

CONDITIONS OF SALE

1. Interpretation

1.1 In these Conditions:

"Buyer" means the person or entity who purchases the Goods from the Seller

"Goods" means the goods (including any instalment of the goods or any parts for them) which the Seller agrees to supply to the Buyer in accordance with these Conditions.

"Seller" means Murco Limited having its registered offices at 11 Adelaide Road, Dublin 2, (registered in Ireland under No.206382).

"Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Buyer and the Seller.

"Contract" means the contract for the purchase and sale of Goods subject to these Conditions.

"Writing" includes facsimile transmission, email, post or other comparable means of written communication.

1.2 any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. Basis of the Sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with these Conditions, upon the written order of the Buyer which is accepted by the Seller. These Conditions shall govern the Contract to the exclusion of any other terms and conditions purported to be applied by the Buyer under any purchase order, confirmation order, specification, or other document.

2.2 Each order for Goods by the Buyer to the Seller shall be deemed to be an offer by the Buyer to purchase the Goods subject to these Conditions.

2.3 No variation of these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

2.4 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on and waives any claim for breach of, any such representations which are not so confirmed.

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

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

3. Orders and Specifications

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specifications) submitted to the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation and confirmed in the Buyer's order (if accepted by the Seller) unless varied by the Buyer pursuant to clause 3.2 and so confirmed by the Seller. All drawings, descriptive matter, specifications and advertising issued by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are issued and published for the sole purpose of giving an approximate idea of the Goods described in them and they will not form part of this Contract.

3.4 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable health or other statutory requirements or, [where the Goods are to be supplied to the Seller's specification which do not materially affect their quality or performance.]

3.5 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used, transport costs) damages, charges and expenses incurred by the Seller as a result of cancellation.

4. Price of the Goods

4.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order. Where the Goods are supplied for export from Ireland, the Seller's published export price list shall apply. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

4.2 Notwithstanding clause 4.1 herein the Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices given by the Seller are on an ex work basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.

4.4 The price is exclusive of any applicable value added tax (or any other applicable tax), which amounts the Buyer shall be additionally liable to pay to the Seller.

5. Terms of Payment

5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, payment for Goods will be effected within 30 days of invoice date.

5.2 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

5.2.1 cancel the Contract and suspend any further deliveries to the Buyer;

5.2.2 appropriate any payment made by the Buyer to such of the Goods (or the Goods supplied under any other contract between the Buyer and the Seller); and

5.2.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 5% per annum above DIBOR bank base rate from time to time, accruing on a daily basis until payment in full is made (a part of a month being treated as a full month for the purposes of calculating interest).

5.2.4 no payment shall be deemed to have been received until the Seller has received payment in cleared funds.

5.3. The Buyer shall make all payments due under the Contract without any deduction whether by way of set off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid Court Order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.

6. Delivery

6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place of delivery is agreed by the Seller, by the Seller delivering the Goods to that place and subject to any other agreement between the parties, at the cost of the Buyer.

6.2 Any dates quoted for delivery of the Goods are approximate only. Time for delivery shall not be of the essence unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate Contract and failure by the Seller to deliver any one or more of the instalments in accordance with 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.

6.4 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) to obtain similar goods to replace those Goods not delivered. In any other case the Seller shall not be liable for any delay in delivery of the Goods whatsoever caused.

6.5 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

6.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

6.5.2 sell the Goods at the best price readily obtainable and charge the Buyer for any shortfall below the price that would have been obtained from the Buyer under the Contract including all reasonable storage and selling expenses.

6.6 If the Buyer rejects delivery of the Goods for reasons that the Goods do not meet with their requirements, the Buyer shall within five business days from the date of delivery communicate this fact to the Seller who shall endeavour to rectify the specifications of the Buyer's Order within seven business days from the date of the Buyer's notification. If the Buyer does not confirm acceptance of the delivery within three business days of the date of delivery, acceptance of said delivery shall be deemed.

7. Risk and Property

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer.

7.1.1 In the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or

7.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongly fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the title and property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods under all other contracts between the Seller and the Buyer for which payment of the full price of those goods thereunder has not yet been paid. Payment of the full price of all of the goods (including the Goods) shall include the amount of any interest or any other sum payable under these Conditions and under all other Contracts between the Seller and the Buyer under which the Goods were delivered.

