

# INTERFLEX SCOTLAND LIMITED

## TERMS AND CONDITIONS OF SALE

### 1. INTERPRETATION

1.1 In these Conditions, the following words and expressions shall have the following meanings:-

"Approved Sample"	means the prototype or sample of the goods and their packaging which is created by the Seller and approved by the Buyer (in writing or otherwise), whether in respect of the current Order or any previous Order, as the required specification of the Goods;
"Business Day"	means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business in Scotland;
"Buyer"	means the person who purchases the Goods from the Seller;
"Buyer IPR"	means any IPR in the designs or materials provided by the Buyer to the Seller for the purposes of the Contract;
"Conditions"	means these terms and conditions of sale;
"Contract"	means the agreement between the Buyer and the Seller for the sale and purchase of Goods incorporating these Conditions and the Order and any other documentation agreed by the parties;
"Force Majeure"	means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under the Contract, but excluding the Buyer's inability to pay or circumstances resulting in the Buyer's inability to pay;
"Goods"	means the goods to be supplied by the Seller to the Buyer under the Contract;
"IPR"	means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, domain names and all similar rights;
"Location"	means the address for delivery of the Goods as set out in the Order or otherwise agreed between the parties;
"Order"	means an order for the Goods from the Seller placed by the Buyer, whether by email, letter, order form, fax or other written communication;
"Seller"	means InterFlex Scotland Limited (Registered No: SC009850);
"Seller IPR"	means any IPR developed or used by the Seller in the creation or production of the Goods, but excluding the Buyer IPR; and
"VAT"	means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Goods.

1.2 In these Conditions, unless the context requires otherwise:

- 1.2.1 the headings in these Conditions are for convenience only and shall not affect their interpretation.
- 1.2.2 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form (including email);
- 1.2.3 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.4 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time; and
- 1.2.5 a reference to legislation includes all subordinate legislation made from time to time under that legislation.

## 2. **CONTRACT**

- 2.1 These Conditions apply to and form part of the Contract between the Seller and the Buyer. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Buyer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Seller otherwise agrees in writing.
- 2.3 These Conditions shall take precedence over any general or standard conditions put forward by the Buyer whether or not such general or standard conditions are or were incorporated expressly or by reference or by implication in any communication between the Seller and the Buyer. If the Buyer's general or standard terms and conditions contain the same or similar over-riding provision, these Conditions shall prevail.
- 2.4 No variation of these Conditions or to an Order or to the Contract shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Seller.
- 2.5 The Seller may accept or reject an Order at its discretion. An order placed by the Buyer shall not be deemed accepted by the Seller unless and until the earlier of:-
  - 2.5.1 the Seller's written acceptance of the Order; or
  - 2.5.2 the Seller dispatches the Goods or notifies the Buyer that the Goods are available for collection (as applicable),at which point the Contract shall be deemed to have been concluded between the Seller and the Buyer.
- 2.6 Marketing and other promotional material relating to the Goods are illustrative only and do not form part of the Contract.
- 2.7 If any paragraph or sub-paragraph of these Conditions shall be found to be invalid, ineffective or unenforceable, such invalidity, ineffectiveness or unenforceability shall not affect any other paragraph or sub-paragraph thereof.

## 3. **PRICE AND PAYMENT**

- 3.1 The price for the Goods shall be as agreed between the parties in the Order or otherwise (the "**Price**").

- 3.2 The Price shall be exclusive of:
- 3.2.1 packaging and delivery which shall be charged in addition at the Seller's rates (unless otherwise notified by the Seller to the Buyer); and
  - 3.2.2 VAT (or the equivalent sales tax), if applicable.
- 3.3 The Buyer shall pay any applicable VAT to the Seller on receipt of a valid VAT invoice.
- 3.4 Timeous payment of the Price shall be the essence of the Contract.

