



## Terms and Conditions of Sale

### 1 General

#### 1.1 In these conditions

"Conditions" means these terms and conditions of sale; "Contract" means the contract for the sale of the Goods by Frostechnic Ltd to the Customer incorporating these conditions.

"Customer" means the person or firm with whom Frostechnic Ltd contracts for the sale of the Goods upon the terms of these conditions;

"Delivery" shall have the meaning given in clause 4;

"Goods" means the products sold by Frostechnic Ltd to the Customer pursuant to the Contract including any part or parts of them;

"Price" means the price to be paid by the Customer for the Goods.

All headings are for ease of reference only and shall not affect the construction of these conditions.

1.2 All orders are accepted and all contracts entered into by Frostechnic Ltd on these Conditions which shall override and exclude any other terms stipulated or referred to by the Customer or by Frostechnic Ltd, unless specifically agreed to in writing by a Director of Frostechnic Ltd. For the avoidance of doubt, other agents and employees of Frostechnic Ltd do not have any authority to alter or vary these Conditions.

1.3 All orders for goods shall be deemed to be an offer by the Customer to purchase Goods pursuant to these Conditions.

1.4 Any estimate or quotation given by or on behalf of Frostechnic Ltd whether orally or in writing shall constitute an invitation to the Customer to place an order and thereby make an offer open to acceptance by Frostechnic Ltd.

1.5 Purely for evidential purposes, acceptance of the Goods shall be deemed to be conclusive evidence of the Customer's acceptance of these Conditions.

### 2 Prices

2.1 If Frostechnic Ltd has issued a quotation stating a price to be fixed and the Customer has complied in all respects with the terms specified by Frostechnic Ltd in the quotation then that price shall be the Price.

2.2 If clause 2.1 does not apply then the Price shall be the price current at the date of despatch of the Goods. Which shall be the price stated at the time of the Contract subject to a variation to reflect any increase in cost to Frostechnic Ltd which is due to any factor beyond the control of Frostechnic Ltd (such as, without limitation, any increase in prices charged by suppliers to Frostechnic Ltd, any foreign exchange fluctuation, increase in the cost of labour or materials, alterations of duties).

2.3 All prices quoted are exclusive of VAT (which shall be due at the rate ruling at the date of VAT invoice) and carriage.

### 3 Payment

Payment of the Price in full and VAT and carriage (if charged) is due on the last working day of the month following the month in which the Goods are despatched. Time for payment shall be of the essence.

### 4 Delivery

4.1 If delivery is arranged or affected by the Customer, delivery shall take place when the Goods leave the premises of Frostechnic Ltd.

4.2 Subject to clause 4.3, if delivery is arranged or affected by Frostechnic Ltd, delivery shall take place upon the arrival of the Goods at the delivery address provided by the Customer.

4.3 If in the opinion of Frostechnic Ltd it is not practicable for Frostechnic Ltd to deliver the Goods due to any act or omission on the part of or on behalf of the Customer including; the Customer failing upon request to provide a UK delivery address, appropriate instructions, necessary documentation, licences or authorisations; the Customer refusing to accept delivery of the Goods; or for any other reason whatsoever, then Frostechnic Ltd may place the Goods into storage either at its own premises or elsewhere and delivery shall be deemed to take place when the Goods are placed into such storage whereupon the Price of the Goods shall become immediately payable and the Customer shall be liable for all related costs and expenses including without limitation storage and insurance. Frostechnic Ltd may at its discretion continue to store the Goods or sell the Goods to another party or parties and the exercise of this discretion shall be without prejudice to any other rights or remedies Frostechnic Ltd may have against the Customer.

4.4 All times and dates of delivery are given in good faith based upon information given by supplier's, Couriers or other transportation providers.

Time and delivery shall not be of the essence and shall not be made of the essence by notice and Frostechnic Ltd shall in no circumstances be liable to compensate the Customer in damages or otherwise for late delivery of the Goods or any of them for whatever reason or for any loss consequential or otherwise arising from late delivery.

