

MODATEX AND MITCHELL ABERCROMBIE LIMITED CONDITIONS OF SALE

1. INTERPRETATION

1.1 In these conditions “BUYER” means the Client whose order for the goods is accepted by the Seller.

“GOODS” means the Goods (including any instalments of the goods or any part of them) which the seller is to supply in accordance with these conditions as detailed in any order.

“SELLER” means Modatex and Mitchell Abercrombie Limited (Company Registration 596 3206) including its divisions.

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

“CONTRACT” means the contract for the purchase and sale of the goods.

“ORDER” means the order placed by the Buyer for the supply of the goods by the Seller whether verbal or in writing.

“WRITING” includes telex, cable, facsimile transmission, email and comparable means of communication.

1.2 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 any order but subject to these conditions which shall govern the Contract to the exclusion of any other terms and conditions including the standard terms of the Buyer, and no variation to these conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and Seller.

2.2 The Sellers employees or agents are not authorised to make any representation concerning the goods unless confirmed by the Seller in writing in entering onto 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.

2.3 Any typographical, clerical or other error or omission in any sales literature, order, invoice or other documents 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 The Seller reserves the right to make any changes in specification of the goods which are required to conform with any applicable safety or other statutory requirements or which do not materially affect their quality appearance or performance.

3.2 No order may be cancelled by the Buyer except with the agreement in writing of the Seller and on the terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs, damages, charges and expenses incurred by the Seller as a result of cancellation. The Buyer may at his discretion charge a flat rate of 30% of the cancelled order value, plus V.A.T. where applicable.

4. PRICE OF GOODS

- 4.1** The price of goods shall be the Sellers quoted price at the time of order, but the Seller reserves the right by giving notice to the Buyer at any time before delivery to increase the price of the goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alterations of duties, significant increase in the cost of labour, materials and other costs of manufacture).
- 4.2** Unless otherwise agreed in writing the prices quoted are Ex Works.
- 4.3** The price is exclusive of any applicable value added tax that the Buyer shall be additionally liable to pay to the Seller.

5. TERMS OF PAYMENT

- 5.1** Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyers for the price for the goods upon EX Works receipt or at any time after receipt of goods into the Buyers control unless the Buyer wrongfully fails to take receipt 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.
- 5.2** The Buyer shall pay the price of the goods (less any discount or special terms which must have previously been agreed in writing between the Buyer and the Seller, but without any other deduction) within terms agreed in writing on the Sellers invoice, notwithstanding that receipt 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.
- 5.3** 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
 - 5.3.1** cancel the contract or suspend any further deliveries to the Buyer and or withdraw any credit facilities,
 - 5.3.2** appropriate any payment made by the Buyer to such other goods (or the goods supplied under any other Contract between the Buyer and Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer) and
 - 5.3.3** charge the Buyer interest (both before and after any judgement) on the amount unpaid at the rate of 5% per annum above HSBC base rate from time to time until payment in full is made.

6. SHIPMENT

- 6.1** Receipt of goods to the stipulated place of shipment or to a forwarder or carrier nominated by the Buyer whichever is the sooner shall constitute shipment to the Buyer.
- 6.2** Any dates quoted for the shipment of the goods are approximate only and the Seller shall not be liable for any delay in shipment of the goods howsoever caused. The time for shipment shall not be of the essence unless previously agreed by the Seller in writing. The goods may be shipped by the Seller in advance of the quoted shipment date upon giving reasonable notice to the Buyer.
- 6.3** If the Buyer fails to take receipt of the goods or fails to give the Seller adequate shipping instructions at the time stated for shipment (otherwise than by reason of any cause beyond the Buyers 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 -
 - 6.3.1** store the goods until actual shipment and charge the Buyer for the reasonable costs (including insurance) of storage or

- 6.3.2** 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.
- 6.4** Unless the Buyer specifies in writing at the time of the order that it will not be acceptable the Seller shall be entitled to make shipments by instalments or partial deliveries.
- 6.5** Incorrect delivery of goods and loss or damage in transit must be notified to the Seller in writing within 7 days after receipt of the goods in the case of incorrect delivery and damage or the invoice for the goods in the case of loss to enable the Seller to make the appropriate claims.