**Payment for Goods Despatched Within the UK**

- 3.5 Where Goods are despatched to a location within the United Kingdom of Great Britain and Northern Ireland, the Buyer shall make payment by cash or cleared funds in full without any form of deduction (including compensation, counterclaim or set-off) within thirty days of the date of the Seller's invoice, unless otherwise agreed with the Buyer in writing in each case.

**Payment for Goods Despatched Outwith the UK**

- 3.6 Where Goods are despatched to a location outwith the United Kingdom of Great Britain and Northern Ireland, the Buyer shall make payment by irrevocable letter of credit or by such other method as the Seller may specify. Payment will be made in Sterling and shall be made in full without any form of deduction (including compensation, counterclaim or set-off) within thirty days of the date of the Seller's invoice, unless otherwise agreed with the Buyer in writing in each case.

**4. DEFAULT OF PAYMENT**

- 4.1 Invoices will be raised by the Seller upon despatch of the Goods.
- 4.2 Notwithstanding Condition 4.1 the Seller is not precluded from recovering the Price, if delivery has not taken place and the property in the Goods has not passed to the Buyer.
- 4.3 If the Buyer fails to make any payment on the due date specified in Conditions 3.5 and 3.6, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:-
- 4.3.1 cancel the Contract and/or suspend any other contracts with the Buyer;
  - 4.3.2 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;
  - 4.3.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 3% percent per annum above the Bank of Scotland 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. DESPATCH OF GOODS**

- 5.1 While the Seller shall make all reasonable efforts to effect despatch of the Goods as soon as the Goods are ready or in accordance with pre-arranged dates, such dates are always approximate only and no guarantee is to be implied as to despatch dates nor will the Seller accept liability for loss or damage to Goods occasioned by delay in despatch howsoever caused. Time for despatch or delivery shall not be of the essence of the Contract and the Buyer shall not be entitled to rely on late despatch or delivery as a ground for withholding payment of the purchase Price or terminating the Contract.
- 5.2 The Seller reserves the right to despatch Goods in instalments. In such circumstances, each despatch 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.

- 5.3 In the event of despatch being delayed for any reason outwith the Seller's control beyond the approximate despatch date, any increase in costs of production (e.g., materials and wages) during this period of delay may be passed onto the Buyer by an increased selling Price. For the avoidance of doubt, payment of the increased selling Price shall be made by the Buyer, in accordance with the terms of Conditions 3.5 or 3.6 as appropriate.

## 6. **DELIVERY OF GOODS**

- 6.1 The Seller shall deliver the Goods to the Location.

- 6.2 To the extent that the Location is outwith the United Kingdom of Great Britain and Northern Ireland, the parties agree that if the Seller incurs any import and / or export costs, duties and tariffs associated with delivery of the Goods under Condition 6.1 (the "**Export Costs**"), the Seller shall be permitted to recover the Export Costs immediately from the Buyer upon written demand for same.

- 6.3 The Buyer shall not be entitled to reject any delivery of Goods on the basis that an incorrect volume of Goods has been supplied provided the volumes are within the tolerances (if any) specified by the Seller to the Buyer or as set out in the Order (as applicable).

- 6.4 The Seller shall not be liable for any delay in or failure of delivery caused by:

6.4.1 the Buyer's failure to:

- (a) make the Location available;
- (b) prepare the Location as required for delivery; or
- (c) provide the Seller with adequate instructions for delivery of the Goods.

6.4.2 the Buyer's failure to collect the Goods from the Seller's premises; or

6.4.3 Force Majeure.

- 6.5 If the Buyer fails to accept delivery of the Goods the Seller shall store and insure the Goods pending delivery, and the Buyer shall pay all costs and expenses incurred by the Seller in doing so, including but not limited to reasonable storage and insurance charges.

## 7. **PERIODIC DESPATCH**

Any orders placed for periodic despatch must be taken up and paid for in full by the Buyer within 90 days of placing the order otherwise all remaining balances of such orders will be despatched and charged at the price prevailing at the end of the 90 Business Day period.

