

OSL GROUP LTD T/A SCANDURA
CONDITIONS OF SALE

1. DEFINITIONS

In these conditions "Seller" means OSL Group Ltd t/a Scandura; "Buyer" means the individual, firm or company placing an order on the Seller relative to the Goods; "Special Conditions" means any terms set out overleaf; "Contract Condition" means these conditions and the Special Conditions together; "Contract" means the agreement arising on the Buyer's receipt of the Seller's written acknowledgement (incorporating the Contract Conditions) of the Buyer's order; "Goods" means the Goods to be supplied by the Seller pursuant to a contract; "1979 Act" means the Sale of Goods Act 1979; "1987 Act" means the Consumer Protection Act 1987.

2. STATUS OF CONDITIONS

Unless otherwise agreed in writing by the Seller the Contract conditions shall override any terms or conditions proposed stipulated or referred to by the Buyer in correspondence; in his order form or elsewhere and accordingly shall be incorporated in all Contracts made at any time hereafter. None of the Sellers agents or employees are authorised to conclude agreements with the Buyer orally or over the telephone.

3. QUOTATIONS, VARIATIONS AND BUYERS REPRESENTATIONS

Quotations and price lists issued by the Seller shall not constitute an offer to sell the Goods. No variation to the Contract Conditions shall be binding unless agreed in writing by authorised representatives of both parties. Any representation made by the Buyer prior to the Contract relative to the intended destination of the Goods shall be deemed repeated in the Contract.

4. DELIVERY

- (a) If a delivery period is specified by the Seller such period shall run from the last of (i) the date when the Seller has been put in possession by the Buyer of all data, drawings and, where appropriate, tooling, moulds and other equipment necessary to enable manufacture of the goods to proceed without interruption. (ii) The date the Contract arises and (iii) the date the Seller accepts in writing any variation to the Contract. The period so specified (if any) shall be taken as an estimate made by the Seller in good faith and the Seller shall not be liable for any loss or damage sustained by the Buyer in consequence of any responsible delay in delivery. Where the Seller is found liable under the condition its liability shall not in any circumstances exceed the invoiced value of the Goods the delivery of which has been delayed.
- (b) Delivery of the Goods will be made by the Buyer collecting the Goods at the Sellers premises at any time after the Seller has notified the Buyer that the Goods are ready for collection unless some other place is stipulated in the Special Conditions for delivery when the Seller shall either deliver the Goods to that place itself or commit the Goods, marked with that place as their destination, to the custody of an independent carrier, Section 32 of the 1979 Act shall apply.
- (c) Where the Goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with the Contract 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.
- (d) If at the time delivery is to be made there exist circumstances which entitle the Seller to terminate the Contract under condition 17 or payment is due by the Buyer to the Seller on any account whatsoever the Seller may withhold delivery of the Goods and, where the payment in question remains unpaid for a further 21 days, may sell the Goods so withheld to a third party and retain all the resultant proceeds without liability to the Buyer.
- (e) The delivery of a greater or lesser quantity of the Goods than the quantity ordered, of other Goods not ordered, or of Goods only some of which are defective, shall not entitle the Buyer to reject the Goods that were ordered and are not defective. Where a greater or lesser quantity of the Goods than the quantity ordered is delivered the Buyer must notify the Seller of such excess or shortfall within 7 days on receipt of the covering despatch notes. If such notification is not given the Seller shall not be obliged to recover the excess or make good the shortfall.
- (f) If the Buyer fails to except delivery of the Goods in accordance with the Contract the Seller may (without prejudice to its other rights against the Buyer) store the Goods at the sole risk and cost of the Buyer and /or sell the Goods to a third party and retain all the resultant proceeds without liability to the Buyer.

5. GOOD IN TRANSIT

Unless express provision to the contrary is made in the Special Conditions, the method of transport shall be at sole direction of the Seller. Where Conditions 4 (b) and 6 (a) operate such the Goods remain at the Sellers risk during transit no claim for loss of or damage to the Goods while in transit will be entertained by the Seller unless the same be communicated in writing by both Seller and relevant carrier within 7 days of the date of the Buyers receipts of the relevant despatch note. Where such a claim is made within that time and accepted by the Seller its liability shall not exceed the invoiced value of the Goods lost or damaged.