7.3 Until such time as the title and the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. In such circumstances the Buyer shall be obliged to maintain the Goods in a satisfactory condition and keep them insured on the Seller's behalf for their full market value against all risks. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods up to the full market value, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties.

7.4 Until such time as the title and the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods without any liability whatsoever on the part of the Seller to the Buyer for the payment of any part of the price already paid to the Seller. The Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so, the Seller shall be entitled to immediate repossession of the Goods and additionally all moneys owing by the Buyer to the Seller shall immediately become due and payable including the amounts due pursuant to clause 7.6 herein (without prejudice to any other right or remedy of the Seller).

7.6 Without prejudice to the generality of this clause, if the Seller exercises its right to recover the Goods and the said Goods were made to the specific requirements of the Buyer, or if at the time of recovery the said Goods are no longer the value of the price originally agreed between the Buyer and the Seller, the Seller shall have the right to revalue the Goods to reflect the adjusted price or value of the Goods at the time of recovery. The Seller's decision as to whether or not Goods are of less value than that at the time that the Contract was originally concluded and the Seller's revaluation price shall be final and binding on both parties. In the event that the valuation price is less than the original agreed price under the Contract or in the event that the Goods having no value at the time of recovery, the Buyer shall be obliged to pay to the Seller the difference between the original agreed price and the valuation price in addition to the balance outstanding. The Seller shall additionally be entitled to immediate repossession of the Goods. The provisions of this Clause are without prejudice to the Seller's right to charge interest under this Contract.

7.6.2 If any of the Goods or products are either incorporated into or used as material for other Goods before payment is made under this Contract, the title and property in the whole of such Goods shall be and remain with the Seller until such payment has been made, or the Goods have been sold as aforesaid and all the Seller's rights hereunder in the material shall extend to those other goods.

7.6.3 In the event that the Buyer disposes of the Goods or any products containing such Goods without title passing from the Seller to the Buyer and without the Buyer paying in full the amounts due in respect of the Goods, the Buyer has the fiduciary duty to the Seller to account for the proceeds of sale including any interest or other amounts due to the Seller.

8. Warranties and Liability

8.1 Subject to the conditions as set out in this clause below, if any of the Goods do not conform with the warranties contained herein, the Seller shall at its option repair or replace such goods (or the defective part) or refund the price of such Goods at the pro rata Contract price provided that, if the Seller so requests, the Buyer shall return the Goods or the part or parts thereof which are defective to the Seller. The Seller shall make good by repair or re-creation or at the Seller's option by the supply of a replacement, defects which under proper use, appear in the Goods within a period of twelve (12) months after the Goods have been delivered and arise solely from a faulty design (other than a design made, furnished or specified by the Buyer), materials or workmanship PROVIDED ALWAYS that the defective Goods have been returned to the Seller if the Seller shall have so required. The Seller shall refund the cost of carriage on such returned goods and the repaired or new parts will be delivered by the Seller to the Buyer free of charge. The Seller warrants that upon delivery (subject to the other provisions of these Conditions) the Goods will be reasonably fit for any particular purpose for which the Goods are being bought by the Buyer. The Seller's warranties under this clause shall be in lieu of any warranty or condition implied by law as to the quality of fitness for any particular purpose of the Goods and save as provided in this clause the Seller shall not be under any liability whether in contract, tort or otherwise, in respect of defects in the Goods delivered or for any injury, damage or loss resulting from such defects or from any work done in connection therewith.

The Buyer shall have no claim against the Seller in respect of defects in the quality of the Goods unless:

(i) A written complaint is sent to the Seller within ten (10) days of the date of when the Buyer discovers or ought to have discovered the defect in the Goods or in the case of an item not manufactured by the Seller within the guarantee period specified by the manufacturer of such item and provided no use is made of the Goods thereafter and no alteration is made thereto or interference made therewith before the Seller is given an opportunity to inspect the Goods in accordance with this condition and;

(ii) The Seller shall not be liable for loss or damage suffered by reason of the use of the Goods after the Buyer becomes aware of a defect or after circumstances which should reasonably have indicated to the Buyer the existence of a defect;

(iii) The defect arises because the Buyer failed to follow the Seller'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; The Buyer accepts that it retains all liability and is responsible for the installation and operation of the Goods; shall take all reasonable care in the installation and commissioning for said Goods and the Seller shall have no liability in this regard.

