

FAKRO - CONDITIONS OF SALE

1. INTERPRETATION

1.1 In these conditions'

"Purchaser" means any person whose order for Goods accepted by Fakro by the issue of a Purchase Acknowledgement.

"Goods" means the goods (including any instalment of the goods or any parts for them) which Fakro is to supply in accordance with these Conditions,

"Fakro" means Fakro GB Limited or any of its subsidiaries or subsidiary undertakings as defined in the Companies Act 1985.

1.2 Any reference in these Conditions 10 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 Fakro shall sell and the Purchaser shall purchase the Goods in accordance with any written purchase order of the Purchaser which is accepted by Fakro by the issue of a Purchase Acknowledgement. No contract will arise between Fakro and the Purchaser until such Purchase Acknowledgement is issued. All goods are supplied subject to these Conditions, which shall govern any contract to the exclusion of any other terms and conditions. Goods supplied by Fakro must not in any circumstances be used where their failure could directly endanger life.

2.2 No variation to these Conditions shall be binding unless agreed in writing by a Director of Fakro.

2.3 Fakro's employees or agents are not authorised to make any representations or give any advice concerning the Goods unless confirmed by a director of Fakro in writing. In entering into any contract the Purchaser acknowledges that it is not relying on, and waives any claim for breach of, any such representations which are not so confirmed,

2.4 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, purchase Acknowledgement, invoice or other document or information issued by Fakro shall be subject to correction without any liability on the part of Fakro.

2.5 All industrial or intellectual property rights of any nature whatsoever in the Goods shall remain vested in Fakro at all times.

3. ORDERS AND SPECIFICATIONS

3.1 No purchase order submitted by any potential purchaser shall be deemed to be accepted by Fakro unless and until confirmed by Fakro by the issue of a Purchase Acknowledgement.

3.2 The quantity and description of and any specification for the Goods shall be those set out in the Purchase Acknowledgement.

3.3 If the Goods are to be manufactured or any process is to be applied to the Goods by Fakro in accordance with a specification submitted by the Purchaser or utilising tooling, software or other goods or equipment supplied by the Purchaser, the Purchaser shall indemnify Fakro against all loss, damages, costs and expenses awarded against or incurred by Fakro in connection with or paid or agreed to be paid by Fakro in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from Fakro's use of the Purchaser's specifications, tooling, software or other goods or equipment.

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

3.5 No order which has been accepted by Fakro may be cancelled or rescheduled by the Purchaser except with the agreement in writing of Fakro and on terms that the Purchaser shall indemnify Fakro 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 FAKRO as a result of cancellation.

4. PRICE OF GOODS

4.1 All prices quoted are valid for 30 days, after which time they may be altered by Fakro without notice to the Purchaser.

4.2 Fakro reserves the right, by giving notice to the Purchaser at any time before delivery, to increase the price of the Goods to reflect any increase costs to Fakro which are due to any factor beyond the control of Fakro (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the cost of labour, material or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Purchaser, or any delay caused by any instructions of the Purchaser or failure of the Purchaser to give Fakro adequate information or instructions.

4.3 Fakro, in its sole discretion, may:-

4.3.1 charge the costs of pallets and other packaging to the Purchaser in addition to the price of the Goods, but full credit will be given to the Purchaser provided that they are returned undamaged to Fakro's address shown

overleaf before the due payment date for the relevant goods; or

4.3.2 not charge the Purchaser for pallets and other packaging, but reserve the right to collect and re-use such pallets or packaging.

4.4 All prices are exclusive of any applicable value added tax.

5. TERMS OF PAYMENT

5.1 Fakro shall be entitled to invoice the Purchaser for the Goods and packaging on or at any time after the delivery of the Goods, unless the Goods are to be collected by the Purchaser or the Purchaser fails to take delivery of the Goods, in which event Fakro shall be entitled to invoice the Purchaser at any time after Fakro has made the Goods ready for collection or (as the case may be) Fakro has tendered delivery of the Goods.

5.2 The Purchaser shall pay for all Goods in sterling within 30 days of the date of Fakro's invoice. The time for payment shall be of the essence of the contract. The purchaser shall not be entitled to make any deductions against the invoice price for any reason including but not limited to set-offs or counterclaims.

