

(including the trading names Wichita Clutch and Stieber Clutch)

## THE CUSTOMERS ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION 13

In these Conditions the following expressions shall have the meanings set opposite to them:-

<b>the Company</b>	Twiflex Limited of Altra Industrial Motion, Cannon Way, Mill Street West, Dewsbury, West Yorkshire, England WF13 1EH registered in England under number 404531 (or any trading name, including "Wichita", any subsidiary, or associate thereof).
<b>the Conditions</b>	these terms and conditions as amended from time to time by the company and notified to the customer the Contract Price the final price for the Goods as defined under clause 3.1
<b>the Customer</b>	the person, firm or company to whom a quotation, offer or tender is addressed or whose Order is accepted by the Company
<b>the Goods</b>	goods and/or related services or any part thereof of any description to be supplied or performed under the Contract
<b>the Order</b>	the order or orders placed by the Customer upon the Company
<b>the Contract</b>	the contract between the Company and the Customer arising on written acceptance from the Company of the Order subject to these Conditions of Sale

### **1 FORMATION OF CONTRACT**

- 1.1 All quotations, offers and tenders that are made by the Company and all future Orders that are received by the Company shall be subject to the following Conditions.
- 1.2 Any quotation given by the Company shall not constitute an offer, and is only valid for a period of 30 days from its date of issue, provided that the Company has not previously withdrawn it.
- 1.3 Any Order submitted by the Customer shall be deemed to constitute an offer by the Customer to purchase the Goods in accordance with these Conditions.
- 1.4 The Order shall only be deemed to be accepted when the Company issues written acceptance of the Order (**Order Acknowledgement**) at which point and on which date the Contract shall come into existence subject to these Conditions (**Commencement Date**).
- 1.5 All other terms, conditions or warranties introduced or implied previously by custom by the Customer during the negotiation of the Contract are excluded from the Contract between the Company and the Customer or any variation thereof to the fullest extent permitted by law.
- 1.6 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.
- 1.7 The Customer shall be fully responsible for ensuring that its needs and requirements are met and fulfilled with the detail it supplies within the Order. Under no circumstances shall the Company be responsible for, or be held liable in respect of, any statement or representation relied upon by the Customer which is not attached to or endorsed within the Order and subsequently confirmed in writing under the Order Acknowledgement by the Company.
- 1.8 Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions of the Goods contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 1.9 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.10 All of these Conditions shall apply to the supply of both goods and any associated services except where application to one or the other is specified.
- 1.11 Unless otherwise agreed in writing all trade terms shall be interpreted in accordance with INCOTERMS current at the time the Order Acknowledgement is sent.

### **2. DESCRIPTION**

- 2.1 The quantity and description of the Goods shall be as set out in the Company's Order Acknowledgement.
- 2.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.
- 2.3 The Company reserves the right to alter or change dimension or composition of the Goods supplied to conform to applicable standards or laws or otherwise within reasonable time limits having regard to the nature of the Goods.

### **3 PRICES**

- 3.1 Quoted prices are subject to fluctuation and the price payable for the Goods shall be as set out in the Company's Order Acknowledgement save that the Company shall be entitled to increase such price in the event of increases in the cost of materials, labour, transport or utilities becoming effective before the date of delivery or any other cause beyond the reasonable control of the Company which increases the cost to the Company of performing the Contract. Without prejudice to the generality of the foregoing prices stated in a currency other than sterling may be subject to amendment in the event of fluctuation in the relevant exchange rate prior to the date of invoice.
- 3.2 Unless otherwise agreed in writing, all prices on Orders for despatch to points within the United Kingdom are quoted net ex works and exclusive of VAT.
- 3.3 Prices quoted on Orders for despatch to points outside the United Kingdom are quoted net ex works exclusive of VAT. If the Company agrees to deliver the Goods otherwise than at its premises, the Customer shall pay all transportation, insurance, import duties and other charges of whatsoever nature incurred by the Company in making such delivery unless otherwise agreed in writing.
- 3.4 Where the Company agrees to deliver or arrange delivery of the Goods, the Customer shall indemnify the Company against any demurrage costs incurred in the event of vehicles being unduly delayed at the designated point of delivery.