## 8. **RISK OF DAMAGE TO OR LOSS OF GOODS**

- 8.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the time the Goods are first delivered to the Buyer or an employee or representative or nominee of the Buyer notwithstanding any failure by the Buyer to take delivery of the Goods or any subsequent return or repossession of the Goods by the Seller.

- 8.2 The Buyer shall insure the Goods from such time until title to them passes to the Buyer in terms of Condition 9.

## 9. **RETENTION OF TITLE OF THE GOODS**

- 9.1 Notwithstanding despatch or the making available of Goods, or the passing of risk in the Goods in terms of Condition 8, or any other provision of these Conditions, the ownership of the Goods shall

not pass to the Buyer until the Seller has received payment in full of the Price of the Goods in terms of the Contract and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.

9.2 Subject to Condition 6.5, until such time as the property of the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's trustee, and shall:

9.2.1 keep the Goods separate from of the Buyer, and third parties, until such time as the Goods are used or sold by the Buyer;

9.2.2 ensure the Goods are properly stored, protected and clearly identified as the Seller's property;

9.2.3 take all reasonable care of the Goods and keep them in the condition in which they were delivered;

9.2.4 not remove or alter any mark on or packaging of the Goods;

9.2.5 insure the Goods from the date of delivery or collection (as applicable): (i) with a reputable insurer; (ii) against all risks; (iii) for an amount at least equal to their Price; and (iv) noting the Seller's interest on the policy; and

9.2.6 on reasonable notice permit the Seller to inspect the Goods during the Buyer's normal business hours and provide the Seller with such information concerning the Goods as the Seller may request from time to time.

9.3 In the event of re-sale of the Goods by the Buyer prior to the passing of title pursuant to Condition 9.1, the Buyer shall hold the proceeds of each re-sale as the Seller's trustee to the extent that the price of the Goods under the Contract, together with the price of all other goods agreed to be sold by the Seller to the Buyer for which payment is then due, remains unpaid.

9.4 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 forthwith, to enter upon any premises of the Buyer or any third party where Goods are stored and repossess such Goods.

9.5 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 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.

## 10. **WARRANTY**

10.1 The Seller warrants that the Goods shall, for a period of 6 months from delivery (the "**Warranty Period**") conform in all material respects to the Approved Sample.

10.2 The Seller shall, at its option, repair, replace, or refund the Price of, any Goods that do not comply with Condition 10.1, provided that the Buyer:

10.2.1 serves a written notice on Seller during the Warranty Period;

10.2.2 provides the Seller with sufficient information as to the nature and extent of the defects and the uses to which the Goods had been put prior to the defect arising;

10.2.3 gives the Seller a reasonable opportunity to examine the defective Goods; and

10.2.4 returns the defective Goods to the Seller at the Seller's expense.

- 10.3 The provisions of these Conditions, including the warranties set out in Condition 10.1, shall apply to any Goods that are repaired or replaced with effect from delivery of the repaired or replaced Goods.
- 10.4 The Seller shall not be liable for any failure of the Goods to comply with Condition 10.1:
- 10.4.1 where such failure arises by reason of wear and tear, wilful damage, negligence, or could be expected to arise in the normal course of use of the Goods;
  - 10.4.2 to the extent caused by the Buyer's failure to store the Goods with reasonable care or failure to comply with the Seller's instructions in relation to the Goods, including any instructions on installation, operation, storage or maintenance;
  - 10.4.3 to the extent caused by the Seller following any specification or requirement of the Buyer in relation to the Goods;
  - 10.4.4 where the Buyer modifies any Goods without the Seller's prior consent or, having received such consent, not in accordance with the Seller's instructions; or
  - 10.4.5 where the Buyer uses any of the Goods after notifying the Seller that they do not comply with Condition 10.1.

