



Francis Searchlights Ltd ("The Company")

**CONDITIONS OF SALE**

**1. INTERPRETATION**

1.1 In these conditions:

**Buyer:** is the person who accepts a quotation of the Company for the sale of the Goods or whose order for the Goods is accepted by the Company.

**Goods:** are the goods (including any instalment of the goods or any parts for them) which the Company is to supply:

**Conditions:** are these terms and conditions of sale and (unless the context otherwise requires) includes any special terms and conditions on the face of the Company's quotation or acceptance of the Buyer's order (as the case may be).

**Contract:** is the contract for the purchase and sale of the Goods.

1.2 Headings are for convenience only and do not affect interpretation.

**2. BASIS OF THE SALE**

2.1 All goods are sold subject to these conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any quotation is accepted or purported to be accepted, or any order is made or purported to be made, by the Buyer. No variation to these Conditions shall be binding unless agreed in writing by a director of the Company.

2.2 The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and irrevocably waives any claim it may have for damages for or right to rescind the Contract for any such representations which are not so confirmed (unless such representations were fraudulently made).

2.3 Any advice or recommendation given by the Company or its employees or agents to the Buyer or its employees or agents as to the application, use or storage of the Goods not confirmed in writing by the company is followed or acted upon entirely at the Buyer's own risk.

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

**3. ORDERS AND SPECIFICATIONS**

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Company unless and until confirmed in writing by the Company.

3.2 The Buyer is responsible for ensuring the accuracy of the terms of any order (including any applicable specification) and for giving the Company any necessary information within a sufficient time to enable the Company to perform the Contract.

- 3.3 The quantity and description of and any specification for the Goods shall be those set out in the Company's quotation (if accepted by the Buyer) or the Company's acceptance of the Buyer's order.
- 3.4 If the goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification, drawing or design submitted by the Buyer, the Buyer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company 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 the Company's use of the Buyer's specification, drawing or design.
- 3.5 The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory requirements or, where the goods are to be supplied to the Company's specification, which do not materially affect their quality or performance.
- 3.6 No order which has been accepted by the Company may be cancelled by the Buyer except with the agreement in writing of the Company and on terms that the Buyer shall indemnify the Company 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 the Company as a result of cancellation.

#### **4. PRICE OF THE GOODS**

- 4.1 The price of the Goods shall be the price ruling at the actual date of despatch.
- 4.2 The Company reserves the right to alter prices without notice for any reason including variations in the cost of raw materials or labour or through the Buyer's change of design. When Goods comprised in an order are despatched in more than one consignment the price of the goods comprised in each consignment will be the price ruling at the date of the actual despatch of that consignment. In the event of variation or suspension of work by the Buyer's instructions, any price quoted by the Company may be adjusted accordingly.
- 4.3 Carriage will be charged at cost.
- 4.3 Any applicable value added tax, import or export duties or other taxes or duties are payable by the Buyer in addition.

#### **5. TERMS OF PAYMENT**

- 5.1 Payment shall be made in full on the placing of an order unless the Buyer has a credit account with the Company, when the Company may invoice the Buyer for the price of the Goods on or at any time after despatch of the Goods, or if the Buyer is to arrange delivery, at any time after the Company has notified the Buyer that the Goods are ready for collection.
- 5.2 The Buyer shall pay the Company's invoices without any deduction, set off or withholding within 30 days of the end of the month of their date. The Company may recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment shall be of the essence of the Contract.
- 5.3 If the Buyer fails to make any payment on the due date the Company may charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 8 per cent per annum over the base rate from time to time of National Westminster Bank Plc until payment in full is received.

## **6. DELIVERY**

- 6.1 Any dates given for delivery of the Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.2 The Goods may be delivered in instalments. Each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.3 If the Company fails to deliver the Goods for any reason other than any cause beyond the Company's reasonable control or the Buyer's fault, and the Company is accordingly liable to the Buyer, the Company's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 6.4 If the Buyer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery then the Company may:
- 6.4.1 store the Goods until actual delivery and charge the Buyer for the costs (including insurance) of storage.
  - 6.4.2 sell the goods at the best price readily obtainable and (after deducting all storage, selling and other expenses) account to the Buyer for the excess over sums owing by the Buyer or charge the Buyer for any shortfall.

