



TERMS AND CONDITIONS OF SALE OF PROTEKTOR GROUP UK LIMITED ("the Conditions")

The Buyer's attention is drawn in particular to the provisions of clause 10. In these Conditions the '**Company**' means Protektor Group UK Limited trading by whatever name and by which the goods in question are sold and '**the Agreement**' means these Conditions together with any contract in which they may be incorporated by reference or otherwise. The '**Buyer**' means the person or firm who purchases the Goods and/or Services from the Company. '**Force Majeure Event**' means an event as described in clause 7.1. The '**Goods**' means the Goods (including any instalment of the Goods or parts of them) which the Company is to supply in accordance with these Conditions. '**Intellectual Property Rights**' means patents, rights to Inventions, copyright and related rights, trade marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world. The '**Order**' means the Buyer's order for the supply of Goods or Services, as set out overleaf. The '**Services**' include any measuring undertaken at any site or property the Company is instructed to do so by the Buyer.

1. EFFECT OF CONTRACT

If there is any inconsistency between the express terms of any written contract between the parties and any of these Conditions, the express terms of such written contract shall prevail.

2. RULING CONDITIONS

- 2.1. All contracts of sale shall be subject to these Conditions (and any special terms and conditions agreed in writing by the Company) and, subject to clause 1 above, these Conditions cannot be varied, suspended or added to except with prior written consent of the Company.
- 2.2. These Conditions shall apply to all contracts for the sale of Goods and / or Services by the Company to the Buyer to the exclusion of all other terms and conditions which the Buyer may purport to apply under any purchase order confirmation of order or similar document or which are implied by law, trade custom, practice or course of dealing.
- 2.3. The Order constitutes an offer by the Buyer to purchase Goods and/or Services in accordance with these Conditions.
- 2.4. It is the Buyer's sole responsibility to ensure the accuracy of any Order placed with the Company in accordance with clause 2.10.
- 2.5. The Order shall only be deemed to be accepted when the Company issues written acceptance of the Order at which point and on which date the Contract shall come into existence.
- 2.6. Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.

- 2.7. 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 any Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed ('**the Contract**').
- 2.8. Any advice or recommendation given by the Company 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 Company, is followed or acted upon entirely at the Buyer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation that is not so confirmed.
- 2.9. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document regarding information issued by the Company shall be subject to correction without any liability on the part of the Company.
- 2.10. The Buyer shall be responsible to the Company for assuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
- 2.11. The quantity, quality and description of and any specification for the Goods shall be those set out in the Company's quotation or the Buyer's order.
- 2.12. 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 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 Intellectual Property Rights of any other person which results from the Company's use of the Buyer's specification.
- 2.13. The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or other requirements or where the Goods are to be supplied to the Company's specification which do not materially affect their quality or performance.
- 2.14. 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 material used), damages, charges and expenses incurred by the Company as a result of such cancellation.
- 2.15. The Company shall retain any and all Intellectual Property Rights for any design profiles created by the Company for the Buyer. The Buyer accepts that it shall have no Intellectual Property Rights in respect of any design profiles created by the Company for the Buyer.

3. FUTURE CONTRACTS

If subsequent to any Contract which is subject to these Conditions a future Contract is made with the same Buyer, without express reference to any conditions then such Contract shall be deemed to be subject to these Conditions.

4. PRICE AND PAYMENT

- 4.1. The price of the Goods shall be the Company's quoted price as given by the Company or where no price has been quoted (or a quoted price is no longer valid) the price published in the Company's published price list currently in operation. Where the Goods are supplied for export from the United Kingdom, the Company's published export price list shall apply where the Company has not specifically quoted for the Goods.