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## **4 PAYMENT**

- 4.1 Unless otherwise agreed by the Company in writing Goods invoiced up to and including the last day of a calendar month shall be paid for not later than 30 days after the date of invoice. The Company shall be entitled to recover the price notwithstanding that delivery may not have taken place and the property of the Goods has not passed to the Customer.
- 4.2 Proforma invoices shall be paid in full before goods can be despatched.
- 4.3 Time for payment shall be of the essence.
- 4.4 No payment shall be deemed to have been received until the Company has received cleared funds.
- 4.5 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 4.6 The Company shall be entitled to submit its invoice with its delivery advice note or at any time afterwards save that where delivery has been postponed at the request of or by the default of the Customer then the Company may submit its invoice at any time after the Goods are ready for delivery or would have been ready in the ordinary course but for the request or default on the part of the Customer.
- 4.7 Where Goods are delivered by instalments the Company may invoice each instalment separately and the Customer shall pay such invoices in accordance with these Conditions.
- 4.8 No disputes arising under the Contract nor delays beyond the reasonable control of the Company shall interfere with prompt payment in full by the Customer.
- 4.9 In the event of default in payment by the Customer the Company shall be entitled, without prejudice to any other right or remedy:
- 4.9.1 to suspend all further deliveries on the Contract and on any other contract between the Company and the Customer then current without notice; and/or
  - 4.9.2 to charge interest on any amount outstanding at the rate of 4% per annum above the Base Rate from time to time of Bank of Scotland plc such interest being charged as a separate, continuing obligation not merging with any judgment accruing on a daily basis until payment is made. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and/or
  - 4.9.3 to serve notice on the Customer requiring immediate payment for all Goods supplied by the Company under the Contract and all other contracts with the Customer whether or not payment is otherwise due or invoiced and the Company reserves the right to raise invoices for monies due under the Contract or any other contract with the Customer at that time; and/or
  - 4.9.4 to sue for the price of the Goods notwithstanding that title therein has not passed to the Customer.

## **5 DELIVERY**

- 5.1 Delivery of the Goods shall take place at the Company's premises unless the Company has specifically agreed in writing to arrange transport for the Goods in which event delivery shall occur when the Goods arrive at the designated place of delivery.
- 5.2 Time for despatch of goods is given as accurately as possible but is not guaranteed and time for delivery shall not be made of the essence by notice. The Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay is caused by the Company and exceeds 180 days.
- 5.3 The date of delivery shall in every case be dependent upon prompt receipt of all necessary information, final instructions or approvals from the Customer. Any delays or alterations by the Customer in design, specifications or quantities required may result in delay in delivery and the provisions of condition 5.2 shall apply.
- 5.4 The Customer shall take delivery of the Goods within 21 days of the Company giving it notice that the Goods are ready for delivery.
- 5.5 Failure by the Customer to take delivery of or to make payment in respect of any one or more instalments of Goods delivered under the Contract shall entitle the Company to treat the Contract as repudiated by the Customer either in whole or in part.
- 5.6 The Company will endeavour to comply with reasonable requests by the Customer for postponement of delivery but shall be under no obligation to do so. If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
- 5.6.1 risk in the Goods shall pass to the Customer (including for loss or damage caused by the Company's negligence);
  - 5.6.2 the Goods shall be deemed to have been delivered; and
  - 5.6.3 the Company may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance, as well as further delivery costs).
- 5.7 If the Company delivers to the Customer a quantity of Goods of up to 10% more or less than the quantity accepted by the Company, or such reduced Goods are supplied in relation to Condition 19 the Customer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.
- 5.8 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 5.9 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.
- 5.10 If the Company agrees to deliver the Goods otherwise than at its premises it shall nevertheless not be liable for unloading the Goods at the designated point of delivery or for placing them in position on site, except by prior agreement in writing. The Customer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for unloading the Goods

## **6 PACKING**

- 6.1 The price of the Goods includes normal packaging and such packaging is non returnable unless otherwise agreed in writing.
- 6.2 Any packaging to the Goods supplied by the Company, unless otherwise expressly agreed in writing, is intended to provide adequate protection in normal conditions of transit of usual duration.
- 6.3 Returnable cases will be charged at cost price if not returned in good condition, carriage paid, to the Company's works within three months of receipt by the Customer.

