

Bespak Europe Ltd

Terms and Conditions of Purchase

1. DEFINITIONS

In these Terms and Conditions (Conditions) the following expressions shall have the following meaning:

- 1.1 "the Buyer" shall mean Bespak Europe Limited.
- 1.2 "the Contract" means the contract between the Buyer and the Seller consisting of the Order, these Conditions, and any other documents (or parts thereof) specified in the Order.
- 1.3 "the Equipment" means all jigs, tools, moulds, patterns, and other material supplied or loaned to the Seller or ordered by the Buyer from the Seller in connection with the Contract.
- 1.4 "Goods" means the articles or things or any of them described in the Order for supply to the Buyer.
- 1.5 "the Material" means all drawings, specifications (including the Specifications) and information supplied or loaned by the Buyer to the Seller in connection with the Contract.
- 1.6 "Order" means the order placed by the Buyer for the supply of the Goods and/or the performance of the Services.
- 1.7 "the Seller" shall mean the person, firm or company to whom the order is addressed.
- 1.8 "the Services" means the services (if any) described in the Order to be undertaken by the Seller.
- 1.9 "the Specifications" means the technical description or other requirements (if any) of the Goods or the Services contained or referred to in the Order.
- 1.10 "supply" shall where the context so permits include a sale, lease, hiring, or loan of the Goods.
- 1.11 Words in the singular shall include the plural and vice versa. References to any gender shall include the others and references to legal persons shall include natural persons and vice versa.

2. GENERAL

- 2.1 These Conditions shall be deemed to be incorporated in the Contract and in the case of any inconsistency with any letter incorporating or referring to these Conditions or any quotation letter or form of contract sent by the Seller to the Buyer or any other communication between the Seller and the Buyer whatever may be their respective dates, the provisions of these Conditions shall prevail unless expressly otherwise agreed or varied in writing and signed on behalf of the Buyer. Any concession made or latitude allowed by the Buyer to the Seller shall not affect the strict rights of the Buyer under the Contract. If in any particular case any of these Conditions shall be held to be invalid or shall not apply to the Contract the other Conditions shall continue in full force and effect. No variation to the order or these Conditions shall be binding unless expressly agreed in writing by the Buyer and signed on its behalf.
- 2.2 These Conditions apply to the Contract to the exclusion of any other terms that the Seller seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing.
- 2.3 Each Order shall constitute a separate and severable Contract.
- 2.4 The Seller shall at all times comply with any codes of conduct provided by the Buyer to the Seller.

3. ACKNOWLEDGEMENT

- 3.1 The Buyer shall be bound by its Order only if:
 - 3.1.1 it is placed on its official order form; and
 - 3.1.2 the Seller accepts in writing within 14 days of the date of the Order.
- 3.2 The Contract shall come into existence when the Seller accepts the Order.

4. QUALITY AND DESCRIPTION

- 4.1 Without prejudice to any other rights the Buyer may have, the Seller warrants that the Goods and Services shall:
 - 4.1.1 conform as to quantity, quality and description with the particulars stated in the Contract.
 - 4.1.2 be of sound materials and workmanship.
 - 4.1.3 be provided with due care and skill.
 - 4.1.4 be equal in all respects to the Specifications and the samples or patterns provided or given by either party.
 - 4.1.5 be capable of any standard or performance specified in the Contract.
 - 4.1.6 be of merchantable and satisfactory quality and fit for the purpose for which they are required as indicated in the Contract either expressly or by implication.
 - 4.1.7 comply with all relevant legislation including, but not limited to, health and safety legislation.
- 4.2 The Seller shall comply with the Buyer's reasonable instructions during manufacture, processing, storage and delivery of the Goods and the provision of the Services.

5. INSPECTION TESTING AND SAMPLES

- 5.1 If so required by the Buyer, the Seller shall submit samples of the Goods or Services for the Buyer's approval before the bulk of the Goods are delivered or before the bulk of the Services are performed (as the case may be). Such samples should be marked for identification by the Seller and will be retained by the Buyer until the Services are completed or the Goods have been delivered.
- 5.2 The Buyer or its representative shall be entitled to inspect and test the Goods during manufacture, processing or storage and shall also be entitled during manufacture to inspect progress against the plan agreed by the parties. If the Buyer exercises this right the Seller, at its own expense, shall provide or shall procure all such facilities as may be reasonably

required by the Buyer, including access to the premises of any sub-contractor. Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Seller's obligations under the Contract.