(iv) The Buyer alters or repairs such Goods without the written consent of the Seller

8.2 The Seller assumes no responsibility whatsoever or liability for repairs to the Goods not made in the Seller's factory or by the Seller's personnel without written consent.

8.3 Save as the above the Seller's total liability in contract, tort (including negligence or breach of statutory duty) misrepresentation, restitution or otherwise, arising in connection with the performance of this contract, shall be limited to the Contract price.

8.4 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, any implied warranty, condition or other term, or any duty at common law or under any express or implied terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.

9. Force Majeure

9.1 Deliveries of Goods or services maybe totally or partially suspended by the Seller during any period in which the Seller maybe prevented or hindered from obtaining, manufacturing, supplying or delivering the same through any circumstances beyond the Seller's reasonable control including, without limitation, and without prejudice to the generality of the foregoing words inability to obtain products, materials, civil commotion, plant breakdowns, governmental actions, war or national emergency, acts of terrorism, protest, riot, fire, explosion, floods, epidemic, lock outs, strikes or other labour disputes (whether or not relating to either party's work force), acts of God provided that, if the event in question continues for a continuous period in excess of 90 days, the Seller shall be entitled to give notice in writing to the Buyer to terminate the Contract.

10. Insolvency of Buyer

10.1 This clause applies to:

10.1.1 The Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

10.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer, or

10.1.3 the Buyer ceases, or threatens to cease, to carry on business; or

10.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

10.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without liability to the Buyer, recover any Goods that have been delivered and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

11. Confidential Information

11.1 All drawing designs, documents, specifications, confidential records and other information supplied by the Seller are to be supplied on the express understanding that copyright is reserved to the Seller and that the Buyer will not without written consent of the Seller either give away, loan, exhibit or sell any such drawings, designs, specifications, documents records or other information or extracts therefrom or copies thereof or use them in any way except in connection with the Goods in respect of which they were issued.

11.2 The Buyer undertakes to regard as confidential all information communicated to him and shall not disclose it or make it available to any third person or entity without the prior written consent of the Seller.

12. Drawings, Designs and Specifications

12.1 All specifications, designs, particulars of weights, dimensions and quantities accompanying the Seller's quotation must be regarded as approximate only and small deviations therefrom shall not vitiate the Contract or be made the basis of any claim against the Seller. The descriptions and illustrations contained in the Seller's catalogue, price list and other advertisement matter are intended to present a general idea only of the Goods described therein and are approximate only. None of these shall form part of a Contract unless stated to be so in the Seller's confirmation of the Buyer's order.

12.2 Specifications mentioned in the Seller's catalogue and any other printed matter have indicative value only. The Seller reserves the right to bring about any modification in shape, design, dimension or material even after the Seller's acceptance of the Buyers order but in no case shall the essential characteristics of the Goods be affected.

12.3 The Buyer shall be solely responsible for ensuring that all drawings, designs, information, advice and recommendations given to the Seller either directly or indirectly by the Buyer or the Buyer's agents, servants, consultants or advisers are accurate, correct and suitable. Examination or consideration by the Seller of such drawings, designs, information, advice or recommendations shall in no way limit the Buyer's responsibility hereunder unless the Seller specifically agrees in writing to accept responsibility.

12.4 The Buyer shall indemnify the Seller from and against all actions, claims, costs and proceedings which arise due to the manufacture of Goods to the drawings, designs or specifications of the Buyer where such drawings, designs or specifications are at fault or where it is alleged that they involved an infringement of a patent, copyright, registered design or design copyright or other exclusive right.

13. Performance

13.1 Any claim by the Buyer in relation to defective Goods is subject to the conditions set out at clause 8.1 and additionally strictly subject to the Seller being afforded a reasonable opportunity to repair or replace said Goods. The Buyer hereby acknowledges that the Goods are sufficient and suitable for the Buyer's purpose save any special conditions agreed in Writing between the Buyer and the Seller

14. General

14.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office address or such other address as shall have been communicated in Writing and agreed between the parties.

14.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

14.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

14.5 The Contract shall be governed by the laws of Ireland and the Buyer and the Seller hereby agree to submit to the exclusive jurisdiction of the Irish Courts.