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## **7 NONDELIVERY & DAMAGE IN TRANSIT**

- 7.1 The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
- 7.2 The Company shall not be liable for any nondelivery of Goods (even if caused by the Company's negligence) unless the Customer gives written notice to the Company of the nondelivery within 3 working days of the date when the Goods would in the ordinary course of events have been received.
- 7.3 Any liability of the Company for nondelivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.
- 7.4 Whilst the Company accepts no liability for damage or loss in transit when Goods are consigned via an independent carrier, the Company will use all reasonable endeavours to assist the Customer in pursuing claims for damage or loss in transit against a carrier provided that:
- 7.4.1 damage or shortage is notified in writing both to the Company and to the carriers within 3 days of receipt of Goods and the Goods have been signed for as "not examined", and have been handled by the Customer in accordance with carrier's conditions (if any); or
  - 7.4.2 Nondelivery in the case of total loss is notified both to the Company and to the Carrier within 3 of the date when the Goods would in the ordinary course of events have been received.

## **8. RISK AND TITLE**

- 8.1 Risk shall pass to the Customer so that the Customer is responsible for all loss, damage or deterioration to the Goods:
- 8.1.1 if delivery under Condition 5.1 is to take place at the Company's premises, at the time that the Customer arrives on the Company's premises (for the avoidance of doubt any loading is at the risk of the Customer); or
  - 8.1.2 if the Company delivers the Goods by its own transport, or in accordance with a specific contractual obligation arranges transport for the Goods, at the time when the Goods arrive at the designated place of delivery (for the avoidance of doubt any unloading is at the risk of the Customer).
- 8.2 Unless otherwise agreed in writing by the parties, all Goods will be shipped Ex Works the Company's facility (Incoterms 2010), and both title and risk of loss (including transportation delays and losses) shall pass to the Customer once the Company makes the Goods available and ready for dispatch at its facility.
- 8.3 The Company may recover Goods in respect of which title has not passed to the Customer at any time and the Customer hereby licenses the Company, its officers, employees and agents to enter upon any premises of the Customer for the purpose either of satisfying itself that Condition 8.4 below is being complied with by the Customer or of recovering any Goods in respect of which title has not passed to the Customer.
- 8.4 Until ownership of the Goods has passed to the Customer, the Customer shall:
- 8.4.1 hold the Goods on a fiduciary basis as the Company's bailee;
  - 8.4.2 store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;
  - 8.4.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
  - 8.4.5 maintain the Goods in satisfactory condition and where instructed by the Company keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company.
- 8.5 The Customer's right to possession of the Goods shall terminate immediately if:
- 8.5.1 the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the windingup of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
  - 8.5.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
  - 8.5.3 the Customer encumbers or in any way charges any of the Goods.
- 8.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 8.7 On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this condition 8 shall remain in effect.

## **9. ACCEPTANCE OF THE GOODS ON INSPECTION**

- 9.1 The Customer shall have no claim for defects in the Goods supplied apparent on visual inspection unless:
- 9.1.1 the Customer inspects the Goods within three (3) working days of the date of delivery (determined in accordance with Condition 5.1); and
  - 9.1.2 a written complaint specifying the defect is made to the Company and (where the Company has arranged transport for the Goods in accordance with a specific contractual obligation to do so) to the carrier within three (3) working days of delivery in the event of any shortage or defect in the Goods; and
  - 9.1.3 the Company is given an opportunity to inspect the Goods and investigate any complaint before any use of or alteration to or interference with the Goods is made.
- 9.2 Where the Customer raises a complaint in accordance with condition 9.1 in relation to any of the Goods which are not in accordance with the Contract the Customer shall nonetheless pay the full price for such Goods.
- 9.3 If a complaint is not made to the Company as provided in this Condition 9.1 then the Goods shall be deemed to be in all respects in accordance with the Contract and the Customer shall be bound to pay for the same accordingly.