- 5.3 If, as a result of any inspection or test under paragraph 5.2, of these Conditions, the Buyer or its representative is of the reasonable opinion that the Goods or Services do not comply with the Contract, or are unlikely on completion of manufacture or processing to comply, the Buyer shall inform the Seller accordingly in writing and the Seller shall take such steps as may be necessary to ensure such compliance.
- 5.4 Where requested, the Seller will provide a certificate of conformance with each delivery and/or a certificate of analysis with the Goods samples.
- 5.5 All Goods and other items supplied by the Seller will be inspected by the Buyer within a reasonable period of delivery in accordance with the Buyer's procedures. Where Goods are supplied in batches, if any batch is rejected by the Buyer then, without prejudice to any other of its rights, the Buyer shall have the option at its absolute discretion:
 - 5.5.1 to return the consignment to the Seller; or
 - 5.5.2 to sort the entire consignment and the Seller shall reimburse the Buyer the costs thereof.
- 5.6 The Seller will inform the Buyer in writing of any proposed changes to the Specification, Materials, Goods or Services including, but not limited to, any qualified raw materials and validated manufacturing processes. The Seller shall allow a reasonable time for the Buyer to complete its evaluation of the proposal. No changes shall be made without the Buyer's written approval to proceed.
- 5.7 In the event that approval for the proposed change is not given by the Buyer then the Seller shall continue to supply the original Specification Goods or Services or the Buyer shall have the right to cancel the Contract under Condition 18.2.

6. DELIVERY

- 6.1 The Goods shall be properly packed and secured in such a manner as to reach their destination in good condition under normal conditions of transport and be capable of long term storage. Upon receipt the Goods shall be delivered by the Seller carriage paid at the time they are despatched for delivery and the Services shall be performed at the place or places and in the manner specified in the Contract or as subsequently agreed in writing by the parties. Time of performance of the Seller's obligations hereunder shall be of the essence of the Contract.
- 6.2 The Buyer shall not be under any obligation to return or pay for returnable packaging, packing cases, skids, drums and other re-usable articles used for packaging the Goods.
- 6.3 If the Goods are not delivered or the Services not performed within the time specified in the Contract the Buyer shall be entitled to terminate the Contract forthwith.
- 6.4 Without prejudice to any other of the Buyer's rights, Goods not despatched in time to reach the Buyer by the date specified in the Contract shall, at the Buyer's option, be delivered by express service at the Seller's expense.
- 6.5 Unless otherwise agreed in writing by the Buyer all deliveries must be made to the Buyer between 8.30am and 3.00pm Monday to Thursday, no deliveries on a Friday unless by prior written agreement.
- 6.6 The Seller shall send to the Buyer on the days of despatch for each consignment of Goods advice(s) of despatch and invoice(s) as may be indicated in the Contract. The Seller shall mark clearly the Buyer's order number, the Buyer's item number, quantity, batch number (where Goods are supplied in batches), description, the Seller's name and manufacturing date on the relevant consignment package(s), packing notes, advice notes, invoices, monthly statements and all other correspondence relating thereto. Any failure by the Seller to comply with the provisions of this paragraph may result in a delay in payment for or rejection of the Goods.
- 6.7 The Seller shall not deliver the Goods in instalments without the Buyer's prior written consent. If the Goods are to be delivered or the Services are to be performed by instalments the Contract shall be treated as a single Contract and not severable.
- 6.8 Unless otherwise agreed, the Seller shall off load the Goods at the agreed delivery point at the Seller's costs and risk.
- 6.9 If the Seller delivers less than 90% or more than 110% of the quantity of the Goods ordered, the Buyer may reject the Goods: and any rejected Goods shall be returnable at the Seller's risk and expense. If the Seller delivers more or less than the quantity of Goods ordered, and the Buyer accepts the delivery, a pro rata adjustment shall be made to the invoice of the Goods.
- 6.10 If the Goods are not provided, or Services are not performed, in accordance with the Specifications, the Buyer may require that the Seller:
 - (i) refund any amounts paid by the Buyer in connection with such Goods or Services within 3 days of a demand by the Buyer; and/or
 - (ii) replace such Goods or re-perform such Services free of charge within such periods as the Buyer may request.