- 4.2. The Company reserves the right to vary the price of the goods without notice to the Buyer at any time before despatch and, if the Company judges the same appropriate, to invoice on a pro-forma basis in advance of delivery of the Goods.
- 4.3. The Buyer shall pay for the goods net cash exclusive/inclusive of VAT within thirty (30) days after the end of the month of despatch by the Company of the Goods or such other time as maybe agreed in writing between the parties.
- 4.4. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 4.5. If the Buyer fails to make any payment on the due date, then without prejudice to any other right or remedy available to the Company the Company shall be entitled to:
 - 4.5.1. cancel the Contract or suspend any further deliveries to the Buyer.
 - 4.5.2. appropriate any payment made by the Buyer for such of the Goods (or the Goods supplied under any other Contract between the Buyer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Buyer)
 - 4.5.3. charge the Buyer statutory interest of 4% plus the Bank of England base rate and any debt recovery, collection and legal costs on an indemnity basis on any overdue sum payable to the Company applicable from the date such sum became due to the Company.

5. DELIVERY DATES

- 5.1. Delivery of the goods shall be made by the Buyer either collecting the Goods at the Company's premises at any time after the Company has notified the Buyer that the Goods are ready for collection or, if some other place for delivery (Delivery Location) is agreed by the Company i.e., the Buyer's premises, by the Company delivering the Goods to that place.
- 5.2. Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide the Company with adequate measurements, designs, drawings, delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.3. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 5.4. Where the Goods are to 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.
- 5.5. If the Company fails to deliver the Goods, its liability shall be limited to the costs and expenses reasonably incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. For the avoidance of any doubt the Company shall not be liable for any importation costs incurred by the Buyer in obtaining replacement Goods from another supplier. The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Buyer's failure to provide the Company with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods. The Company shall remain the legal owner of any Goods for which it has compensated the Buyer for in accordance with this clause 5.5.
- 5.6. If the Buyer fails to accept or take delivery of the Goods within 3 Business Days of the Company notifying the Buyer that the Goods are ready, then except where such failure or delay is caused by a

Force Majeure Event or by the Company's failure to comply with its obligations under the Contract in respect of the Goods:

- a) the Company shall store the Goods until delivery takes place, and charge the Buyer for all related costs and expenses (including insurance); and or
- b) 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.

5.7. The Buyer shall not be entitled to reject the Goods or claim an adjustment in the price of the Goods if the Company delivers up to 5 per cent less than the quantity of Goods ordered.

5.8. The Buyer shall not be entitled to reject the Goods or claim an adjustment in the price of the Goods where Goods are delivered according to any measurements, designs, drawings or plans prepared either by the Buyer or by the Company acting under the Buyer's instruction.

6. RESTOCKING

Custom and/or non-standard Items will not be eligible to be restocked. Items which are kept in stock in large quantities by the Company and are not ordered in on a job-by-job basis may, at the sole discretion of the Company and if the Company agrees, be returned at the Buyer's expense. If such returned items on inspection are free from defect or other damage, the Company shall refund to the Buyer the price paid for such items subject to a deduction of 25% in respect of restocking and a deduction in respect of any reasonable transport/carriage costs incurred by the Company in collecting the restocked items.

7. FORCE MAJEURE

7.1. No failure or omission by either party to carry out or observe any of the provisions of the Agreement shall give rise to any liability on the part of that party or be deemed to be a breach of the Agreement, if such failure or omission directly or indirectly arises from fire, flood, accident, explosion, breakdown or failure of plant or machinery, war, riot, civil disturbance, strike, labour dispute acts, pandemic, orders or regulations of Government, shortage of material or of fuel or of labour or from any cause, whether or not of the same nature as the foregoing, beyond the control of the party in question.

7.2. In the event that by reason of any of the circumstances described in clause 7.1 above the quantity of goods available for sale by the Company is reduced then the Company shall have the right to withhold, reduce or suspend deliveries to the Buyer and the Buyer shall by giving written notice to the Company have the right at the Buyer's own expense to buy from third parties such goods as the Company shall have not supplied provided that any goods not so bought from third parties shall remain to be delivered under the Agreement and any dates or periods for delivery shall be extended to a reasonable extent having regard to the circumstances as aforesaid. The buyer shall have no claim whatsoever against the Company for any losses suffered, damages or expenses of whatever nature in respect of purchasing or acquiring the Goods from third parties.

