

## BRENNAN ATKINSON INTERNATIONAL – Terms & Conditions of Sale

### 1. Definitions

- 1.1 In these Conditions- "the 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; "the Conditions" means the standard terms and conditions of sale set out herein and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Buyer and the Seller and specified herein or overleaf; "the Contract" means the contract for the purchase and sale of the Goods; "the 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 from time to time; "Person" means an individual or a body corporate or unincorporate or a partnership and "Persons" shall be construed accordingly; "the Seller" means Brennan Atkinson International, "Writing" shall have the ordinary meaning ascribed to it, including type written documents or communications and shall include telex, cable, facsimile transmission and comparable means of 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 Except where the context otherwise requires words herein denoting the singular include the plural and vice versa; words denoting any one gender include all genders.
- 1.4 References to clauses are, unless the context otherwise permits, references to clauses of these Conditions.
- 1.5 Clause headings herein are for reference only and do not affect the construction of these Conditions or the Contract.

### 2. Parties

- 2.1 The parties to these Conditions are the Seller and the Buyer. All transactions as between the Seller and the Buyer are as between principal and principal and are subject to the following expressed conditions.

### 3. Variation

- 3.1 The Contract between the Seller and the Buyer cannot be varied, altered or excluded unless such variation, alteration or exclusion is agreed between the parties in Writing between the authorised representatives of the Seller and the Buyer (being in the case of the Seller a Director of the Seller) and signed by the parties to be bound.

### 4. Waiver

- 4.1 Any concession, latitude or waiver allowed by the Seller at any time shall only apply to the extent specifically covered by such concession, latitude or waiver and shall not prevent the Seller otherwise exercising its full rights under the Contract and these Conditions.

### 5. Acceptance of Orders

- 5.1 The Contract between the Seller and the Buyer shall only become binding upon the confirmation of any order by the Seller acting through its authorised representative and all quotations or tenders made and price or product lists supplied by the Seller shall be treated as invitations to treat only.
- 5.2 The Seller reserves the right to accept or refuse orders. The Seller also reserves the right (without prejudice to any other remedy) to cancel any uncompleted order or to suspend delivery in the event of the Buyer's commitments (including in particular, without limitation, the payment on the due dates for Goods delivered) with the Seller not being met. The Seller reserves the right to refuse, modify or renegotiate orders in the event of changes in HM Government's trade policy pertaining to imports, tariffs, surcharges, pound sterling exchange rate fluctuations and other conditions affecting the charges, quotes or procedures the Seller is obliged to follow. If an order is cancelled by the Seller in the aforementioned circumstances then the Buyer shall be liable to indemnify the Seller against all loss, costs (including the cost of all labour and materials used and overheads incurred), damages, charges and expenses arising out of the orders and the cancellation thereof (the Seller giving credit for the value of any such materials sold or utilised for other purposes).
- 5.3 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.
- 5.4 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).
- 5.5 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, trademark or other industrial or intellectual property rights of any other Person which results from the Seller's use of the Buyer's specification.
- 5.6 The Seller reserves the right to make any changes in the specification of the Goods 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.

### 6. Representations

- 6.1 The Seller's employees or agents are not authorised to make a legally binding representation concerning the Goods or this Contract and no representations shall bind the Seller unless the same shall have been specifically authorised by a Director of the Seller.
- 6.2 In entering into this Contract, the Buyer acknowledges that it does not rely on and waives any claim for breach of any representations which are not confirmed in Writing as provided for in clause 6.1.
- 6.3 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.
- 6.4 All illustrations, drawings and general descriptions accompanying any quotation from the Seller or contained in the Seller's price lists, advertisements or other literature (including but not limited to the internet) or otherwise provided to the Buyer are intended for general guidance only and shall not be binding by the Seller and are only approximate indications of the type, size or colour of Goods quoted for and sales of such Goods shall not be by reference thereto. 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.

### 7. Carriage and Packaging

- 7.1 Unless expressly stated in Writing by the Seller all prices quoted are ex works and carriage is not included.
- 7.2 The packaging of the Goods is at the sole discretion of the Seller who shall have the right to pack the Goods in such manner and with such materials as it thinks fit.

### 8. Price

- 8.1 All prices shall be exclusive of Value Added Tax and any other taxes from time to time in force and shall be such prices as stated by the Seller.
- 8.2 The price for the Goods shall be such price as stated by the Seller in the Contract and shall be subject to variation at the sole discretion of the Seller at any time.

### 9. Payment

- 9.1 The Seller will invoice the Buyer immediately upon dispatch of ordered Goods. Save where otherwise indicated on the invoice in writing the total invoice value must be paid by the Buyer to the Seller within thirty days of delivery of the Goods which are the subject matter of the invoice in question.
- 9.2 Where the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, 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.
- 9.3 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:
- 9.3.1 cancel the Contract and/or suspend any further deliveries to the Buyer; and/or
- 9.3.2 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/or
- 9.3.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 5% per annum above Barclays Bank plc 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);
- 9.3.4 recover from the Buyer all monies due and outstanding to the Seller together with monies in respect to any invoices for goods delivered but which would not otherwise be due at the date of breach.