4.5 The Customer shall not be entitled to reject the Goods by reason only of short delivery and the Customer shall pay for such Goods delivered to the Customer at the pro rata contract price.

### 5 Inspection

5.1 The Customer must inspect the Goods as soon as practicable after receipt. Any discrepancy (including short delivery and failure to comply with description), defect or damage (which discrepancy, defect or damage would be apparent on reasonable examination) must be notified to Frostechnic Ltd within 2 working days within receipt of the Goods. Any other discrepancy, defect or damage must be notified to Frostechnic Ltd as soon as it is or ought reasonably to have been discovered, whatever the sooner. In the case of non-receipt of the Goods, the Customer must notify Frostechnic Ltd within 2 working days of Frostechnic's invoice for the non-received Goods.

5.2 If the Customer fails to give notice as required by clause 5.1 the Goods shall be deemed to have been received and to be in all respects in accordance with the Contract and free from any discrepancies, defect or damage and the Customer shall be deemed to have accepted the Goods accordingly.

5.3 As regards this clause 5 time shall be of the essence.

### 6 Passing of title and risk

6.1 The property in the Goods shall not pass to the Customer until:

6.1.1 All sums (including sums pursuant to any contract or otherwise) due or owing to Frostechnic Ltd shall have been paid in full without any deduction or deferment on account of any disputes or counterclaims whatsoever, or

6.1.2 The Goods are delivered to a third party following a sale by the Customer in the normal course of its business, in which case property in the Goods shall be deemed to have passed to the Customer immediately prior to such a delivery.

6.2 Until property in the Goods passes to the Customer the following shall apply;

6.2.1 The Customer shall hold the Goods as bailee and trustee owing fiduciary duties to Frostechnic Ltd;

6.2.2 The Customer shall safely store the Goods at no cost to Frostechnic Ltd and shall ensure that the Goods are clearly identified as belong to Frostechnic Ltd. Frostechnic Ltd shall be entitled to examine the Goods in storage at any time during the normal working hours of the Customer;

6.2.3 The customer shall fully insure the Goods against any loss or damage whatsoever and any monies received from such insurance shall be held by the Customer on trust for Frostechnic Ltd.

6.2.4 Frostechnic Ltd shall be entitled without prior notice to repossess and resell the Goods if clause 7.1 applies or if any sum due to Frostechnic Ltd from the Customer pursuant to any contract or otherwise is not paid in full after the due date for payment and agents and employees of Frostechnic Ltd may enter, together with any vehicle which Frostechnic Ltd considers necessary for the removal of the Goods, upon the premises of the Customer or any other premises or locations where the Goods may be located for the purpose of exercising its rights under this clause 6.

6.3 If the Customer sells the Goods in the normal course of its business, proceeds of such a sale, whatever any sum due from the Customer to Frostechnic Ltd is outstanding pursuant to any contract or otherwise, shall be held by the Customer on trust for Frostechnic Ltd.

6.4 Frostechnic Ltd shall be entitled to maintain an action against the Customer for the Price notwithstanding that property in the Goods has not passed to the Customers.

6.5 The rights and remedies conferred on Frostechnic Ltd by this clause 6 shall be in addition to and shall not in any way prejudice or limit any other rights of Frostechnic Ltd.

6.6 Risk in the Goods shall pass to the Customer upon delivery.

### 7 Insolvency by the Customer and breach of Contract by the Customer.

7.1 This clause shall apply if any of the following events occur or in the opinion of Frostechnic Ltd is likely to occur:

7.1.1 The Customer commits any breach of the Contract;

7.1.2 The Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) has become bankrupt or (being a company) goes into liquidation;

7.1.3 A person of encumbrance takes possession or a receiver is appointed to any of the property or assets of the Customer;

7.1.4 The Customer ceases or threatens to cease to carry on business or any part of its business.

7.2 If this clause 7 applies, without prejudice to any other rights or remedies available to Frostechnic Ltd, Frostechnic Ltd shall be entitled to cancel the Contract without any liability to the Customer and if the Goods have been delivered but not paid for in full the Price shall become immediately due and payable notwithstanding any prior arrangements to the contrary.