8. DELIVERY OF THE GOODS AND PASSING OF PROPERTY AND RISK THEREIN

8.1. Delivery should be deemed to be effective and the risk of damage or loss of the goods shall pass to the Buyer: -

- 8.1.1. In the case of goods to be supplied c.i.f. or f.o.b. - when the goods pass over the ships rail at port of shipment.
- 8.1.2. In the case of goods to be collected by the Buyer or the Buyer's agent - when the goods are loaded on to the vehicle collecting them.

8.1.3. In other cases - when the goods are unloaded at the address nominated by the Buyer or the Buyer's agent for delivery. A photograph of the unloaded goods at the Buyer's nominated address or a delivery note with a signature (either wet or electronic) shall be conclusive proof of delivery. Property in the goods shall pass to the Purchaser only on payment in full to the Vendor of all sums payable in respect thereof. Until such time the goods remain the absolute property of the Vendor and the Purchaser shall allow the Vendor to repossess such goods at its entire discretion and at any time prior to payment in full thereof. Such repossession shall not affect in any way the continued existence of any Contract between the parties.

8.2. Title to the Goods shall not pass to the Buyer until the earlier of:

- a) the Company receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Company has supplied to the Buyer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
- b) the Buyer resells the Goods, in which case title to the Goods shall pass to the Buyer at the time specified in clause 8.4.

8.3. Until title to the Goods has passed to the Buyer, the Buyer shall:

- a) store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Company's property;
- b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date of delivery;
- d) notify the Company immediately if it becomes subject to any of the events listed in clauses 15 and 19; and
- e) give the Company such information relating to the Goods as the Company may require from time to time.

8.4. Subject to clause 8.3, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Company receives payment for the Goods. However, if the Buyer resells the Goods before that time:

- a) it does so as principal and not as the Company's agent; and
- b) title to the Goods shall pass from the Company to the Buyer immediately before the time at which resale by the Buyer occurs.

8.5. If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 16, then, without limiting any other right or remedy the Company may have:

- a) the Buyer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and the Company may at any time;
- b) require the Buyer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
- d) if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

9. CLAIMS

9.1. The Buyer shall be deemed to have accepted goods 24 hours after delivery to the Buyer.

9.2. All claims for non-delivery of any consignment shall be made in writing to the Company and any carrier engaged by the Company within seven (7) days after the date of the Company's invoice.

9.3. All claims for short delivery, measured by weight or by number, shall be made in writing to the Company and any Carrier engaged by the Company within three (3) days after the Buyer's receipt of the consignment in question or seven (7) days after the date of the Company's invoice whichever is the earlier, and the Company shall be given an adequate opportunity to reweigh or recount the goods as the case may be.

9.4. All claims for damage to or deterioration of goods in transit shall be made in writing to the Company and the Carrier engaged by the Company within three (3) days after the Buyer's receipt of those goods and the Company shall be given an adequate opportunity to inspect the goods in question.

9.5. In the absence of notification of claim and opportunities to reweigh, recount or inspect in accordance with paragraphs (a), (b) and (c) above the goods shall be deemed to have been delivered in accordance with the Contract.

10. LIMITATION OF LIABILITY

10.1. The limits and exclusions in this clause reflect the insurance cover the Company has been able to arrange and the Buyer is responsible for making its own arrangements for the insurance of any excess liability.

10.2. References to liability in this clause 10 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

10.3. Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- a) death or personal injury caused by negligence;
- b) fraud or fraudulent misrepresentation;
- c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- d) defective products under the Consumer Protection Act 1987.

10.4 Subject to clause 10.3, the Company's total liability to the Buyer shall not exceed 10 times the value of the Contract.

10.5 Subject to clause 10.3, the following types of loss are wholly excluded:

- a) loss of profits;
- b) loss of sales or business;
- c) loss of agreements or contracts;
- d) loss of anticipated savings;
- e) loss of use or corruption of software, data or information;
- f) loss of or damage to goodwill; and
- g) indirect or consequential loss.

10.6 This clause 10 shall survive termination of the Contract.

11. MILL TOLERANCES

The Company reserves the right to deliver and charge for Goods within the usual Mill tolerances as to weight and dimensions.

12. QUALITY

12.1. The Company warrants that on delivery the Goods shall:

- a) conform with their description and any applicable Goods Specification;
- b) be free from material defects in design, material and workmanship;
- c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- d) be fit for any purpose held out by the Company.