## **7. SHORTAGES, DAMAGE , LOSS IN TRANSIT AND RETURNS**

- 7.1 No claim for non-delivery of the whole or part of any consignment nor for damage in transit, shortage of delivery, deviation, delay or detention will be entertained unless separate notices in writing are given to the carrier and the company within three days of the receipt of the goods, or in the case of the non-delivery of a complete consignment within 14 days of despatch, and in either case a complete claim is made in writing within a further five days. The goods in respect of which such claim is made shall be preserved intact for inspection. The Company and the carrier shall have the right to attend at the Buyer's place of business or otherwise the place of delivery of the goods to investigate the claim. Any breach of the requirements of this condition shall disentitle the Buyer from any allowance in respect of the claim which it may have.
- 7.2 The Buyer shall inspect the Goods on delivery and unless the Buyer notifies any defects within seven days of delivery shall be deemed to have accepted them. After acceptance the Buyer shall not be entitled to reject Goods which are not in accordance with the Contract. In no event shall the Buyer be entitled to reject the Goods on the basis of any defect or failure which is so slight that it would be unreasonable for the Buyer to reject the Goods.
- 7.3 The Goods are sold as a batch. Without affecting any rights which the Buyer may have to reject all the batch, the Buyer may not accept some and reject some only of the Goods.
- 7.4 Goods cannot be returned for credit without our permission. A minimum handling charge of 30% will be made on accepted returns (carriage paid home) in new condition. Specially manufactured goods will not be accepted for credit.

## **8. RISK AND PROPERTY**

- 8.1 Risk in the Goods shall pass to the Buyer when the Buyer or its agent takes delivery of the Goods or collects them.
- 8.2 Notwithstanding delivery 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 Company 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 Company to the Buyer for which payment is then due.
- 8.3 Before title has passed to the Buyer under the terms of Clause 8.2 the Seller shall have the right to recover and resell the Goods or any of them and may enter upon the Buyer's premises by its servants or agents for that purpose.
- 8.4 Should the Buyer alter the Goods by subjecting them to any manufacturing process or incorporating them into another product by mixing them in any way, the Company will own the resulting product ("altered goods") until payment due under all contracts between the Company and the Buyer has been made in full and all the Company's rights under these clauses shall extend to the altered goods.
- 8.5 Until payment due under all contracts between the Buyer and the Company has been made in full:-
- 8.5.1 The Buyer shall hold upon trust for the Company the Goods and altered goods and shall keep them separate from other goods and properly stored, protected and identified as the Seller's property.
- 8.5.2 in the event of the Sale or hire of the Goods or altered goods by the Buyer it shall hold the proceeds of such sale or hire on trust for the Company in a separate bank account opened by the Buyer for this purpose;
- 8.5.3 the Company may trace all such proceeds of sale or hire charges received by the Buyer through any bank or other account maintained by the Buyer;
- 8.5.4 in the event of sale or hire of the Goods or the altered goods by the Buyer in the ordinary course of its business the Buyer shall assign its rights to recover the selling price or hire charges from the third parties concerned to the Company if required to do so in writing by the Company;
- 8.5.5 the Buyer shall not assign to any other person any rights arising from a sale or hire of the goods or the altered goods without the express consent of the Company in writing.
- 8.6 The Buyer shall keep the Goods insured in the amount of the price at which the Goods are sold to the Buyer against all insurable risks.

If Goods are destroyed by an insured risk prior to the same being paid for by the Buyer, the Buyer shall receive the proceeds of the insurance as trustee for the Company.

## **9. WARRANTIES AND LIABILITIES**

- 9.1 The Company warrants that it holds unencumbered title to the Goods.
- 9.2 Subject to the conditions set out below, the Company warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of delivery.
- 9.3 The above warranty does not apply:
- 9.3.1 in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

- 9.3.2 in respect of any defect arising from fair wear and tear, wilful damage, negligence (including improper storage, improper installation or maintenance, abnormal working conditions, failure to follow the Company's oral or written instructions) misuse or alteration or repair of the Goods without the Company's approval;
- 9.3.3 if any sum owing by the Buyer to the Company has not been paid;
- 9.3.4 to parts, materials or equipment not manufactured by the Company, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.

9.4 The Company shall replace or repair free of charge the Goods (or the part in question) which do not meet the warranty in condition 9.2 or, at the Company's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Company shall have no further liability to the Buyer. Replacements or repairs shall be warranted for an additional period of three months or until the expiry of the original warranty period, whichever is the longer.

9.5 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, representations or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

9.6 Save as otherwise expressly provided in these Conditions, the following provisions set out the Company's entire liability in contract, tort (including negligence), misrepresentation (other than fraudulent misrepresentation) or otherwise howsoever arising.