### 8 Warranty

8.1 Frostechnic Ltd shall have no liability for faulty or defective goods save to the extent of any warranty available to Frostechnic Ltd (be that the warranty given by a manufacturer or any other person) and Frostechnic Ltd will if possible assign to the Customer any such warranty to enable the Customer to pursue any claim it may have against the manufacturer or another person provided always that Frostechnic Ltd shall have no greater liability to the Customer for faulty or defective goods than the warrantor has to Frostechnic Ltd and provided always that the liability of Frostechnic Ltd shall in no circumstances exceed the Price of the Goods.

8.2 Frostechnic Ltd shall not be liable for any claims (other than those falling within clause 8.1) in respect of direct injury; loss or damage to the Customer whether in contract or tort (including negligence on the part of Frostechnic Ltd, its agents or employees) arising out of or in connection with: any fault or defect in Goods and/or services; and, any act, omission, neglect or default (whether or not the same constitutes a fundamental breach of this Contract or the breach of a fundamental term thereof) of Frostechnic Ltd, its agents or employees (including without limiting the generality of the foregoing, breach of any condition or warranty whether express or implied by common law, statute or otherwise).

8.3 Frostechnic Ltd shall not be liable for any claims for economic loss, loss of production, loss of profit, loss of opportunity, loss of bargain or any other indirect or consequential loss or expense or injury or damage to the Customer whether in contract or tort (including negligence by Frostechnic Ltd, its agents or employees) arising out of or in connections with any defect, act, omission, neglect or default referred to in clause 8.2.

8.4 Nothing in these conditions shall:

8.4.1 Limit or exclude liability in respect of death or personal injury resulting from negligence of Frostechnic Ltd, its agents or employees.

8.4.2 Limit or exclude any liability which it is prohibited by law so to limit or exclude.

8.5 Subject as expressly provided in these conditions all warranties, condition or other terms concerned with the condition, suitability, merchantability of the Goods, their fitness for any purpose or correspondence with any description or sample, whether express or implied by statute, common law, custom, usage or otherwise are excluded to the fullest extent permissible by law.

8.6 Frostechnic Ltd shall have no liability and the Customer shall have no remedy (including recession) in respect of any false representation of fact (provided always that the representation was not made fraudulently) made by Frostechnic Ltd, any of its agents or employees prior to the date of the Contract unless Frostechnic Ltd has agreed in writing that any such representation shall be a term of the Contract.

### 9 Brochures, Price Lists etc

Price lists, brochures or other documentation shall be indicative only and Frostechnic Ltd shall not be bound by any information (including specifications and prices) contained therein.

### 10 Rights of third parties

The parties to this contract do not intend that any term of this Contract shall be enforceable by any person that is not a party to it.

**11 Force Majeure**

11.1 Insofar as the performance by Frostechnic Ltd of the Contract may be affected by any clause whatsoever beyond the reasonable control of Frostechnic Ltd (including, but not limited to, strikes, unavailability of materials or transport, fire, weather conditions, decision or acts of any government or other authority) Frostechnic Ltd may elect at its absolute discretion: to terminate the Contract; or to perform the Contract within a reasonable

time after the termination of such events or circumstances.

11.2 If Frostechnic Ltd makes an election under clause 11.1 the Customer shall accept the Goods or such part of them as are delivered notwithstanding any delay.

**12 Cancellation**

Frostechnic Ltd may cancel this Contract at any time before delivery by giving notice in writing to the Customer. On giving such notice Frostechnic Ltd shall be liable to repay to the Customer any sums paid in

respect of the Price. Frostechnic Ltd shall not be liable for any loss or damage whatsoever arising from such cancellation.

**13 Assignment**

Rights under this Contract are not assignable by the Customer but may be freely assigned by Frostechnic Ltd

**14 Law**

These conditions shall be construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.