the relevant Contract and the Company shall not be liable to the Customer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever which arise out of or in connection with the Contract.

**14 SAFE WORKING**

14.1 The Customer warrants that it will at all times provide a safe working environment for the Company's employees, agents or subcontractors and will comply with all statutory or other regulations in connection therewith and will indemnify the Company in respect of any loss incurred by the Company due to the Customer's breach of this warranty

**15 GENERAL**

15.1 These terms and conditions and the Contract are governed by English law and the parties agree to submit to the exclusive jurisdiction of the English courts in the event of any dispute

15.2 The headings in these terms and conditions are inserted for convenience only. They are not to affect their interpretation or construction

15.3 If any provision of these conditions becomes illegal or void for any reason, the validity of the remaining provisions shall not be affected

15.4 Failure by the Company to enforce strict compliance with these conditions by the Customer will not constitute a waiver of any of the conditions

15.5 The parties to the Contract do not intend that any term of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it

15.6 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company, whether under the Contract or not.

15.7 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

**16 INTELLECTUAL PROPERTY RIGHTS**

16.1 All documents of the Company (together with all intellectual property rights therein) shall remain the exclusive property of the Company and must not be copied loaned or transferred or dealt with in any way without the prior written consent of the Company

16.2 Unless otherwise agreed in writing, all copyright, design rights, registered design rights, trade marks, trade-names, know-how and other intellectual property rights (whether registered or unregistered) in the goods and/or services originated by or on behalf of the Company are the property of and shall remain vested in the Company. Without prejudice to the generality of foregoing, all property and copyright in any software supplied by the Company shall remain vested in the Company or in its licensors

**17 ANTI-BRIBERY**

17.1 The Customer shall not, and shall ensure that its employees, agents and sub-contractors do not, offer or accept, or facilitate any offer or acceptance, of any bribe (as defined in the Bribery Act 2010 (as amended from time to time))