

## TERMS AND CONDITIONS OF SALE

### 1 DEFINITIONS

- 1.1 "Buyer" means the organisation or person who buys or agrees to buy the Goods from the Seller;
- 1.2 "Buyer's Purchase Order" means an order for Goods by the Buyer and acknowledged by the Seller in accordance with clause 2.2;
- 1.3 "Contract" means the contract between the Seller and the Buyer for the sale and purchase of Goods incorporating these Terms and Conditions;
- 1.4 "Delivery Date" means the date specified by the Seller when the goods are to be delivered;
- 1.5 "Goods" means the articles that the Buyer agrees to buy from the Seller;
- 1.6 "List Price" means the list of prices of the Goods maintained by the Seller as amended from time to time;
- 1.7 "Price" means the price for the Goods excluding VAT (if applicable) or any analogous sales tax, carriage, freight, postage or insurance costs;
- 1.8 "Seller" means FlexEJ Ltd of Factory 2, Morgan Rushworth Industrial Estate, Bromley Street, Lye, DY9 8HY;
- 1.9 "Terms and Conditions" means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller;
- 1.10 It is expressly understood that neither the Buyer nor the Seller are consumers, as defined by the Unfair Contract Terms Act 1977;
- 1.11 Any reference to a statutory provision shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

### 2 CONDITIONS

- 2.1 These Terms and Conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions that the buyer may purport to apply under any purchase order, confirmation of order or similar document.
- 2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Terms and Conditions and shall only be accepted by means of the Seller's standard acknowledgement form.
- 2.3 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Terms and Conditions.

- 2.4 Any variation to these Terms and Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

### 3 PRICE AND PAYMENT

- 3.1 The Price shall be that in the Seller's current List Price, or such other price as the parties may agree in writing. The Price is exclusive of VAT or any analogous sales tax, carriage, freight, postage or insurance costs.
- 3.2 Payment of the Price and VAT and any other applicable costs shall be due within 30 days of the date of receipt of the invoice supplied by the Seller.
- 3.3 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 8.00% per annum above the base rate of Bank of England from time to time in force.

### 4 THE GOODS

- 4.1 The quantity and description of the Goods shall be as set out in the Buyer's Purchase Order.
- 4.2 The Goods shall be required only to conform to the specification in the Buyer's Purchase Order. Photographs are for illustrative purposes only and may not exactly match the product itself.

### 5 DELIVERY OF THE GOODS

- 5.1 Unless otherwise agreed, delivery of the Goods shall take place at the address specified in the Buyer's Purchase Order on the Delivery Date and the Buyer shall be deemed to have accepted the Goods upon their delivery. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- 5.2 The Delivery Date specified by the Seller is an estimate only. Time for delivery shall not be of the essence of the Contract.
- 5.3 If the Seller is unable to deliver the Goods for reasons beyond its control, then the Seller shall be entitled to place the Goods in storage until such times as delivery may be effected and the Buyer shall be liable for any expense associated with such storage.
- 5.4 The Buyer shall be entitled to replacement Goods where the Goods have been damaged during transportation. The Buyer must notify the Seller of the damage within 24 hours of delivery.
- 5.5 Risk shall pass on delivery of the Goods to the Buyer.

### 6 TITLE

- 6.1 The Seller warrants that it has good title to the Goods.
- 6.2 Title to the Goods shall not pass to the Buyer until the Seller has been paid in full for the Goods.
- 7 GUARANTEE**
- 7.1 Where the Goods have been manufactured by the Seller and are found to be defective, the Seller shall repair, or in its sole discretion, replace defective Goods free of charge, subject to the following conditions:
- 7.1.1 the Buyer notifying the Seller of the defect within 5 days of the defect becoming apparent;
- 7.1.2 such notice being served within 90 days of delivery;
- 7.1.3 the defect being due to the faulty design, materials or workmanship of the Seller.
- 7.2 Any Goods to be repaired or replaced shall be returned to the Seller at the Buyer's expense.
- 7.3 Where the Goods have been manufactured and supplied to the Seller by a third party, any warranty granted to the Seller in respect of the Goods shall be passed on to the Buyer.
- 7.4 Subject to the Seller's liability under Clause 6 and subject to Clause 8, the Seller shall be under no liability whatever to the Buyer for any loss (including loss of profit), costs, damages, charges or expenses incurred by the Buyer or for any loss or damage to or caused by the Goods.
- 7.5 Subject to this Clause 7 and to Clause 8, all other warranties, conditions or terms whether made expressly or implied by common law or by statute relating to use, quality, and/or fitness for purpose are excluded.
- 8 LIMITATION OF LIABILITY**
- 8.1 Subject to Clauses 8.2 and 8.3, in the event of any breach of these Terms and Conditions by the Seller the remedies of the Buyer shall be limited to damages which shall in no circumstances exceed the Price of the Goods.
- 8.2 Nothing contained in these Terms and Conditions shall be construed so as to limit or exclude the liability of the Seller for death or personal injury as a result of the Seller's negligence or that of its employees or agents.
- 8.3 Nothing contained in these Terms and Conditions shall be construed so as to limit or exclude the liability of the Seller for breach of the warranties contained in Clause 6 or for breach of warranty as to title and quiet possession implied by the Sale of Goods Act 1979 where such Act applies to the Contract.
- 9 FORCE MAJEURE**
- Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the party shall be entitled to a reasonable extension of its obligations.
- 10 SEVERANCE**
- If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid illegal or unenforceable provision eliminated.
- 11 GOVERNING LAW AND JURISDICTION**
- These Terms and Conditions shall be governed by and construed in accordance with the Law of England and Wales and the parties hereby submit to the exclusive jurisdiction of the Courts of England and Wales.