

Terms and Conditions of Sale

STANDARD TERMS AND CONDITIONS OF SALE

HENRY TECHNOLOGIES LIMITED

1 Definitions and Interpretation

In this document the following words and expressions have the following meanings:-

"Buyer" means the company, firm or person from whom a purchase order for the Goods is accepted by the Seller

"Terms & Conditions" means the terms and conditions of sale set out in this document together with any other terms and conditions agreed in writing between the Buyer and the Seller means the goods of the description given by the Seller which the Buyer has ordered and which order has been accepted by the Seller or any part thereof

"Price" means the price of the Goods excluding VAT

"Seller" means Henry Europe Limited

Headings are inserted for convenience only and shall not affect the interpretation and construction of this Agreement.

2 Basis of Sale

2.1 These Terms & Conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer and shall prevail over any terms and conditions which the Buyer purports or seeks to apply under any purchase order, confirmation or other documents. No conduct other than express written acceptance by the Seller shall be deemed to constitute acceptance of any terms put forward by the Buyer.

2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase the Goods pursuant to these Terms & Conditions.

2.3 Catalogues, brochures, sales literature, or oral or written representations made by the Seller's employees during negotiations are not intended to form part of these Terms and Conditions.

2.4 No additions or variations to these Terms & Conditions including any special terms and conditions, shall be binding on the Seller unless agreed to in writing by the Seller.

2.5 Insofar as not otherwise previously accepted by the Purchaser in accordance with these terms the Purchaser's acceptance of delivery of the Goods shall constitute acceptance of these terms.

3 Delivery of the Goods

3.1 Unless the Acknowledgement of Order issued by the Seller expressly provides otherwise, delivery of the Goods shall be Ex Works and place of delivery is the Seller's premises.

3.2 The Seller will give the Buyer notice when the Goods are ready for delivery. Within seven days commencing on the day of the service of that notice the Buyer will collect the Goods or give the Seller instructions for their delivery.

3.3 If the Buyer fails to collect the Goods or give sufficient instructions for their delivery within that period this will constitute a breach of contract and the Seller may terminate the contract with immediate effect. On termination, the Seller may exercise its rights to do any of the following:-

3.3.1 disposal of the Goods as it thinks fit;

3.3.2 retain any deposit or part payment made by the Buyer;

3.3.3 recover damages from the Buyer in respect of any losses it suffers as a result of the Buyer's failure to take delivery, including the costs of storing the Goods, the costs of disposing of the Goods, and any other losses (including loss of profit) suffered by the Seller as a result of the Buyer's breach or termination of the contract.

3.4 Risk in the Goods shall pass on delivery, or in the case of Goods to be collected from the Seller's premises, on the day of service of the notice referred to in Clause 3.2 and the Buyer will insure the Goods accordingly.

3.5 In the event that the Buyer instructs the Seller to deliver the Goods in terms of Clause 3.2, and the Goods are not received by the Buyer, the Buyer must, within 21 days of the invoice date, notify the Seller and the carrier in writing of such non-delivery: The Seller shall have no liability whatsoever to the Buyer in respect of such non-delivery and the Buyer shall be deemed to have irrevocably waived all its rights and remedies which it might otherwise have had in relation to such non-delivery unless proper notification has been made in accordance with this Clause 3.5.

3.6 The Buyer must carefully examine all Goods immediately on receipt of the same. If any of the Goods have sustained damage or there are any shortages, the Buyer must notify the carrier (*where applicable*) and the Seller of such shortages or damage within 3 days of receipt of the same, in writing. In the absence of receipt of such notice from the Buyer, the Seller shall be DISCHARGED FROM ALL LIABILITY in respect of such damage or shortages.

4 Goods, Price and Payment

4.1 The quantity and description of the Goods will be as set out in the Seller's quotation or as otherwise agreed to in writing by the Seller.

4.2 The Price shall be the Seller's quoted price or such other price as shall be agreed in writing by the Seller. Receipts for payment will be issued only on request.

4.3 The Seller reserves the right to increase the Price of the Goods by giving notice to the Buyer at any time before delivery, to reflect any increase in the costs of the Seller due to any factor beyond the reasonable control of the Seller (*including, without prejudice to the generality of the foregoing, any significant increase in the costs of labour, materials or other costs of manufacture*).

4.4 Unless otherwise expressly agreed to by the Seller in writing, the Buyer will pay the Price in full (*plus VAT*) within 30 days of the date of issue of the Seller's invoice. Time of payment is of the essence. If the Buyer fails to pay the Price within 30 days then the Seller, without prejudice to its other rights or remedies, shall be entitled to:-

4.4.1 suspend or cancel deliveries of any goods due to the Buyer; and/or

4.4.2 appropriate any payments made by the Buyer to such of the Goods (*or other articles or goods supplied under any other contract with the Buyer*) as the Seller may in its sole discretion think fit; and/or

4.4.3 charge interest on all outstanding sums on a day to day basis until the date of payment at the rate of 3% above the Royal Bank of Scotland base rate from time to time in force until final payment of all sums due.