10.5 Except as set out in this Condition 10:

10.5.1 the Seller gives no warranties and makes no representations in relation to the Goods; and

10.5.2 shall have no liability for their failure to comply with the warranty in Condition 10.1,

and all warranties and conditions (including the conditions implied by ss 13–15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.

## 11. **LIABILITY AND LIMITATION OF LIABILITY**

11.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in delict, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this Condition 11.

11.2 Except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

11.3 Subject to Conditions 11.6 and 11.7, the maximum liability of the Seller to the Buyer shall be limited in respect of all valid and legally enforceable claims, to a sum equal to twice the invoice Price for the Goods, as disclosed by the Seller to the Buyer.

11.4 The Seller shall not be liable to the Buyer in respect of any indirect, special or consequential loss or damage howsoever caused or suffered.

11.5 Subject to Conditions 11.6 and 11.7, the Seller shall not be liable for any of the following (whether direct or indirect):

11.5.1 loss of profit;

11.5.2 loss of data;

11.5.3 loss of use;

11.5.4 loss of production;

- 11.5.5 loss of contract;
- 11.5.6 loss of opportunity;
- 11.5.7 loss of savings, discount or rebate (whether actual or anticipated); and
- 11.5.8 harm to reputation or loss of goodwill.

11.6 The limitations of liability set out in Conditions 11.3 to 11.4 shall not apply in respect of any indemnities given by either party under the Contract.

11.7 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:

- 11.7.1 death or personal injury caused by negligence;
- 11.7.2 fraud or fraudulent misrepresentation;
- 11.7.3 any other losses which cannot be excluded or limited by applicable law; and
- 11.7.4 any losses caused by wilful misconduct.

12. **INTELLECTUAL PROPERTY**

12.1 The Buyer shall indemnify the Seller from and against any losses, damages, liability, costs and expenses (including reasonable professional fees) incurred by it as a result of any action, demand or claim that use or possession of the Buyer IPR infringes the IPR of any third party (an "**IPR Claim**"),

13. **ASSIGNATION**

The Buyer shall not assign or otherwise transfer all or any of its rights, interests or obligations under the Contract without the prior written consent of the Seller. The Seller may assign any or all of the Seller's rights or obligations under the Contract.

14. **WAIVER**

The rights of the Seller shall not be prejudiced or restricted by an indulgence or forbearance extended to the Buyer and no waiver of any breach shall operate as a waiver of any subsequent breach.

15. **SET OFF**

15.1 The Buyer undertakes to make any payment due hereunder in full without any deduction, offset or counterclaim whatsoever, save in respect of any credit note issued to the Buyer by the Seller.

15.2 The Seller shall be entitled to set off against any sum due from the Seller to the Buyer on an account whatsoever any sum owed to the Seller by the Buyer whether or not the same shall have become due for payment and any claim or counterclaim which the Seller may have against the Buyer whether liquidated or unliquidated and whether jointly or otherwise.

16. **NOTICES**

16.1 Any notice hereunder shall be deemed to have been given if delivered by hand, by email (to the email address directed by either of the parties from time to time) or sent by prepaid first class post (in the case of the Seller) to its registered office and in the case of the Buyer at its last known address and shall be deemed to have been received:

- 16.1.1 on the date of despatch, if delivered by hand;

16.1.2 at the time that the e-mail enters the designated information system of the intended recipient provided that no error message indicating failure to deliver has been received by the sender, if delivered by email; and

16.1.3 on the second day after posting if sent by post.

17. **CUMULATIVE REMEDIES**

The rights and remedies provided in the Contract for the Seller only are cumulative and not exclusive of any rights and remedies provided by law.

18. **FURTHER ASSURANCE**

The Buyer shall at the request of the Seller, and at the Buyer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

19. **VARIATION**

No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and is duly signed or executed by, or on behalf of, the Seller.

20. **PROPER LAW AND JURISDICTION**

These Conditions shall be governed and construed in accordance with the Law of Scotland and the Buyer and the Seller submit to the non-exclusive jurisdiction of the Scottish Courts.