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- 9.4 No Goods delivered to the Customer which are in accordance with the contract will be accepted for return without the prior written approval of the Company in accordance with the Company's returns authorisation procedure and on terms to be determined at the absolute discretion of the Company.
- 9.5 If the Company agrees to accept the return of any Goods which are in accordance with the contract the Customer shall be liable to pay a handling charge of 10% of the invoice price. Such Goods must be returned by the Customer carriagepaid to the Company in their original shipping carton and without damage.
- 9.6 Goods which are in accordance with the contract and which are returned without the prior written approval of the Company may at the Company's absolute discretion be returned to the Customer or stored at the Customer's cost without prejudice to any rights or remedies the Company may have.
- 9.3 Defects in quality or dimension in any instalment delivery shall not be a ground for cancellation of the remainder of the Contract.
- 9.2 After acceptance the Customer shall not be entitled to reject Goods which are not in accordance with the Contract.

## **10 CANCELLATION**

- 10.1 The Company may cancel the Contract at any time within a period of 3 working days from the date of the Order by giving written notice. On giving such notice the Company shall promptly repay to the Customer any sums paid in respect of the Goods. The Company shall not be liable for any loss, damage, interest or cost whatsoever arising from such cancellation.
- 10.2 The Company will use all reasonable endeavours to avoid any costs or liabilities where a cancellation notice has been submitted in accordance with condition 10.1, however any costs and expenses incurred by the Company up to the time of cancellation shall be the liability of the Customer and shall be paid forthwith by the Customer to the Company.
- 10.3 Where the Customer attempts to make cancellation other than in accordance with condition 10.1 the cancellation will only be agreed to by the Company on condition that all costs and expenses incurred by the Company up to the time of cancellation and all loss of profits and other loss or damage resulting to the Company by reason of such cancellation shall be paid forthwith by the Customer to the Company.
- 10.4 Goods returned to the Company without the Company's written consent will not be accepted for credit unless otherwise agreed in writing by the Company.

## **11 VARIATION**

- 11.1 All variations required by the Customer and accepted by the Company shall be agreed in writing and the price, if not agreed prior to the manufacture or delivery of the Goods, shall be based on the appropriate Contract Price (if any) plus escalation in respect of inflation and increased costs of materials and labour for the agreed variations.
- 11.2 If the Company agrees to any variation any dates quoted for delivery shall be extended accordingly and the provisions of condition 5.3 shall apply.