5 Warranty

5.1 The Seller warrants to the Buyer (*and to no other person*) that as from the date of delivery for a period of 12 months, that when applied properly under normal conditions, the Goods will be free of defects in materials and workmanship.

5.2 The Buyer shall have 7 days from date of discovery of such defect or when the defect should reasonably have been discovered by the Buyer, to notify the Seller with full details thereof in writing, and the Buyer shall return the defective Goods to the Seller with completed warranty documentation, and particulars of the original order number, Seller's invoice number and relevant serial number(s).

5.3 The Buyer will be responsible for the costs of returning the defective Goods to the Seller and delivery of any replacement Goods or return of the Goods from the Seller (*as the case may be*), and shall bear the risk of loss or damage to the Goods in transit.

5.4 If upon investigation by the Seller, the Goods are found to be defective then the Buyer's rights and remedies shall be limited to:-

5.4.1 replacement of the defective Goods in which case the Seller will warrant the replacement Goods for the unexpired balance of the warranty period applicable to the defective Goods; or

5.4.2 repayment, or credit of such part of the Price applicable to the defective Goods; or

5.4.3 repair of the Goods;

5.5 The Buyer shall not be entitled to withhold payment, or make any deduction, set off or retention in respect of the Price (*or any part thereof*) for any alleged breach of Clause 5.1, unless it has acted in accordance with the above Clauses 5.2 and 5.3 and if, upon investigation, and finding that the Goods are defective, the Seller has then expressly agreed to such a withholding, deduction, set-off or retention.

5.6 If upon investigation, the Seller finds in its reasonable opinion, that the Goods are not defective, the Seller shall notify the Buyer who shall then be responsible for collecting the Goods.

5.7 The Seller shall not be liable for any defect which in its reasonable opinion arises from the misuse, misapplication, negligent use of the Goods, or accident, or in respect of fair wear and tear.

5.8 This warranty shall not apply to Goods which have not been paid for, or which in the reasonable opinion of the Seller have been improperly applied, installed, serviced, repaired or altered or fitted to inappropriate components.

5.9 The Buyer shall have no entitlement to return the Goods other than in the circumstances described above and the Seller gives no further warranty and shall have no liability for such defect or failure except in respect of death or personal injury caused by the Seller's negligence.

6 Risk and Passing of Property

6.1 Notwithstanding Risk in the Goods passing in accordance with Clause 3.4, title in the Goods shall not pass to the Buyer until whichever shall be the first to occur of the following:

6.1.1 Payment being received by the Seller for the Goods and no other amounts then being outstanding from the Buyer to the Seller in respect of any other goods supplied by the Seller;

6.1.2 The Buyer selling the Goods in accordance with the provisions of these terms and conditions, in which case title to the Goods shall be deemed to have passed to the Buyer immediately prior to delivery of the Goods to the Buyer's customer; and

6.1.3 The Seller waiving its rights in writing under this Clause whereupon title to the Goods shall forthwith vest in the Buyer.

6.2 The Buyer is empowered by the Seller to sell, or agree to sell as Principal in relation to any such sale or agreement to sell, the Goods delivered to the Buyer subject to the following express conditions:-

6.2.1 That the Buyer account for the entire proceeds of any resale made by it of the Goods or such proportion of any proceeds of sale as reflect the Seller's rights therein, including any insurance proceeds;

6.2.2 That the Goods shall only be sold for a reasonable price and on commercially reasonable terms;

6.2.3 That the proceeds referred to in Clause 11.3.1 are kept separate from the Buyer's other moneys and are not to be paid into any overdrawn bank account and are to be at all times identified as the Seller's moneys; and

6.2.4 That the Seller shall at any time be entitled to appropriate any Payment made to the Buyer in respect of any Goods and/or any of the proceeds referred to in Clause 6.3.1 in settlement of such invoices or accounts in respect of such Goods as the Seller may in its absolute discretion think fit, notwithstanding any purported appropriation to the contrary by the Buyer.

6.3 Until title to the Goods passes:-

6.3.1 The Buyer will hold the Goods as fiduciary agent and bailee for the Seller;

6.3.2 The Goods shall, subject to Clause 6.2 be kept separate and distinct from all other property of the Buyer and of third parties and in good and substantial repair and condition and be stored and labelled in such a way as to be clearly identifiable as belonging to the Seller and the Buyer will keep the Goods free from, and will indemnify the Seller against any charge, lien or other encumbrance thereon;

6.3.3 The Seller may at any time revoke the power of sale and use contained in Clause 6.2 by notice in writing to the Buyer if the Buyer is in default for longer than 14 days in the payment of any sum whatsoever due to the Seller or if the Seller has bona fide doubts as to the solvency of the Buyer;

6.3.4 The Buyer's power of sale and use contained in Clause 6.3 shall automatically cease if the Buyer institutes or is subject to any form whatsoever of insolvency or Bankruptcy proceedings;

6.3.5 Upon determination of the Buyer's power of sale and use the Buyer shall place any of the Goods in his possession or under his Control and unsold at the disposal of the Seller and the Seller shall be entitled to enter upon any premises of the Buyer for the purpose of removing such Goods. This right shall continue to subsist notwithstanding the termination of the contract for any reason and is without prejudice to any accrued rights of the Seller thereunder or otherwise.