5.3 If the Purchaser fails to make payment on the due date then without prejudice to any other right or remedy available to Fakro, Fakro shall be entitled to:-

5.3.1 cancel the contract or suspend any further deliveries to the Purchaser,

5.3.2 appropriate any payment made by the Purchaser to such of the Goods as Fakro may think fit; and

5.3.3 charge the Purchaser interest (both before and after any judgement) on the amount unpaid, at the rate of four per cent per annum above Barclays Bank Plc's base rate from time to time, until payment in full is made.

6. DELIVERY

6.1 Fakro will use its reasonable endeavours to deliver the Goods on the dates set out in the Purchase Acknowledgement. Such dates, however, are approximate only, and Fakro shall not be liable for any damages or losses of whatever nature resulting from any delay in delivery of the Goods, or for any failure to deliver Goods howsoever caused except that it Fakro fails to deliver Goods which the Customer has already paid for the purchase price of such Goods will be reimbursed. Time for delivery shall not be of the essence. Goods may be delivered by Fakro in advance of the quoted delivery dates upon giving reasonable notice to the Purchaser.

6.2 Where Goods are delivered in instalments, each delivery shall constitute a separate contract and failure by Fakro to deliver any one or more of such instalments shall not entitle the Purchaser to repudiate the contract as a whole.

6.3 If the purchaser fails to take delivery of Goods or fails to give Fakro adequate delivery instructions then, without prejudice to any other right or remedy available to Fakro, Fakro may:-

6.3.1 store the goods until actual delivery and charge the Purchaser for the reasonable costs including but not limited to insurance of storage

6.3.2 sell the goods at the best price reasonably obtainable and (after deducting all reasonable storage and selling expenses) charge the Purchaser for any shortfall below the contract price.

6.4 If delivery is delayed by industrial dispute or any circumstances beyond Fakro's reasonable control then the periods for delivery shall be extended by such a period as is reasonable in the circumstances. Should any delay continue for a period exceeding six months then, unless the parties agree to the contrary, the contract shall be deemed to be terminated without any claim for compensation against Fakro.

7. RISK AND PROPERTY

7.1 Risk of damage to or loss of the Goods shall pass to the Purchaser at the time Fakro tenders Goods to the carrier for delivery to the Purchaser.

7.2 Notwithstanding the passing of risk in the Goods, or any other provision of these Conditions, the legal title to the Goods shall not pass to the Purchaser until Fakro has been paid in full for the Goods and all other Goods and services agreed to be sold by Fakro to the Purchaser for which payment is then due.

7.3 Until such time as the legal title to the Goods passes to the Purchaser, the Purchaser shall:-

7.3.1 hold the Goods as Fakro's fiduciary agent and bailee and shall keep the Goods separate from those of the Purchaser and third parties and properly stored, protected and insured and identified as Fakro's property; and

7.3.2 be entitled, subject to Fakro informing the Purchaser to the contrary, to resell or use the Goods in the ordinary course of its business as principal vis-a-vis sub-purchasers and not as agent for Fakro but shall immediately account to Fakro for the proceeds of sale of the Goods. The Purchaser shall have no authority to enter into any contract of sale on behalf of Fakro and any such contract shall accordingly be concluded in the name of the Purchaser.

7.4 Until such time as the legal title to the Goods passes to the Purchaser Fakro shall be entitled at any time to require the Purchaser to deliver up the Goods to Fakro and, if the Purchaser fails to do so forthwith, do enter upon any premises of the Purchaser or any third party, where the Goods are stored and repossess such Goods.

7.5 The Purchaser shall not be entitled to pledge or in any way charge by way of security for any indebtedness any Goods which remain the property of Fakro, but if the Purchaser does so all monies owing by the Purchaser to Fakro shall (without prejudice to any other right or remedy of Fakro) forthwith become due and payable.

8. WARRANTY AND LIABILITY

8.1 Subject to Condition 8.2 below Fakro warrants that the Goods will correspond with their specification at the time of delivery and will be freed from defects in material and workmanship for twelve months from the date of delivery to the Purchaser

8.2 The above warranty is given to the Purchaser subject to the following conditions:-

8.2.1 Fakro shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Purchaser or where the Goods have been used, in breach of Condition 2.1, in circumstances where their failure could directly endanger life.