## **12. QUALITY**

- 12.1 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Company.
- 12.2 The Company warrants that (subject to the other provisions of these conditions) on delivery, and for a period of 12 months from the date of delivery (as determined by condition 5.1), the Goods shall:
- 12.2.1 Unless otherwise provided elsewhere in these Conditions be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
- 12.2.2 be reasonably fit for any particular purpose for which the Goods are being bought if the Customer had made known that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Customer to rely on the skill and judgement of the Company.
- 12.3 The Company shall not be liable for a breach of any of the warranties in condition 12.2 unless:
- 12.3.1 the Customer gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit to the carrier, within 14 working days of the time when the Customer discovers or ought to have discovered the defect; and
- 12.3.2 thereafter the Customer shall not use the Goods any further, and no alteration is to be made nor any interference made to the Goods before the Company has inspected the Goods in accordance with this Condition 12.3; and
- 12.3.3 the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Customer's cost for the examination to take place there.
- 12.4 The Company shall not be liable for a breach of any of the warranties in condition 12.2 if:
- 12.4.1 the defect in the Goods arises from any drawing, design or specification supplied by the Customer; or
- 12.4.2 the total price for the Goods that has already been invoiced has not been paid by the Customer by the due date for payment under these Conditions; or
- 12.4.3 the Customer makes any further use of such Goods after giving such notice; or
- 12.4.4 the defect arises due to accident, neglect or misuse, unsuitable storage, incorrect installation, commissioning, use contrary to instruction, maintenance or repair of the Goods whether by the Customer or third party, the use of unsuitable lubricant, or damaging external influences of a physical, electrochemical or chemical nature or otherwise in contravention of good trade practice; or
- 12.4.5 the Customer alters or repairs such Goods without the written consent of the Company.
- 12.5 Subject to condition 12.3 and condition 12.4, if any of the Goods do not conform with the warranty in condition 12.2 the Company shall at its option repair or replace such Goods (or the defective part) within a reasonable time period or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Customer shall, at the Customer's expense, return the Goods or the part of such Goods which is defective to the Company.
- 12.6 If the Company complies with condition 12.5 it shall have no further liability for a breach of any of the warranties in condition 12.2 in respect of such Goods.
- 12.7 The warranty in Condition 12.2 does not extend to parts, materials or equipment not manufactured by the Company in respect of which the Customer shall only be entitled to rely upon and the benefit of any such warranty or guarantee as is given by the manufacturer to the Company and which is under Condition 12.1 successfully transferred to the Customer.
- 12.8 The Company shall not be liable for (and the Customer shall indemnify the Company against claims arising from) loss or damage suffered by reason of use of the Goods after the Customer becomes aware of a defect or of circumstances which should reasonably have indicated to the Customer the existence of a defect.

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## **13. LIMITATION OF LIABILITY**

### **WARNING – YOU ARE STRONGLY ADVISED TO READ THIS CONDITION**

- 13.1 Subject to condition 5, condition 7 and condition 12, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of:
- (a) any breach of these conditions, including any deliberate breach of these conditions by a party, or its employees, agents or subcontractors;
  - (b) any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and
  - (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 13.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 13.3 Nothing in these conditions excludes or limits the liability of the Company:
- (a) for death or personal injury caused by the Company's negligence; or
  - (b) under section 2(3), Consumer Protection Act 1987; or
  - (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
  - (d) for fraud or fraudulent misrepresentation.
- 13.4 Subject to condition 13.2 and condition 13.3 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract Price.

## **14 SAFETY DEVICES**

- 14.1 It shall be the responsibility of the Customer to ascertain the requirements of its local factory inspector as to the proper guarding of the Goods and to ensure that such guarding is installed. Safety devices and guards supplied by the Company (otherwise than pursuant to a separate contract as provided below to supply guards to the requirements of the Customer's local factory inspector) will not necessarily meet the requirements of the Customer's local factory inspector and no warranty or representation is given or made that they comply with any statutory or other requirement and no liability is accepted by the Company in respect thereof.
- 14.2 The Company is prepared to enter into a separate contract with the Customer to supply guards to the requirements of the Customer's local factory inspector and the price for such guards shall be charged extra when the full extent of such requirements is made known. In the event that the Customer does not wish to enter into such a contract with the Company the Customer will on request give the Company a written undertaking pursuant to Section 6(8) of the Health and Safety at Work Act 1974 to the effect that it will provide and install such guards so as to relieve the Company from any liability in respect thereof.

## **15 CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY RIGHTS**

- 15.1 All drawings, documents, confidential records, computer software and any other information whatsoever supplied by the Company are supplied on the express understanding that copyright is reserved to the Company and that the Customer will not, without the written consent of the Company, either give away, loan, exhibit, use or sell any such drawings, documents, records, software or other information or extracts therefrom or copies thereof or use them in any way except in connection with the Goods and for the purposes for which they were issued to the Customer.
- 15.2 All claims for alleged infringement in respect of patents, trade marks, registered design, design right or copyright received by the Customer must be notified immediately to the Company and the Company must thereafter be kept fully informed of the conduct of such claims.
- 15.3 The Customer shall not, without first obtaining the Company's permission in writing, exhibit any of the Company's Goods at any public exhibition or trade display in Great Britain or Northern Ireland.