6.4 The Buyer shall insure and keep insured the Goods to the full price against "all risks" in the joint names of the Buyer and the Seller to the reasonable satisfaction of the Seller until the date that property in the Goods passes from the Seller and shall furthermore whenever requested by the Seller produce a copy of the policy of insurance.

7 Indemnity

7.1 The Buyer acknowledges he has the requisite skill and knowledge to deal with the Goods safely and that he will ensure that any necessary safety information is passed on with the Goods whether they are used by or on behalf of the Buyer or by any third party.

7.2 The Buyer agrees to indemnify the Seller against any damages, losses, costs, claims, expenses incurred by the Seller in respect of any claim brought against the Seller by any third party for:-

7.2.1 any loss, injury or damage wholly or partly caused by the Goods or their use;

7.2.2 any loss, injury or damage in any way connected with the performance of this contract.

Provided that this Clause will not require the Buyer to indemnify the Seller against liability arising as a result of the Seller's negligence.

8 Liability and Remedies

8.1 It is expressly understood that neither the Buyer nor the Seller are "consumers" (*as defined in the Unfair Contract Terms Act 1977*) and that all warranties, terms or conditions other than those given under these Terms and Conditions are hereby excluded to the full extent permissible by law.

8.2 Time shall not be of the essence in respect of the late delivery of the Goods.

8.3 Except as provided for elsewhere in these Terms & Conditions, the liability of the Seller shall be limited to the Price of the Goods.

9 Force Majeure

9.1 If performance of the Seller's obligations is delayed or hindered by circumstances outside the Seller's control amounting to a "force majeure" event as defined hereunder, the following provisions shall apply:-

9.1.1 The Seller will as soon as reasonably practicable, give the Buyer notice of the reasons for the delay or hindrance. However, failure to give such notice will not prevent the Seller relying on the remaining provisions of this Clause and the Seller will incur no liability for failure to give such notice.

9.1.2 The Seller's duty to perform shall be suspended for as long as the circumstances amounting to "force majeure" continue and the time for performance of the Seller's obligations shall be extended by a period equal to the duration of those circumstances.

9.2 If due to circumstances outside the Seller's control amounting to "force majeure", there is a shortage of goods of a type to be supplied under this contract so that the Seller has or can obtain or produce insufficient goods to satisfy its contracts with the Buyer and the Seller's other customers, the Seller may allocate the goods available to it between the customers with whom it has contracts for the supply of such goods and may make that allocation on such basis as it thinks fit. In that case:-

9.2.1 The Buyer will accept and pay for such quantity of goods delivered to it;

9.2.2 the price payable for the Goods shall be proportionate to the contract price in the same ratio as the quantity delivered to the contract quantity; and

9.2.3 the Seller shall be treated as having discharged its obligations to deliver the Goods under this contract and shall not be liable for breach of contract in respect of the failure to deliver the full contract quantity.

9.3 For the purposes of this clause, "force majeure" means any event outside the Seller's control including, but not limited to, the following: strikes, sit-ins, trade disputes, walkouts or any other actual or threatened industrial action or difficulty in obtaining labour, plant and materials or bought-in components or breakdown of plant machinery (*including transport*) or interruption of power supplies, fire, flood, legal action, war, civil riot or intervention by governmental authority.

10 Waiver

No failure by the Seller to enforce the Terms & Conditions shall constitute a waiver of its rights hereunder.

11 Amendment

The Terms and Conditions may be subject to amendment by the Seller from time to time by 21 days notice given by the Seller. In the event that the Buyer does not reject the amendment within that 21 day period the Buyer will be deemed to have accepted the amendment.

12 Notices

12.1 Any notice required to be given in accordance with these Terms & Conditions shall be deemed to be served in the following circumstances:-

12.1.1 if sent by pre-paid first class post to the party to whom it is given and its last known address, in which case it shall be effective on the second day after posting;

12.1.2 if sent electronically or by fax or telex to the recipient's e-mail address or fax or telephone number in which case it shall be effective on transmission.

13 Brochures, Drawings, Prints and Specifications

Any brochures, drawings, prints and specifications supplied by the Seller to the Buyer under or in connection with or contemplation of the contract shall remain the property of the Seller. The Buyer shall not copy or reproduce them without the Seller's prior written consent.

14 Trademarks

The Buyer will not alter, tamper with or remove any trademarks, numbers or other means of identification used on or in relation to the Goods.

15 Governing Law

The interpretation of these Terms & Conditions are subject to the laws of Scotland and both the Buyer and the Seller shall submit to the exclusive jurisdiction of the Scottish Courts, except that the Seller may be entitled to proceed in any jurisdiction where proceedings may lawfully be brought against the Buyer.