8.2.2 Fakro shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow Fakro's instructions (whether oral or in writing) or misuse or alteration or repair of Goods without Fakro's approval;

8.2.3 Fakro shall be under no liability under the above warranty (or any other warranty, condition or guarantee), if the total price for the Goods has not been paid by the due date for payment

8.2.4 the warranty does not extend to parts, materials or equipment not manufactured by Fakro; and

8.2.5 the warranty is personal to the Purchaser and may not be assigned or transferred in any way by the Purchaser to any other party.

8.3 Subject as expressly provided in these Conditions all warranties, conditions or other terms or liabilities whether arising as a result of negligence or otherwise implied by or arising from statute or common law are excluded to the fullest extent permitted by law,

8.4 Any claim by the Purchaser which is based on any defect in the quality or condition of the Goods or their failure to correspond with their specification shall (whether or not delivery is refused by the Purchaser) be notified to Fakro in writing within 10 days from the date of delivery. If the Purchaser fails to give such notice the Purchaser shall not be entitled to reject the Goods and Fakro shall have no liability to such defect or failure and the Purchaser shall be bound to pay the price as if the Goods had been delivered in accordance with the contract.

8.5 Where any valid claim is notified to Fakro in accordance with Condition 8.4, Fakro shall be entitled to repair or replace Goods (or the part in question) free of charge or, at Fakro's sole discretion, refund the price of the Goods (or a proportionate part of the price). Fakro shall have no other liability to the purchaser of any nature whatsoever, in particular, but without limitation, Fakro shall not be liable to the Purchaser by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the contract, for any consequential loss or damage whether for loss of profit or otherwise) costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Purchaser.

8.6 Fakro shall not be liable to the Purchaser or deemed to be in breach of the contract by reason of any delay in performing, or in any failure to perform, any of its obligations in relation to the Goods. If the delay or failure is due to any cause beyond Fakro's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond Fakro's reasonable control:-

8.6.1 act of God, explosion, flood, tempest, fire or other accident;

8.6.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition.

8.6.3 acts, restrictions, regulations, bye-laws, prohibitions, or measures of any kind on the part of any governmental, parliamentary or local authority,

8.6.4 import or export regulations or embargoes,

8.6.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of Fakro or of a third party),

8.6.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery; or

8.6.7 power failure or breakdown of machinery.

9. INSOLVENCY OF THE PURCHASER

9.1 If:-

9.1.1 the Purchaser makes any voluntary arrangement with its creditors or becomes subject to any administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction);

9.1.2 an encumbrancer takes possession of, or a receiver or administrative receiver is appointed over any of the property or assets of the Purchaser;

9.1.3 the Purchaser ceases, or threatens to cease, to carry on business; or

9.1.4 Fakro reasonably apprehends that any of the events mentioned above is about to occur in relation to the Purchaser and notifies the Purchaser accordingly

without prejudice to any other or remedy available to Fakro, Fakro shall be entitled to cancel the contract or suspend any further deliveries under the contract without liability to the Purchaser, and if 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 and the Purchaser's right to resell Goods set out in Condition 7.3.2 above will automatically be revoked.

10. EXPORT TERMS AND TERRITORIAL RESTRICTIONS

Where Goods are supplied to the Purchaser for export from the United Kingdom:-

10.1.1 the Purchaser shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon;

10.1.2 the Goods shall be delivered ex works and Fakro shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979, and

10.1.3 the Purchaser acknowledges that the Goods purchased from Fakro may be subject to Export Licence Control and other export restrictions in force from time to time. The Purchaser undertakes to comply in all respects with all laws and restrictions relating to the export of Goods in force from time to time.

11. GENERAL

11.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be given in writing addressed to that other part 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.

11.2 No waiver by Fakro of any breach of the contract by the Purchaser shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

11.4 All disputes arising in connection with any present contract for the supply of Goods shall be finally settled under the Rules of Cancellation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with such rules.

11.5 These conditions and all contracts for the supply of Goods shall be governed by the laws of England and both Fakro and the Purchaser hereby submit to the jurisdiction of the English Courts for all purposes arising in connection therewith.