## **16. TOOLING**

- 16.1 All tools, unless provided by the Customer, remain the property of the Company.

## **17 CUSTOMER'S DRAWINGS**

- 17.1 The Customer shall be solely responsible for ensuring that all drawings, information, advice and recommendations given to the Company, either directly or indirectly by the Customer or by the Customer's officers, employees, agents, consultants or advisers, are accurate, correct and suitable. Examination or consideration by the Company of such drawings, information, advice or recommendations shall in no way limit the Customer's responsibility hereunder unless a director or other authorised representative of the Company specifically agrees in writing to accept responsibility.
- 17.2 The Customer shall indemnify the Company from and against all actions, claims, costs and proceedings which arise due to the manufacture of Goods to the drawings or specifications of the Customer where such drawings or specifications are at fault or where it is alleged that they involve an infringement of a patent, copyright, registered design, design right, design copyright or other exclusive right.

## **18 INSOLVENCY**

- 18.1 If the Customer shall become bankrupt, or under the provisions of Section 123 of the Insolvency Act 1986 shall be deemed to be unable to pay its debts, or compounds with creditors or in the event of a resolution being passed or proceedings being commenced for the administration or liquidation of the Customer (other than for a voluntary solvent winding up for the purposes of reconstruction or amalgamation), or if a receiver or manager is appointed of all or any part of its assets or undertaking, the Company shall be entitled to cancel the Contract in whole or in part by notice in writing without prejudice to any other right or remedy accrued or accruing to the Company.

## **19 FORCE MAJEURE**

- 19.1 In the event of the performance of any obligation accepted by the Company being prevented, delayed, or in any way interfered with by: 19.1.1 direction of government, war, industrial dispute, strike, breakdown of machinery or plant, accident, fire or by any other cause beyond the Company's control; or
- 19.1.2 nondelivery by the Company's suppliers or damage to or destruction of the whole or part of the Goods, the Company may at its option defer delivery, suspend

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performance, reduce the quantity of the Order or cancel its obligations under the Contract without liability for any damage or consequential loss resulting therefrom such suspension or cancellation being without prejudice to the Company's right to recover all sums owing to it in respect of consignments delivered prior to the date of suspension or cancellation.

## **20 SPECIALS AND FREE ISSUE MATERIALS**

- 20.1 The Company gives no guarantee and accepts no liability in relation to the suitability of materials or design of Goods made specially to the Customer's requirements and differing from the Company's standard specifications (if any) even if the purpose be known to the Company.
- 20.2 The Company accepts no responsibility for Customer's samples, drawings, tools and the like while in the Company's possession and the Company will not accept any claim for loss, breakages or damage to the same whatever the cause. The Customer shall be responsible for insurance cover in its own name and at its cost for the risks specified in this Condition 20.
- 20.3 Where materials are supplied by the Customer to the Company such materials shall remain at the risk of the Customer at all times and the Company shall not be liable for the loss of, or damage to, any material during fabrication by the Company or by any subcontractor employed by the Company or whilst on the premises of the Company or of any such subcontractor or whilst in transit to or from the premises of the Company or of any subcontractor provided that the Company may, at its discretion, make a contribution towards the replacement costs of the material.
- 20.4 Where materials are supplied by, or on behalf of, the Customer to the Company the Customer shall be responsible for ensuring that the material is of merchantable quality and is fit for its purpose and shall indemnify the Company against any loss, damage, injury or expense whatsoever arising directly or indirectly from any fault in or incorrect specification of the said material.