7. STORAGE

If for any reason the Buyer is unable to accept delivery of the Goods at the time when the Goods are due and ready for delivery the Seller shall, if its storage facilities permit, store the Goods, safeguard them and take all reasonable steps to prevent their deterioration until their actual delivery.

8. BUYER'S MATERIAL AND EQUIPMENT

- 8.1 Details of the Contract and of all Material and Equipment and all other information relating thereto shall be treated as confidential and shall not without the prior written consent of the Buyer be disclosed by the Seller, its officers or employees, or any sub-contractor of the Seller to any third party or used by the Seller or any such sub-contractor for any other purpose than for supplying the Goods or Services to the Buyer. This paragraph 8.1 survives the expiry or earlier termination of the Contract.
- 8.2 The Equipment and the Material shall be maintained in good condition by the Seller and the Seller shall indemnify the Buyer against any loss or damage thereto whilst the same are in the possession or control of the Seller.
- 8.3 Where the Goods are designed, created or otherwise developed by or for the Seller pursuant to the Contract then all intellectual property rights therein or relating thereto throughout the world (including, without limitation, patents, copyrights, design rights, registered designs, trade marks, service marks and know-how and the rights to apply for any of the foregoing) (the "Intellectual Property Rights") shall belong to the Buyer absolutely. The Seller hereby assigns the Intellectual Property Rights to the Buyer with the intent that upon the making or creation thereof the Intellectual Property Rights shall automatically vest in the Buyer.
- 8.4 The Seller shall at the Buyer's request (and notwithstanding the termination or expiry of the Contract) sign and execute and procure the signature and execution of all such documents and do all such acts as the Buyer may reasonably require:
- 8.4.1 to vest the legal title in, apply for, obtain and maintain in force in the Buyer's sole name (unless it otherwise directs) the Intellectual Property Rights;
- 8.4.2 to resist any objection or opposition to obtaining, and any petitions or applications for a revocation of, any of the Intellectual Property Rights;
- 8.4.3 to bring any proceedings for infringement of any of the Intellectual Property Rights.
- 8.5 The Seller irrevocably undertakes that neither it nor any other person will assert against the Buyer or any third party any moral rights in or relating to the Intellectual Property Rights and warrants that all such moral rights are irrevocably waived and extinguished. For the purpose of this Condition 8 "moral right" shall have the meaning ascribed thereto by Chapter IV of Part 1 of the Copyright, Designs and Patents Act 1988 (or any statutory amendment or re-enactment thereof) and all rights similar or corresponding thereto subsisting in any other country of the world from time to time.
- 8.6 The Material and the Equipment shall only be used for the purpose of manufacturing and supplying the Goods or performing the Services for the Buyer and shall remain the absolute property of the Buyer at all times.
- 8.7 All containers, pallets and packing materials supplied by the Buyer to the Seller shall be maintained in good condition and shall remain the property of the Buyer at all times.
- 8.8 At the request of the Buyer, the Seller shall promptly return the Material and the Equipment and the said containers, pallets and packing materials or part thereof to the Buyer.
- 8.9 Without prejudice to the Seller's liability under the foregoing paragraph of this Condition 8, the Seller shall maintain such insurance as the Buyer may stipulate in respect of the Material and the Equipment and as shall be necessary to cover the said liability of the Seller and the Seller shall produce to the Buyer on demand either:
- 8.9.1 such policies of insurance and the receipts for all premiums paid thereunder; or
- 8.9.2 a current certificate of insurance from the insurers under such policies.