6. PROPERTY AND RISK

- (a) Risk of damage or loss to the goods shall pass to the Buyer on delivery (as fixed by Condition 4(b) unless the sale is to an overseas Buyer in which event the passing of risk shall be determined by the nature of the Contract as specified in the Special Conditions (with reference to the then current edition of INCOTERMS).
- (b) Until the Seller has been paid in full for the goods and for any other goods the subject of a contract (whether that contract be for the sale of those goods or the provision of some service to which those goods are necessarily ancillary) between the Seller and the Buyer. The Seller shall retain title in the Goods.
- (c) Until the Buyer acquires title to the goods it shall have possession of the Goods solely as bailee and fiduciary for the Seller and shall keep the Goods separate from its own property and the property of any third party and shall mark the Goods as being the property of the Seller.
- (d) If any payment for the Goods is overdue in whole or in part the Seller may in addition to its other rights stop in transit and/or repossess and/or resell the Goods or any of them and may enter upon the Buyer's premises for this purpose. All the proceeds of any such sale shall be for the Seller's account.
- (e) All payments for the Goods shall become immediately due and payable on the happening of any event, act or proceeding in which the Buyer's solvency is called into question.

7. PRICES AND VAT

Unless the Special Conditions provide that the price shall remain firm for a special period the price shall be subject to increases reflecting (i) any increase in the Seller's cost in respect of materials, labour, services or transport between the date of the contract and the date of delivery: (ii) any variations to the Contract requested by the Buyer and accepted by the Seller and: (iii) any delay caused by the Buyer's failure to provide instructions, information, tooling, moulds or other equipment to enable manufacture of the Goods to proceed expeditiously. All prices quoted are exclusive of the value added tax and any other duties or taxes levied on the Seller in the Buyer's country for which the Buyer shall be additionally liable.

8. PAYMENT

- (a) Payment for the Goods shall be made in pounds sterling to the Seller no later than the last day of the month following that in which the relevant invoice was despatched unless the Special Conditions provide otherwise.
- (b) Method of payment shall be at the Buyer's discretion other than in the case of an overseas Buyer when all payments shall be made by irrevocable letter of credit confirmed by a United Kingdom clearing bank or such other bank as the Seller may stipulate in the Special Conditions.
- (c) Time of payment shall be of the essence. 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 suspend any further deliveries to the Buyer under the Contract or any other contract between them, appropriate any payment made by the Buyer to such of the Goods (or the 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), charge the Buyer interest (both before and after any judgement) on the amount unpaid at the rate of 4 per cent per annum above Lloyds Bank Plc base rate from time to time and exercise a lien over any property of the Buyer then in its possession, until payment in full is made.
- (d) Save as aforesaid payments shall be applied to invoices in the order in which they were issued and to Goods in the order in which they are listed in invoices.
- (e) The Buyer shall not be entitled to make any deduction or withhold any sum from the payment from time to time due from it whether by way of set-off, counter claim or otherwise.