12.2. Subject to clause 12.1, if:

- a) the Buyer gives notice in writing, within 21 days of delivery, of discovery that some or all of the Goods do not comply with the warranty set out in clause 12.1;
 - b) the Company is given a reasonable opportunity of examining such Goods; and
 - c) the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's cost, the Company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 12.3. The Company shall not be liable for the Goods' failure to comply with the warranty in clause 12.1 if:
- a) the Buyer makes any further use of such Goods after giving a notice in accordance with clause 12.2;
 - b) the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - c) the defect arises as a result of the Company following any drawing, design, measurements or specification either supplied by the Buyer or undertaken by the Company under the express instruction of the Buyer;
 - d) the Buyer alters or repairs such Goods without the written consent of the Company;
 - e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
 - f) the Goods differ from their specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 12.4. Except as provided in this clause 12, the Company shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 12.1.
- 12.5. The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Company under clause 12.2.

13. TEST CERTIFICATES

The Company shall not be obliged to provide test certificates but, at its absolute discretion, may do so if certification is available and if the Buyer requests the same at the time of initial enquiry. The Company shall be entitled to charge a reasonable fee for each such certificate provided.

14. CANCELLATION

Subject to condition 7.2 above the Buyer shall have no right under any circumstances to cancel the Agreement or any instalment or order thereunder without the prior written consent of the Company which consent shall be conditional upon payment of such compensation as the Company shall reasonably require.

15. SET-OFF

- 15.1. The Buyer shall not be entitled to withhold payment of any amount payable under the Agreement or otherwise to the Company by reason of any disputed claim by the Buyer in connection with the Agreement nor shall the Buyer be entitled to set off against any amount payable under the Agreement to the Company any amount which is not then due and payable by the Company or for which the Company disputes liability.
- 15.2. The Company shall be entitled to a general lien on all goods of the Buyer in the Company's possession (including Goods of the Buyer which have been paid for) for the unpaid price of all Goods sold to the Buyer by the Company under this or any other contract.

16. TERMINATION

- 16.1. The Company shall be entitled, without prejudice to its other rights and remedies, either to terminate wholly or in part the Contract or any or every other contract with the Buyer or to suspend any further deliveries under the Contract or any or every other such contract in any of the following events:
- a) If the Buyer commits a material breach of any of the terms of the Contract.
 - b) If any debt due and payable by the Buyer to the Company is unpaid.
 - c) If the Buyer has failed to take delivery of any goods under the Contract or any other contract as aforesaid, otherwise than in accordance with the Buyer's contractual rights.
 - d) If the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business.
 - e) If the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - f) If the Buyer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 16.2. In addition to any right of lien which the Company may have, the Company shall in any of the events described in paragraph 16.1 above have a general lien over all goods of the Buyer then in the possession of the Company for the unpaid price of any goods sold and delivered by the Company to the Buyer under the Contract or any other contract.

17. NON-DELIVERY OF INSTALMENTS

Failure by the Company to delivery any instalment under the Agreement shall not entitle the Buyer to cancel or suspend the Agreement or any other instalments.

18. WAIVERS

The Company's rights and remedies shall not be prejudiced by an indulgence or forbearance to the Buyer and no waiver by the Company of any breach by the Buyer shall operate as a waiver of any subsequent breach.

19. ASSIGNMENT

- 19.1. This Agreement or any part thereof shall not be assigned to the Buyer without prior written consent of the Company.
- 19.2. The Company may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract to any third party.

20. MISCELLANEOUS

- 20.1. All specifications patterns drawings photographs samples and information provided by the Company to the Buyer shall remain the exclusive property of the Company and shall not be disclosed by the Buyer to any third party without the Company's written consent.
- 20.2. 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 the provisions to the party giving the notice. Any such notice shall be deemed to have been received, if delivered by hand,

- at the time the notice is left at the proper address and if sent by pre-paid first class post, the second business day after posting.
- 20.3. Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 20.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 20.4. Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

21. PROPER LAW

- 21.1. Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 21.2. Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.