

Terms and Conditions of Sale

1. Interpretation

1.1 In these conditions

“Buyer” means the person who accepts a quotation of the Seller for the sale of the goods or whose order for the goods is accepted by the Seller.

“Goods” means the goods (including any instalment of the goods or any parts of them) which the Seller is to supply in accordance with these conditions.

“Seller” means SageZander Limited (registered in England under number 5987698).

“Conditions” means the standard terms and conditions of sale set out in this document and include any special terms and conditions agreed in writing between the Buyer and the Seller.

“Contract” means the contract for the purchase and sale of the Goods.

2. Basis of the Sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order which is accepted by the Seller, subject in either case to these conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

2.2 No variation to these conditions shall be binding unless agreed in writing between the authorized representative of the Buyer and the Seller.

2.3 Any advice, recommendation or representation given or made by or on behalf of the Seller concerning the Goods or their use which is not confirmed in writing by the Seller is followed, acted or relied upon entirely at the Purchaser’s own risk and the Seller shall not be liable for any such advice, recommendation or representation which is not so confirmed.

2.4 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, order acknowledgement, 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 authorized representative.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by 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 (if accepted by the Buyer) or the Buyer’s order (if accepted by the Seller).

3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller’s use of the Buyer’s specification.

3.5 The Seller reserves the right to make any changes in the specification of the Goods as published by the Seller from time to time which are required to conform with any applicable safety 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.

3.6 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), 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. All prices quoted are valid for 10 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 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, 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 agreed in Writing between the Buyer and the Seller, all prices are given on an ex-works 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 and duties, which the Buyer shall be additionally liable to pay the Seller.

5. Terms of payment

5.1 Unless otherwise expressly agreed in writing, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be), the Seller has tendered delivery of the Goods.

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 or 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) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer), and

5.2.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of four percent per annum above HSBC Bank base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

5.2.4 by the Seller giving notice in writing to the Buyer, cancel any other contract between the Buyer and the Seller.

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 for delivery is agreed by the Seller, by the Seller Delivering the Goods to that place.

6.2 Any dates quoted for delivery are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing.

6.3 Where Goods are to be delivered other than at the Seller’s premises, if the Goods are not delivered or on delivery are found to be damaged or short the Seller shall not in any event be liable unless the Buyer gives written notice to the Seller and to the Carrier within 3 days of the expected delivery date and, in the case of short or damaged delivery, the Buyer gives the Seller a reasonable opportunity to inspect the Goods, in the same condition and location as when delivered.

6.4 Where delivery is to be made by instalments, each delivery shall be deemed for such purpose to be the subject of a separate contract and any failure whatsoever by the seller in respect of any one delivery shall not entitle the buyer to repudiate the contract or any instalments remaining to be delivered thereunder.

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 (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.

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 wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

7.2 The buyer shall keep the Goods fully insured against all risks normally insured against at least throughout the period from the

passing of risk in the Goods until the passing of property in them.

7.3 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these conditions, the 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 agreed to be sold by the Seller to the Buyer for which payment is not due.

7.4 Until such time as 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.

7.5 Until such time as 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 immediately, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

7.6 The buyer is responsible for checking each batch of material supplied by the seller to assess its suitability for the buyers particular application prior to using it for manufacturing.

7.7 Notwithstanding clause 7.3 the buyer shall be entitled to use or sell the goods in the normal course of business but only on the following conditions:

7.7.1 If the goods at the time of sale by the buyer remain identifiable and unincorporated and unmixed with other goods then the buyer shall sell the goods on behalf of the seller as owner and the proceeds of the sale shall be held in trust for the seller in a separate account.

7.7.2 If the goods are prior to sale by the buyer made up or incorporated in or mixed with other goods then if they remain separately identifiable the seller shall retain title thereto and if they do not remain separately identifiable the seller shall become the owner of the goods in or with which the goods are incorporated or mixed who shall be entitled to sell the new goods and shall retain from the proceeds of sale a sum equal to the amount outstanding to it in respect of the price of the goods and shall pay the balance of the sale proceeds to the buyer.

7.8 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 all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and Payable.

8. Warranties and liability

8.1 The Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express 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 in their use or resale by the Buyer, except as expressly provided by these conditions.

8.2 In no circumstances shall the liability of the Seller to the Buyer for a breach of any express or implied term of the Contract or any other duty of any kind imposed on the Seller by law arising out of or in connection with the Contract exceed 5% of the contract price for each act or omission or series of acts or omissions causing substantially the same loss.

8.8 Nothing in this clause 8 shall exclude or limit the Seller’s liability for death or personal injury caused by its negligence.

8.9 The Seller shall not be liable for any delay or failure or for the consequences of any delay or failure in performing any of its obligations under this contract if such delay or failure is the result of any circumstances wholly or partially beyond its reasonable control, and the Seller shall be entitled to a reasonable extension of time for performing such obligations. Without prejudice to the generality of the foregoing, strikes, lock-outs or other industrial actions or trade disputes of whatever nature (whether involving the employees or operations of the Seller or any third party) shall be regarded as included in such circumstances.

9. Insolvency of Buyer

9.1 This clause applies if:

9.1.1 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

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

9.1.3 the Buyer ceases, or threatens to cease to carry on business, or

9.1.4 the Buyer is in breach of these conditions or any other contract between the parties, or

9.1.5 the Seller reasonably apprehends that any of the events mentioned above is about to occur to the Buyer and notifies the Buyer accordingly, or

9.1.6 any analogous proceedings to those under clauses 9.1.1 or 9.1.2 are commenced in any jurisdiction.

9.2 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 any liability to the Buyer, 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.

10. Copyright

10.1 Unless otherwise agreed in writing, all patterns, drawings, plans, diagrams and fixtures required for the performance

of the Contract shall, notwithstanding any payment by the Buyer, at all times remain the property of the Seller.

10.2 All intellectual property and other proprietary rights (including, but not limited to, copyright, design right and trade marks) and all technical or similar information (including, but not limited to, all designs, documents and other materials relating to the Goods) created by the Seller during the course of the Contract shall be, and shall remain, the property of the Seller only.

11 General

11.1 Any notice shall be deemed to be served:

11.1.1 if sent by pre-paid first class post to the party to whom it is given, on the second working day after posting; or

11.1.2 if sent by fax to the recipient’s fax number, on the date and time given on the sender’s transmission acknowledgement slip or (in the case of loss or manifest error) on receipt.

11.2 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.

11.3 The Buyer shall be solely responsible for and shall keep the Seller indemnified in respect of any loss, liability or exposure arising directly or indirectly from use of the Goods other than in accordance with the Seller’s operating instructions.

11.4 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.

11.5 The Contract shall be governed by the laws of England and the parties hereby submit to the exclusive jurisdiction of the English courts, unless otherwise agreed by both the Seller and the Buyer in writing.

11.6 Any dispute arising out of the Contract, including the construction or interpretation of its provisions shall be settled by a single arbitrator appointed by agreement between the parties, or failing such agreement, by the President of the Law Society of England and Wales, at the request of either party. This shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1950 or any statutory re-enactment or replacement thereof.

11.7 The Buyer shall not assign this Contract or any of its rights under it without the prior written consent of the Seller.

SAGEZANDER LTD, MOUNTBATTEN HOUSE, WORRALL STREET, CONGLETON, CW12 1DT

Tel +44 (0)1260 295264 FAX +44 (0)1260 295264 Website www.sagezander.com