9. WARRANTIES

- (a) Subject to the provisions which appear below the Seller warrants the Goods as far as they be of its own manufacture to be free from defects in materials and workmanship and to be in compliance with any specification prescribed by the Buyer and forming part of the Contract for the period of twelve calendar months from the date of delivery subject to the following conditions:
 - (i) the Seller shall not be under any liability relative to defects in the Goods attributable to any drawing, design, specification, tooling, mould or other equipment supplied by the Buyer or relative to deviations from the Contract's requirements which have been the subject of a concession disclosed to and accepted by the Buyer;
 - (ii) the Buyer shall notify the Seller of the alleged defect within 14 days of the same coming to the Buyer's attention and shall allow the Seller a reasonable opportunity of verification and where the Seller chooses to take that opportunity at its own premises the Buyer shall return the goods in question to those premises in accordance with the instructions and at the risk of the Seller but at the cost of the Buyer;
 - (iii) the Goods that are allegedly defective shall have been paid for in full and shall have at all times been stored, handled, used and applied in accordance with the Seller's instructions or in the absence of such instructions in a proper fashion and under normal working conditions;
 - (iv) the Buyer shall have ceased to use or apply the Goods immediately on the alleged defect coming to its attention
- (b) In the event that such a warranty claim is accepted by the Seller then the Seller will at its own option either repair or replace the goods (or the part in question) free of charge (and any replacement of the Goods shall be subject to these conditions) or refund to the Buyer the price of the Goods (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer.
- (c) The Seller further undertakes that insofar as the Goods are not of its own manufacture it will make available to the Buyer the benefit of any guarantees or indemnities given to it in respect of those Goods by its own suppliers.
- (d) Save as aforesaid and under section 12 of the 1979 Act all express or implied conditions or warranties statutory or otherwise as to the state, quality, fitness or performance of the Goods are expressly excluded and the Buyer acknowledges that it will satisfy itself of the suitability of the Goods for the purpose for which they are purchased. Further the Seller shall not be liable in any manner whatsoever whether in contract, tort, negligent or otherwise for any loss damage or injury suffered by the agents Buyer howsoever caused and whether consequential or otherwise and which relates to or arises out of the supply of the Goods or which is attributable directly or indirectly to the acts defaults or negligence of the Seller or any of the Seller's servants or agents other than death or personal injury caused by the Seller's negligence or in respect of liability under the 1987 Act.
- (e) In the event that notwithstanding sub-conditions (a), (b) and (d) above the Seller is found liable for any loss or damage suffered by the Buyer that liability shall not exceed the invoiced value of the Goods to which the liability relates.

10. TECHNICAL ADVICE

If the Seller at the request of Buyer gives technical or operational advice in connection with the Goods or otherwise in relation to the Buyer's activities the Seller shall not make any representation regarding nor incur any liability whether in contract, tort, negligence or otherwise for that advice or the use to which it is put.

11. PATENTS ETC.

The Goods do not to the Seller's knowledge infringe any UK or foreign patent or other industrial property right but the Seller gives no contractual or other undertaking in that regard and shall not be liable to the Buyer in any circumstances whatsoever for the infringement of such rights.

12. INDEMNITY TO SELLER

The Buyer shall indemnify the Seller in respect of all damage injury or loss arising directly or indirectly from the negligence of the Buyer and his servants contractors or agents or from the use by the Seller of any design, drawing, data, specification, tooling, mould or

other equipment provided by the Buyer or by any breach by the Buyer of either its obligations to the Seller hereunder or of any patent, design or other intellectual property right of a third party.

13. FREE ISSUE EQUIPMENT

Any article (including tooling, test equipment or moulds) provided by the Buyer to the Seller for the purpose of any Contract shall:-

- (a) be warranted by the Buyer as being free from defects in material and workmanship and fit for its purpose;
- (b) be and remain the property of the Buyer and shall be clearly marked by the Buyer as such;
- (c) be and remain at the Buyer's risk other than in the event of the Seller's negligence;
- (d) be accompanied by comprehensive instruction manuals as to its operation and maintenance, such manuals to be kept up-to-date by the Buyer.

14. CONSIGNMENT STOCKS

Where the Specialist Conditions indicate that the Goods are to be supplied on a consignment stock basis then:-

- (a) the Buyer shall on receipt of the Goods (or any instalment thereof) sign a delivery note confirming the quantity delivered and the application of this condition to that delivery;
- (b) upon delivery the Goods shall become the Buyer's risk and shall be insured by the Buyer from that moment against all risks of loss or damage to their full re-instatement value in the joint names of the Seller and the Buyer and with an insurer approved by the Seller;
- (c) the Buyer shall maintain full and complete records (to which the Seller shall have unrestricted access at all times) of the stock of Goods in its possession and the Seller shall be entitled on twenty-four hours prior notice to reconcile these records with physical stocks of the Goods and shall be permitted access to the Buyer's premises for the purpose;
- (d) on the first day of every month the Buyer shall submit to the Seller a statement, showing the Goods still in its possession and those sold or disposed of since the date of the last statement, on receipt of which the Seller shall tender an invoice relative to the Goods so sold or disposed of.
- (e) should any reconciliation carried out by the Seller under sub-condition (c) above disclose a shortfall (for whatever reason) of the stock of Goods in the Buyer's possession from the Goods delivered but at that time not paid for by the Buyer then, without prejudice to any other rights available to it, the Seller may tender an invoice relative to that shortfall;
- (f) other than where in conflict with sub-conditions (a) to (e) above the remainder of the Contract Conditions shall apply *mutatis mutandis*

15. CANCELLATION

The Contract may be cancelled by the Buyer only with the Seller's written consent which, if given, shall be on the express condition that the Buyer shall pay to the Seller a cancellation charge commensurate with the Seller's costs incurred up to date of cancellation plus the Seller's loss of profit on the Contract as a whole or, at the Seller's option, a sum equal to 10 per cent of the Contract price.