## **21 CONSUMER PROTECTION ACT 1987 ("the Act")**

- 21.1 In circumstances where the Company supplies Goods to the Customer for incorporation with, or any other use ancillary to, any other products to be produced, manufactured, processed or supplied by the Customer then:
- 21.1.1 the Customer shall forthwith on demand produce for inspection by the Company copies of all written instructions, information and warnings to be supplied by the Customer in relation to the said other products, provided nevertheless that such inspection or right to inspect shall not of itself constitute acceptance or approval on the part of the Company of such instructions, information or warnings; and
- 21.1.2 the Customer shall indemnify, reimburse and fully compensate the Company for all losses and damages (including costs, expenses and charges for legal actions in which the Company may be involved) that the Company may incur, or has to bear, in the event that any claim or claims are made against the Company pursuant to the Act or otherwise relating to the said other products of the Customer in circumstances in which the Goods supplied by the Company were either (i) not the defective part of the said other product, or (ii) only became defective by reason of acts or omissions of the Customer (including without limitation the supply of defective free issue materials), or (iii) only became defective by reason of instructions or warnings given by the Customer or other supplier of the said other products or (iv) were supplied in accordance with a specification and/or drawings furnished by, or on behalf of, the Customer.
- 21.1.3 for the purposes of this Condition only the word "defective" shall be interpreted in accordance with the definition of 'defect' contained in Part 1 of the Act.
- 21.2 The Customer hereby acknowledges that it is under a duty to pass on to its customers all instructions, information and warnings supplied to it by the Company with the Goods.

## **22 ASSIGNMENT**

- 22.1 The Contract is between the Company and the Customer as principals and under no circumstances shall the Customer assign the benefit or burden of it without the prior written consent of the Company. The Company shall be entitled to assign or subcontract the whole or part of its obligations under the Contract.

## **23 SEVERABILITY**

- 23.1 If any provision of these Conditions or the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of these Conditions and the Contract and the remainder of such provision shall continue in full force and effect..

## **24 ATTENDANCE ON SITE**

- 24.1 Should the Company attend on the Customer's premises or on the premises of any purchaser from the Customer to perform any services in relation to the Goods then the Customer shall indemnify the Company in respect of all claims made, or proceedings taken, against the Company (and all damages and penalties awarded against or costs (including legal costs) incurred by the Company in connection therewith) by any third party including but not limited to the Company's employees, the Customer's employees or the employees of any contractor employed by the Customer or the personal representatives or dependants of such employees or other third parties in respect of death, personal injury or damage to property (including damage as a result of fire or explosion) caused by or arising out of any act or omission (negligent or otherwise) of the Company its employees agents or sub contractors whilst at or on such premises.

## **25 LEGAL**

- 25.1 The Contract shall be governed by and interpreted exclusively according to the Laws of England and shall be subject to the exclusive jurisdiction of the English Courts save to the extent that the Company may require to obtain injunctive relief outside such jurisdiction.
- 25.2 All references to Statute in these Conditions of Sale refer to UK legislation.
- 25.3 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

## **Twiflex Ltd** Terms and Conditions of Sale

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- 25.4 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 25.5 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by prepaid first class post or sent by fax:
- 25.5.1 (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Customer by the Company in correspondence; or
  - 25.5.2 (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Customer.
- 25.6 Communications shall be deemed to have been received:
- 25.6.1 if sent by prepaid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
  - 25.6.2 if delivered by hand, on the day of delivery; or
  - 25.6.3 if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
- 26. EXPORT CONTROL REGULATIONS**
- 26.1 The Customer agrees to comply with all applicable export and re-export control laws, including, without limitation, laws related to the resale and disposition of the Goods (including required export licenses, clearances and consents), in connection with performing its obligations hereunder. The Customer warrants that it will not sell, transfer or support, directly or indirectly, or assist in any sale or transfer of any products or product technology in countries or to users concerning which such sale, transfer or support is not permitted under applicable law. The Customer shall defend, hold harmless and indemnify the Company for any damages resulting to the Company from a breach of this paragraph by the Customer.