

# Losberger UK Ltd

## Terms and Conditions of Sale



### 1. Application

Losberger UK Limited ("the Seller") shall sell to any person ("the Buyer") who accepts a quotation of the Seller for the sale of goods or whose order for goods is accepted by the Seller shall purchase the contract goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions which shall govern the contract to the exclusion of any other terms and conditions printed or otherwise specified on the Buyer's acceptance of from the Buyer to the Seller relating to the contract. Where any terms or conditions specified by the Buyer conflict with these Conditions any such conflicting terms shall be deemed to be severable and shall be severed from the acceptance from the quotation, order or other communication without otherwise affecting the validity thereof and any subsequent acceptance by the Seller of the Buyers order made subject to these Conditions shall constitute a counter offer by the Seller any quotation, the Buyer's order or any other communication without otherwise affecting the validity thereof.

### 2. Quotations

2.1 All quotations given by the Seller will be valid for a period of 30 days from the date thereof and shall thereafter be subject to variations by the Seller. In the event of the Buyer purporting to accept the Seller's quotation after the expiry thereof no binding obligation on the Seller to supply the contract goods shall arise until acceptance by the Seller, whether in writing otherwise, of the Buyer's order and the Seller reserves the right to reject the Buyers purported acceptance of the Seller's quotation and to re-quote for the supply of goods.

2.2 No order which has been accepted by the Seller may be cancelled by the buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller 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 Seller as a result of the cancellation.

### 3. Variations

3.1 No variation of these Conditions or of any contract incorporating them shall be binding on the Seller unless agreed in writing and signed for and on behalf of the Seller. No employee or agent of the Seller is authorised to make any representation concerning the goods unless the same is confirmed by the Seller in writing. In entering into the contract for the purchase of the goods the Buyer acknowledges that it does not rely on, and waive any claim for breach of, any such representation which are not so confirmed.

3.2 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk and accordingly the Seller shall not be liable for any such advice or recommendation which is not confirmed.

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

### 4. Buyer's Specification

4.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of and order (including any applicable specification) submitted by the Buyer and for giving the Seller the necessary information relating to the goods within sufficient time to enable the Seller to perform a contract in accordance with its terms. If the goods are to be manufactured or any process is to be applied to the goods by the Seller in accordance with the specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses ordered against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement for any infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any person which results from the Seller's use of the Buyer's specifications.

4.2 The Seller 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 the goods are to be supplied to the Sellers specification, which do not materially affect their quality or performance.

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Director: N. D. Edwards, Catherine Edwards · Registration number: 3582559

5. Price of goods

5.1 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, alteration of duties, significant increase in the cost of labour, materials or other costs of manufacture, any change in delivery dates, quantities or specifications requested by the Buyer, or any delay caused by any instructions by the Buyer or failure of the Buyer to give the Seller adequate information or instruction).

5.2 Except as otherwise stated in any quotation of the Seller or as otherwise agreed in writing by the Seller, all prices are given by the Seller on an ex-works basis and, where the Seller agrees to deliver the goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's delivery charges.

5.3 The price of the goods is exclusive of any applicable Value Added Tax which the Buyer shall be additionally liable to pay to the Seller.

6. Payment Terms

6.1 Save as otherwise agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the goods on or at any time after delivery unless the goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery 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 or (as the case may be) the Seller has tendered delivery of the goods.

**6.2 The Buyer shall pay the price of the goods as per Losberger's payment terms clearly stated on the Seller's invoice, notwithstanding that delivery may not have taken place and the property of the goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the contract.**

**6.3 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**

- (i) **cancel the contract or suspend any further deliveries to the Buyer;**
- (ii) **appropriate any payment made by the Buyer to such the contract goods (or goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer), and charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 1% per month.**

7. Delivery

7.1 Delivery of the contract goods shall be made by the Buyer collecting the goods from the Seller's premises at any time after the Seller has notified the Buyer that the goods are ready for collection, or, if some other place for delivery is agreed by the Seller delivering the goods to that place.

7.2 Any dates quoted for delivery of the goods are approximate only and the Seller shall not be liable for any delay in delivery of the goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing.

7.3 If the Seller fails to deliver the goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault and the Seller is accordingly liable to the Buyer, the Seller'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 contract goods.

7.4 If the Buyer fails to take delivery of the goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's 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;

- (I) store the goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- (II) sell the goods at the best price readily obtainable (after deducting all reasonable storage and selling expenses) charge the Buyer for any shortfall below contract price.

8. Risk

Risk of damage to or loss of the goods shall pass to the Buyer:

- (i) in the case of goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the goods are available for collection; or
- (ii) in the case of goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the goods, the time when the Seller has tendered delivery of goods.

9. Property

9.1 Notwithstanding delivery and the passing of risk in the goods, or any other provision of these Conditions property in the contract goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full for the price of the contract goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.

9.2 Until such time as property in the contract 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 shall properly, insure and identify the same as the Seller's property and as against the Seller's invoices. Until that time the Buyer shall be entitled to resell or use the contract goods in the ordinary course of its business but shall account to the Seller for the proceeds of sale or otherwise thereof and shall keep such proceeds separate from any monies or property of the Buyer and third parties.

9.3 Until such a time as property in the contract goods passes to the Buyer, the Seller shall be entitled at any time to require the Buyer to redeliver up the goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the goods are stored and to repossess the same.

10. Warranties and Liability

10.1 The Seller warrants that the goods will correspond with their specification and will be free from defect in material and workmanship at the time of delivery provided that the above warranty is given by the Seller subject to the following conditions

- (i) the Seller shall be under no liability in respect of any defect in the goods arising from drawings design or specification supplied by the Buyer.
- (ii) the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the contract goods has not been paid by the due date for payment;
- (iii) the above warranty does not extend to parts, materials or equipment, not manufactured by the Seller or its associate company Losberger Intertent GmbH and Walter SAS, 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 Seller or its associate company Losberger Intertent GmbH and Walter SAS.

10.2 Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the full extent permitted by law.

10.3 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 specifications shall (whether or not delivery is refused by the Buyer) be notified to the Seller within (14) days from the date of delivery or (where the discovery of the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the contract 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. The Seller's liability in respect of any claim based on any defect in the quality or condition of the goods or their failure to meet the specification notified to the Seller in accordance with these Conditions shall be limited to the free replacement of the contract goods or any defective part thereof or, at the Seller's sole discretion, the refund to the Buyer of the price of the goods or a proportionate part thereof.

10.4 Except in respect of death or personal injury caused by the Seller's negligence or as otherwise expressly provided by these Conditions, the Seller shall not be liable to the Buyer by reason of any representation, or implied warranty, condition or other term, or any duty at common law, or under the express terms of the contract, or 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 Buyer.

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10.5 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 its obligations in relation to the goods if the delay or failure was due to any strike, lock-out or other industrial action or trade dispute (whether involving employees of the Seller or of a third party) or any cause beyond the Seller's reasonable control.

## 11. Termination

In the event that:

- (i) 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 (otherwise than for the purposes of voluntary solvent amalgamation or reconstruction); or
  - (ii) an encumbrance takes possession, or a receiver is appointed, over any of the property or assets of the Buyer; or
  - (iii) the Buyer ceases or threatens to cease to carry on business; or
  - (iv) 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;
- the Seller shall, without prejudice to any other right or remedy available to it, be entitled to cancel the contract for the supply of goods or to suspend any further deliveries under the contract 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 agreement or arrangement to the contrary.

## 12. General

12.1 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 the notice.

12.2 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.

12.3 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.

12.4 The contract shall be governed by the laws of England.

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