

Semloh Electrics Limited

Terms and Condition of Sale

1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

"Business Day": a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

"Conditions": the terms and conditions set out in this document as amended from time to time in accordance with clause 11.6.

"Contract": the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

"Customer": the person or firm who purchases the Goods from the Supplier.

"Goods": the goods (or any part of them) set out in the Order.

"Order": the order by the Customer for the Goods.

"Supplier": Semloh Electrics Limited (registered in England and Wales with company number 02674882).

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality)
- (b) A reference to a party includes its personal representatives, successors or permitted assigns
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted
- (d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms
- (e) A reference to **writing or written** includes faxes and e-mails

2. CONTRACT

2.1 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.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.

2.3 The Order shall only be deemed to be accepted by the Supplier:

- (a) when the Supplier issues a written acceptance of the Order; or
- (b) if earlier, when the Supplier delivers the Goods to the Customer at which point the Contract shall come into existence.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the catalogues or brochures of the Supplier are produced 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.

3. GOODS

3.1 The Goods are as described in the catalogue of the Supplier.

3.2 The Supplier reserves the right to amend the specification of the Goods at any time and without notice if required by any applicable statutory or regulatory requirements.

4. DELIVERY

4.1 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note which shows relevant reference numbers of the Customer and the Supplier, the type and quantity of the Goods.

4.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**") at any time after the Supplier notifies the Customer that the Goods are ready.

4.3 Delivery of the Goods shall be completed on the arrival of the Goods at the Delivery Location or, if the Customer collects the Goods from the Supplier's premises, at the time of collection by the Customer.

4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the failure of the Customer to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier 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 failure of the Customer to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6 If the Customer fails to take delivery of the Goods within 3 Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the failure of the Supplier to comply with its obligations under the Contract:

- (a) delivery of the Goods shall be deemed to have been completed at 9:00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
- (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.7 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. QUALITY

5.1 The Supplier warrants that on delivery the Goods shall:

- (a) conform in all material respects with their description; and
- (b) be free from material defects in design, material and workmanship.

5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing to the Supplier that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the place of business of the Supplier at the cost of the Customer (such cost to be refunded by the Supplier if the Supplier determines the Goods do not comply with the warranty set out in clause 5.1),

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 The Supplier shall not be liable for failure of the Goods to comply with the warranty set out in clause 5.1 in any of the following events:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2; or
- (b) the defect arises because the Customer failed to follow the oral or written instructions of the Supplier or manufacturer as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same; or
- (c) the Customer alters or repairs such Goods without the written consent of the Supplier; or
- (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (e) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the failure of the Goods to comply with the warranty set out in clause 5.1.

5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 The Customer acknowledges that the Supplier is not the manufacturer of the Products. If, in respect of any of the Products, the manufacturer of those Products offers or provides a warranty, the Supplier shall, at the Customer's written request, use reasonable endeavours to ensure the Customer obtains the benefit of any such warranty.

6. TITLE AND RISK

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until the earlier of:
- the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer, in which case title to the Goods shall pass at the time of payment of all such sums; and
 - The Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the property of the Supplier (and, in particular, shall store Goods for which the Customer has paid separately from Goods for which the Customer has not paid);
 - not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.2; and
 - give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 6.4 If the Customer allows the Goods (or any of them) for which the Customer has not paid to be stored with Goods for which the Customer has paid such that it is not possible to distinguish between Goods which have been paid for and those which have not been paid for, the Customer shall be deemed to have not paid for such number of the Goods which remain in the Customer's possession and for which the Supplier has not received payment.
- 6.5 Subject to clause 6.6, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:
- it does so as principal and not as the agent of the Supplier; and
 - title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- 6.6 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2 then, without limiting any other right or remedy the Supplier may have:
- the right to resell the Goods by the Customer or use them in the ordinary course of its business ceases immediately; and
 - the Supplier may at any time:
 - require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. PRICE AND PAYMENT

- 7.1 The price of the Goods shall be the price set out in the published price list of the Supplier in force as at the date of delivery or, if different, the price specified in the Contract.
- 7.2 The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); or
 - any request by the Customer to change the delivery date(s), quantities or types of Goods ordered or any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 7.3 For Orders to be delivered within the UK mainland with a value of more than £150 the price of the Goods is inclusive of the costs for the delivery of the Goods. For Orders with a value of less than £150 or for delivery outside the UK mainland the costs of delivery will be charged to the Customer at the Supplier's standard rates and which costs shall be invoiced to the Customer in addition to the price of the Goods.
- 7.4 The price of the Goods is exclusive of amounts in respect of value added tax ("VAT"). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the

Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

- 7.5 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 7.6 The Customer shall pay the invoice in full and in cleared funds within 30 days following the end of the month in the invoice is dated. Time of payment is of the essence.
- 7.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the base rate of Barclays Bank PLC from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).

8. TERMINATION AND SUSPENSION

- 8.1 If the Customer becomes subject to any of the events listed in clause 8.2, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer and, all amounts which are then outstanding and to be paid by the Customer to the Supplier (whether under the Contract or any other Contract) shall become immediately due and payable by the Customer.
- 8.2 For the purposes of clause 8.1, the relevant events are:
- the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
 - the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - (being an individual) the Customer is the subject of a bankruptcy petition or order;
 - a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
 - (being a company) the holder of a qualifying charge over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver;
 - a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;
 - any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2(a) to clause 8.2(h) (inclusive);
 - the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - the financial position of the Customer deteriorates to such an extent that in the opinion of the Supplier the capability of the Customer to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 8.3 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 8.2(a) to clause 8.2(i), or the Supplier reasonably believes that the Customer is about to become subject

to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

- 8.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the outstanding unpaid invoices and interest of the Supplier.
- 8.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 8.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

9. LIMITATION OF LIABILITY

- 9.1 Nothing in these Conditions shall limit or exclude the liability of the Supplier for:
 - (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); or
 - (b) fraud or fraudulent misrepresentation; or
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - (d) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 9.2 Subject to clause 9.1:
 - (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - (b) the total liability of the Supplier to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

10. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including default of suppliers or subcontractors.

11. GENERAL

- 11.1 **Assignment and other dealings.** The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.
- 11.2 **Notices.** Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post or other next working day delivery service, commercial courier, fax or e-mail. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 11.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 11.4 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 11.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 11.6 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Supplier.
- 11.7 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

11.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

Terms and Conditions of Sale :

All orders and contracts for the supply of products by Semloh Electrics Limited are governed by and subject to the standard terms and conditions of sale of Semloh Electrics Limited (Standard Conditions). No other terms and conditions will apply to any such order or contract unless expressly agreed by Semloh Electrics in writing.

By signing this Form, I/we declare that the information set out in this form is correct and that I/we accept and agree that all and any orders for the supply of products will be on and subject to the Standard Conditions.

Signature.....

Print Name.....

Position.....Date.....