### 10. Collection

- 10.1 If the recovery of any sums outstanding from the Buyer to the Seller is passed to a debt collection agency, the Buyer shall pay the Seller's costs incurred on an indemnity basis in instructing the said debt collection agency and all legal and other costs ancillary thereto.

### 11. Delivery

- 11.1 Save where the Buyer collects the Goods from the Seller's premises (in which case delivery shall take place at the Seller's premises) delivery shall take place at the Buyer's premises or such other actual location of which the Buyer shall have previously notified the Seller in Writing. In the event that the Buyer wrongfully fails to take delivery of the Goods for whatever reason the Seller will be deemed to have tendered delivery of the Goods upon notification to the Customer that the Goods are ready for collection at the Seller's premises.
- 11.2 The Seller will endeavour to complete on any delivery dates stipulated, but such dates are only estimated and the Seller will not be liable to the Buyer for any loss, damage, injury, penalty, claim or any other matter of whatsoever nature arising from any delay in delivery and time for delivery shall not be of the essence of the Contract.
- 11.3 The Seller shall be entitled to deliver Goods by instalment. 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.
- 11.4 The Seller reserves the right to withhold delivery of Goods to the Buyer at any time when the Buyer is exceeding or upon delivery would exceed any credit limit with the Seller either in relation to such Goods or otherwise.
- 11.5 A delivery or collection note signed by or on behalf of the Buyer or of the Buyer's customer or the duly authorised agent of either of them is deemed to be evidence of delivery or collection of the Goods specified therein.

### 12. Demurrage

- 12.1 Where the unloading of Goods is for any reason delayed the Buyer shall indemnify the Seller in respect of any loss or damage which it may sustain in consequence thereof.

### 13. Storage Charges

- 13.1 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 the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may-
- 13.1.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 13.1.2 sell the Goods at the best price readily obtainable and charge the Buyer for any shortfall below the price under the Contract.

### 14. Claims and Damages

- 14.1 The Buyer shall upon delivery examine the Goods and shall promptly (but in any event within two working days of delivery) notify the Seller in Writing of any apparent damage, defect or shortage.
- 14.2 In default of the written notification referred to in clause 14.1 the Seller shall be deemed conclusively to have properly performed its obligations under the Contract.
- 14.3 Except in respect of death or personal injury caused by the Seller's negligence the Seller shall not be liable for any loss or damage of whatsoever nature or to whomsoever or whatsoever caused arising out of the use of or the supply of the Goods supplied by it hereunder notwithstanding that the same may be due to negligence on the part of the Seller's employees or agents or to any defect inherent, latent or otherwise which may be or which may subsequently develop in products, goods or materials supplied by the Seller or otherwise howsoever arising.
- 14.4 The Seller shall not be liable or held responsible for any damages, costs, charges or expenses awarded against or any liabilities incurred by the Buyer arising out of any infringement of any patent belonging to third parties.
- 14.5 In the event of a claim, settlement will be limited to the value of the Goods defectively processed and will in no way extend to consequential loss howsoever caused.
- 14.6 All Goods must be stored by the Buyer in suitable conditions and the Seller will not be liable to the Buyer for any defects brought about by the Buyer storing the Goods in unsuitable conditions.
- 14.7 Goods supplied to the Buyer may not be returned without the Seller's consent in Writing. The Seller reserves the right to refuse Goods so returned.

### 15. Risk and Property

- 15.1 The Buyer acknowledges that before entering into the Contract for the purchase of the Goods from the Seller, it has expressly represented and warranted to the Seller that it is not insolvent and there are no circumstances which would entitle any debenture holder or secured creditor to appoint a receiver or entitle any person to petition for its winding up or exercise any other right over or against the Buyer or its assets.
- 15.2 Notwithstanding delivery and the passing of risk, legal ownership of the Goods shall not pass from the Seller to the Buyer until the Seller has received payment in full of the price for the Goods. Furthermore, title in the Goods shall remain vested in the Seller and shall not pass to the Buyer unless and until the full price of any other delivered goods the subject of any other business transaction between the Buyer and the Seller has been paid in full either by way of cash or cleared funds.
- 15.3 Risk of damage to or loss of the Goods shall pass to the Buyer:-
- 15.3.1 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
- 15.3.2 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 deemed to have tendered delivery of the Goods.
- 15.4 Until such time as the ownership 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 properly protected and insured and identified as the Seller's property.
- 15.5 Until such time as the legal ownership in the Goods passes to the Buyer, the Seller may at any time enter upon any of the Buyer's premises or any other premises where the Goods are held (as the case may be) and remove the Goods there from and the Buyer permits the Seller access to the said premises to do so. The Buyer shall indemnify the Seller on a full indemnity basis against all loss, damage, costs or expenses so arising including in particular without limitation, loss, damage, costs or expenses in respect of third party claims.