16. FORCE MAJEURE

- (a) If either party is affected by circumstances beyond its reasonable control which shall include but not be limited to any act of God fire flood earthquake explosion tempest riot civil commotion and when affecting the Seller's premises any strike lock out or other industrial action then it shall notify the other party of the nature and extent of the circumstance in question.
- (b) Notwithstanding any other provision of the Contract Conditions neither party shall be deemed to be in breach of the Contract or otherwise be liable to the other for any delay in performance or non-performance of any of its obligations under the Contract to the extent that the delay or non-performance is due to any force majeure of which it has notified the other party and the time for performance of that obligation shall be extended by that number of days for which the force majeure prevails.
- (c) If either party claims force majeure and is relieved under sub-condition (b) above from performing any of its obligations for a continuous period in excess of 90 days or for an aggregate period of 90 days in any period of 365 consecutive days then the other party may notwithstanding any other provision of the Contract Conditions terminate the contract by giving to the party which has claimed force majeure not less than 21 days written notice.
- (d) In the event of termination by either party under sub-condition (c) above the Seller shall be entitled to invoice the buyer for all costs (including the cost of all labour and materials used) and expenses incurred up to the date of termination.

17. TERMINATION

Without prejudice to any other right of termination granted to the Seller hereunder the Seller shall be entitled to terminate the Contract and all other contracts between the Seller and the Buyer if the Buyer compounds with its creditors, executes an assignment for the benefit of its creditors, has a bankruptcy order made against it, or being a company enters into voluntary or compulsory liquidation, or has presented against it a petition for its winding-up, or has an administrator or administrative receiver or manager appointed over all or part of its assets, or has presented against it an application for the appointment of such an administrator, or takes or suffers any similar action in consequence of indebtedness, or becomes insolvent, or commits a breach of any of its obligations under the Contract or any other Contract between the Seller and the Buyer, or if the Seller reasonably believes any of the said events is likely to occur.

18. GENERAL

- (a) The Buyer shall not be entitled to assign the benefit of the Contract without the prior written consent of the Seller.
- (b) Any termination of the Contract shall not prejudice the accrued rights of the Seller and the Buyer at the date of termination.
- (c) Any waiver by either party of a breach of any provision of the Contract shall not be considered as a waiver of any subsequent breach of the same or any other provision.
- (d) Any failure to or delay in enforcing any provision of the Contract by either party shall not be construed as a waiver by that party of the right afforded to it by that provision.
- (e) The headings used in these conditions are for convenience only and shall not affect the construction or interpretation of these conditions in any way.

- (f) The Contract Conditions shall constitute the entire agreement between the Seller and Buyer relative to the sale and purchase of the Goods and any other implied conditions, warranties or terms are excluded to the fullest extent permitted in law.
- (g) Any Special Conditions shall prevail in the event of a conflict with these conditions.
- (h) Should any term of the Contract be found to be unenforceable or void then that term shall be severed from the remainder of the Contract which shall continue in full force and effect.
- (i) Any notice required by the Contract Conditions shall be properly given if delivered to the registered office of the recipient, being a company, or, otherwise, to its address set out on the relevant order and delivery shall be deemed to occur at the time of delivery if effected by hand, 24 hours after being posted properly addressed first-class postage pre-paid if effected by post and on receipt on the sender's machine of a report confirming effective transmission if effected by facsimile or telex.
- (j) The Contract shall be governed by the laws of England, and the parties hereby submit to the non-exclusive jurisdiction of the English courts.

WARNING:

A Buyer may incur criminal liability should it mislead the Seller as to the use to which the Goods are to be put or the intended destination of the Goods or any other material particular relative to the Goods and thereby obtain a contract price for the Goods which is lower than it would have been had the Buyer not misled the Seller.