**AND THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE FOLLOWING PROVISIONS OF THIS CONDITION**

- 9.7 To the extent the law does not permit such liability to be excluded the Company's liability to the Buyer for death or injury resulting from its own or that of its employees', agents' or sub-contractors' negligence shall not be limited.
- 9.8 To the extent the law does not permit such liability to be excluded the Company accepts liability to the Buyer for damage to the tangible property of the Buyer Resulting from the negligence of the Company or its employees, agents or sub-contractors not exceeding £5 million for any one incident or series of incidents arising from a common cause.
- 9.9 To the extent the law does not permit the liabilities concerned to be excluded and save as otherwise expressly provided, the Company's entire aggregate liability in respect of all claims shall be limited to damages of an amount equal to the price of the Goods.
- 9.10 Subject to condition 9.7 above, the Company shall not be liable to the Buyer, for any increased costs or expenses, loss of profits, goodwill, business, contracts, revenues or anticipated savings or any type of special, indirect or consequential loss (including loss or damage suffered by the Buyer as a result of a claim by a third party) even if such loss was reasonably foreseeable or the Company had been advised of the possibility of the Buyer incurring the same.
- 9.11 The Company 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 Company's obligations, if the delay or failure was due to any cause beyond the Company's reasonable control including (without limitation) flood, fire, war, governmental action, industrial disputes, or difficulty in obtaining supplies.

9.12 Save as otherwise expressly provided, the Buyer shall indemnify the Company in respect of any cost, claim, loss or liability made by any person in connection with the Goods.

## **9 INDEMNITY**

10.1 If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person the Company shall indemnify the Buyer against all damages and legal costs awarded against the Buyer in connection with the claim, provided that:

10.1.1 the Company is given full control of any proceedings or negotiations in connection with any such claim;

10.1.2 the Buyer shall give the Company all reasonable assistance for the purposes of any such proceedings or negotiations;

10.1.3 except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Company (which shall not be unreasonably withheld);

10.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);

10.1.5 the Company shall be entitled to the benefit of, and the Buyer shall accordingly account to the Company for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld ) to be paid by, any other party in respect of any such claims; and

10.1.6 without prejudice to any duty of the Buyer at common law, the Company may require the Buyer to take such steps as the Company may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Company is liable to indemnify the Buyer under this clause.

## **11 BREACH BY OR INSOLVENCY OF BUYER**

11.1 The Company may cancel the contract and any other contract with the Buyer or suspend any further deliveries under the Contract and any other Contract with the Buyer without any liability to the Buyer, 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 if;

11.1.1 the Buyer fails to make any payment when due or breaches any provision of the Contract or any other contract with the Company;

11.1.2 the Buyer fails to take delivery of Goods;

11.1.3 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation; or an encumbrance takes possession, or a receiver is appointed of any of the property or assets of the Buyer; or the Buyer ceases, or threatens to cease, to carry on business; or the Company reasonably apprehends that any of these events is about to occur in relation to the Buyer;

11.2 The Company shall have a lien over all property of the Buyer in its possession for any sums owing by the Buyer and may use or dispose of the same to set against sums owing by the Buyer and at such price as the Company sees fit.

## **12 EXPORT TERMS**

- 12.1 In these conditions 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these conditions the latter shall prevail.
- 12.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this condition 12 shall (subject to any special terms agreed in writing between the Buyer and the Company) apply notwithstanding any other provision of these conditions.
- 12.3 The Buyer 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 due.
- 12.4 Unless otherwise agreed in writing between the Buyer and the Company, the Goods shall be delivered ex-works to the air or sea port of shipment and the Company shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 12.5 Unless otherwise agreed in writing, the Buyer shall be responsible for arranging for testing and inspection of the Goods at the Company's premises before shipment. The Company shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.
- 12.6 Payment of all amounts due to the Company shall be made by irrevocable letter of credit opened by the Buyer in favour of the Company and confirmed by a Bank in England acceptable to the Company, unless otherwise agreed in writing by the Company.

### **13. GENERAL**

- 13.1 The Company may assign or sub-contract its rights and obligations. The Buyer may not assign its rights and obligations.
- 13.2 Any notice shall be in writing addressed in writing to the addressee 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.
- 13.3 No delay or failure by the Company in enforcing any provision of the Contract shall constitute a waiver of that provision or any other provision. No waiver by the Company 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. No waiver by the Company shall be effective unless in writing.
- 13.4 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.
- 13.5 These Conditions and the Company's acknowledgement of order constitute the entire agreement between the Company and the Buyer concerning the supply of the Goods and replace and supersede any prior arrangement, understanding, warranty or representation (other than fraudulent misrepresentation).

13.6 The Company's rights are cumulative and in addition to any rights available to it at common law.

13.7 The Contract shall be governed by the laws of England and the parties submit to the non-exclusive jurisdiction of the English courts.

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