- 15.6 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 moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 15.7 The Buyer may attach or fix the Goods to other property belonging to the Buyer, but provided that the Goods may be removed without causing damage (other than superficial damage) to the property of the Buyer such attaching or fixing shall not affect the ownership of the Goods.
- 15.8 In the event that the price for the Goods is not paid by the due date the Seller shall at its absolute discretion be at liberty either to recover the Goods or maintain an action for the price of the Goods and/or damages.
- 15.9 No provision of these Conditions shall prejudice the Seller's rights to exercise any alternate remedies whatsoever in default of payment by the Buyer or any other breach of contract.
- 15.10 Each of the preceding clauses shall be construed and take effect separately and in the event of one or more of such clauses being held ineffective this shall not affect the validity of the remaining clauses.
- 16. Termination**
- 16.1 Save as herein appears the Buyer shall have no right to cancel the whole or any part of the Contract and if notwithstanding this clause, the Buyer shall purport to cancel the whole or any part of the Contract, the Seller may, by notice in Writing to the Buyer, elect to treat the Contract as repudiated and the Buyer shall thereupon be liable to pay to the Seller by way of liquidated damages a sum equal to all the expenses incurred by the Seller in connection with the Contract including, in particular without limitation, an appropriate amount in respect of administrative overheads, costs and losses of profit.
- 16.2 The Seller's reasonable estimate of the expenses incurred by it on repudiation by the Buyer as referred to in clause 16.1 shall be final and binding on the parties.
- 16.3 If the Seller for whatever cause is unable to make delivery of the Goods on the delivery date set out in the Contract or if the Seller is unable to perform any of its other obligations under the Contract, the Seller may, by notice in Writing to the Buyer, terminate the Contract or suspend the Contract without liability for any loss or damage thereby incurred by the Buyer.
- 16.4 In addition to the right to cancel any uncompleted order or to suspend delivery thereof, pursuant to clause 5.2, the Seller shall have a similar right of cancellation of any uncompleted order or to suspend delivery in respect of any orders where the delivery of such Goods would result in the amount of monies outstanding to the Seller from the Buyer for those Goods and for any other Goods supplied by the Seller, would exceed the Seller's credit limit on the Buyer, as provided by the Seller's insurers.
- 17. Insolvency of Buyer**
- 17.1 This clause applies if:-
- 17.1.1 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
- 17.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer, or
- 17.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
- 17.1.4 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.
- 17.2 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.
- 18. Samples and Displays**
- 18.1 The Buyer shall be responsible to pay to the Seller for the cost of any samples and displays supplied by the Seller to the Buyer.
- 19. Force Majeure**
- 19.1 Insofar as the performance of the Contract by the Seller may be affected by any strike, any lack of available transport or materials, any restriction, regulation or decree by any local or municipal authority or government department or by any strike, commotion, riot, act of God or for any other cause or reason of whatsoever nature beyond the Seller's control (which shall be construed without the eiusdem generis rule) the Seller may elect at its absolute discretion either:-
- 19.1.1 to terminate the Contract; or
- 19.1.2 to proceed to perform or continue performance under the Contract within a reasonable time after the termination of such events or circumstances and with such reasonable variation as the circumstances shall prevail.
- 20. Advice**
- 20.1 The Seller shall be under no liability whatsoever in respect of any advice it has given or views it has expressed whether or not such advice is given or such views expressed at the Customer's request.
- 20.2 Any suggestions or recommendations by the Seller for any Person to act as an installer of the goods are made in good faith but without any responsibility on the part of the Seller. No such installer shall be regarded as an agent for the Seller for any purposes whatsoever.
- 21. Consents**
- 21.1 It shall be the responsibility of the Buyer (and not of the Seller) to obtain all consents necessary for the installation and storage of any goods and to satisfy himself that the installation and storage of such goods in accordance with the provision of any relevant by-laws, regulations or statutes.
- 22. Severability**
- 22.1 Should any of these Conditions be found by a court or other competent authority to be void or unenforceable such provision shall be deemed to be deleted from these Conditions and the remaining Conditions shall continue in full force and effect.
- 23. Obligations**
- 23.1 The Seller may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group (if any), provided that any act or omission of any such other member shall be deemed to be the act or omission of the Seller.
- 24. Infringement**
- 24.1 No warranty is given by the Seller that the use of the Goods for any purpose does not infringe any British or foreign patents, copyright or other similar intellectual property right.
- 25. Notices**
- 25.1 Save as hereinbefore otherwise provided, any notice required or permitted to be given by the Buyer under these conditions shall be in Writing, addressed to the Seller at its trading address shown on the Contract. Any notice required or permitted to be given by the Seller to the Buyer under these Conditions shall be in Writing, addressed to the Buyer at the address shown for the Buyer herein.
- 26. Conflict**
- 26.1 To the extent of any conflict between these Conditions and any terms and conditions of the Buyer either on the Buyer's order form or otherwise, the Conditions herein contained shall take precedence. The Seller shall not be bound by the Buyer's terms and conditions or any of them unless expressly agreed to in Writing by a Director of the Seller after the date of these Conditions.
- 27. Proper Law**
- 27.1 These Conditions and the Contract shall be construed according to English Law and the parties hereto hereby submit to the non-exclusive jurisdiction of the Courts of England and Wales.