7. RISK AND PROPERTY

- 7.1** Risk of damage to or loss of the goods shall pass to the Buyer upon receipt to the stipulated place of shipment or to a forwarder or carrier nominated by the Buyer whichever is the sooner or if the Buyer wrongfully fails to take receipt of the goods, the time when the Seller has tendered shipment of the goods.
- 7.2** Notwithstanding shipment 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, subject to our all monies retention of title clause.
- 7.3** 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 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.
- 7.4** Until such time as the property of 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 the premises of the Buyer or any third party where the goods are stored and repossess the goods.
- 7.5** 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 monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 7.6** Nothing in this Condition shall give the Buyer any right to return the goods to the Seller. The Seller may sue the Buyer for the price when due, notwithstanding the property in the goods may not have passed to the Buyer and the Buyer hereby assigns all rights and claims that the Buyer has against any third party in relation to the goods.
- 7.7** If the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) goes bankrupt or (being a Company) goes into liquidation (otherwise and for the purpose of amalgamation or reconstruction) or an encumbrance takes possession or a Receiver is appointed of the property or assets of the Buyer or the Buyer ceases or threatens to cease to carry on business or 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 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 and withdraw any credit facilities 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 arrangement to the contrary.

8. WARRANTIES AND LIABILITY

8.1 Subject as aforesaid to the conditions set out below the Seller warrants that the goods will correspond to their specification at the time of delivery and will be free from defects in material and workmanship unless the goods be sold as 'seconds' and have been notified as such to the Buyer.

The above warranty is given by the Seller subject to the following conditions.

- 8.2.1** the Seller shall be under no liability in respect of any defects arising from fair wear and tear, wilful damage, negligence abnormal working conditions, failure to follow the Sellers instructions, or such instructions which accompany the goods (whether oral or in writing) misuse or alteration or repair of the goods without the Sellers approval.
- 8.2.2** the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price of the goods has not been paid by the due date for payment.
- 8.3** Subject as expressly provided in these Conditions and except where the goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.4** Where the goods are sold under a consumer transaction as defined by the Consumer Transactions (Restrictions on Statements) Order 1976 the statutory rights of the Buyer are not affected by these conditions.
- 8.5** Any claim by the Buyer which is based on any defect in the quality or condition of the goods or their failure to correspond with specification shall be notified to the Seller within 7 days from the date of Buyer warehouse receipt or (where the defect or failure was not apparent on reasonable inspection) within reasonable time after discovery of the defect or failure. If the Buyer does not notify the Seller accordingly the Buyer shall not be entitled to reject the goods and the Seller shall have no liability for such defect or failure and the Buyer shall be bound to pay the price as if the goods had been delivered in accordance with the Contract. Return of faulty goods shall not be accepted later than 6 months from date of invoice.
- 8.6** Where any valid claim in respect of any of the goods which is based on any defect in the quality or condition 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 or repair the goods free of charge or at the Sellers sole discretion, refund to the Buyer the price of the goods (or appropriate proportion thereof according to the circumstances) but the Seller shall have no further liability to the Buyer.
- 8.7** Except in respect of death or personal injury caused by the Sellers negligence the Seller shall not be liable to the Buyer by reason of any representation or any implied warranty condition or other term or any duty at common law or under the expressed 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 for resale by the Buyer except as expressly provided in these conditions.
- 8.8** The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Seller's obligations in relation to the goods if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing the following shall be

regarded as causes beyond the Seller's reasonable control (whether involving the Seller or their own suppliers).

- 8.8.1** Act of God explosion, flood, tempest, fire or accident.
- 8.8.2** War or threat of war, sabotage, insurrection, civil disturbance or requisition.
- 8.8.3** Acts, restrictions, regulations by-laws, prohibitions or any measures of any kind on the part of any given government parliament or local authority.
- 8.8.4** Import or export regulations or embargoes.
- 8.8.5** Strikes, lock outs or other industrial actions or trade disputes.
- 8.8.6** Difficulties in obtaining raw materials, labour, fuel, parts or machinery.
- 8.8.7** Power failure or breakdown in machinery.

9. GENERAL

- 9.1** Any notice required or permitted to be given by either party to the other under these conditions, shall be in writing addressed to that other 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 notice.
- 9.2** 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.
- 9.3** 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.
- 9.4** The Contract shall be governed by the laws of England.