9. PASSING OF PROPERTY AND RISK

- 9.1 Risk of damage to or loss of the Goods shall pass to the Buyer on delivery to the Buyer in accordance with the Contract.
- 9.2 The property in the Goods shall pass to the Buyer at the latest on the date of notification by the Seller that the Goods are due and ready for delivery but without prejudice to:
- 9.2.1 the passing of property at an earlier time under any statute or rule of law; or
- 9.2.2 any right of rejection which may accrue to the Buyer whether under these Conditions or otherwise.

10. REJECTION

- 10.1 Without prejudice to any of its other rights, the Buyer may, by notice in writing, to the Seller reject any or all of the Goods which are found not to be in accordance with the Contract or in respect of which the Seller has failed to comply with any of its obligations under the Contract.
- 10.2 The Buyer shall when giving notice of rejection specify the reason for rejection and the Seller shall remove such Goods at its risk and expense. In such case the Seller shall within a reasonable time replace such rejected Goods with Goods which are in all respects in accordance with the Contract or credit the Buyer with the invoice price thereof at the Buyer's option. These Conditions will apply to any replaced Goods.
- 10.3 Any money paid by the Buyer to the Seller in respect of any rejected Goods not replaced by the Seller within a reasonable time, together with any additional expenditure over and above the Contract price reasonably incurred by the Buyer in obtaining other goods in replacement, shall be paid by the Seller to the Buyer within seven days of a demand by the Buyer for such payment.

- 10.4 The Buyer shall not be deemed to have accepted any Goods until the Buyer has had a reasonable time to inspect them following delivery, or if later, within a reasonable time after any latent defect in the Goods has become apparent.

11. PRICE AND PAYMENT

- 11.1 The price of the Goods or Services will be the price set out in the Contract.
- 11.2 All Goods delivered to the Buyer or Services performed during any month as per the Buyer's periodic calendar will be paid 60 days following the end of the month of the date of the invoice and the Buyer shall be entitled to such discounts as may be stated in the Seller's quotation. The Seller shall send to the Buyer a Monthly Statement of Account quoting invoice numbers applicable to each item thereof. Without prejudice to any other right or remedy, the Buyer reserves the right to set off any amount owing at any time from the Seller to the Buyer against any sums payable to the Seller under the Contract.
- 11.3 The prices stated are exclusive of Value Added Tax but include the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by the Buyer.
- 11.4 If the Buyer fails to make any payment due to the Seller under the Contract by the due date for payment then the Seller shall be entitled to charge interest on the overdue amount at the rate of 3% per annum above the Bank of England's base lending rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment.

12. STATUTORY REQUIREMENTS

- 12.1 The Seller warrants that the design, construction and quality of all Goods to be supplied under the Contract and the quality of the Services will comply in all respects with all statutory requirements and regulations or other instrument having the force of law which may be in force at the time and will conform with all relevant British or ISO Standard specifications.
- 12.2 The Seller warrants it has all licenses, permits and other authorisations required to provide the Goods and Services under the Contract.

13. ASSIGNMENT AND SUB-CONTRACTING

- 13.1 The Seller shall not, without prior written consent of the Buyer, assign, transfer or sub-contract the Contract or any of its rights or obligations thereunder to any other person, firm or company.
- 13.2 The Seller agrees and acknowledges, that the Buyer may assign, transfer or sub-contract the Contract, or any of its rights or obligations thereunder, to any person, firm or company without the prior consent of the Seller.

14. BANKRUPTCY OR LIQUIDATION

- 14.1 If: (i) the Seller being an individual (or when the Seller is a firm, any partner in that firm) shall at any time become bankrupt, or shall have an application for a receiving order or administration order made against it or shall make any composition or arrangement with or for the benefit of its creditors; or (ii) the Seller being a company shall pass a resolution or the Court shall make an order that the company shall be wound up (not being a members winding up for the purpose of reconstruction or amalgamation) or if a receiver or administrative receiver or administrator shall be appointed of the whole or part of its assets or if it shall make any composition or arrangement with or for the benefit of its creditors then the Buyer shall be at liberty:
- 14.1.1 to cancel the Contract summarily by notice in writing without compensation to the Seller; or
- 14.1.2 to give any such receiver or liquidator or other person the option of carrying out the Contract.
- 14.2 The exercise of any of the rights granted by the Buyer under paragraph 14.1 hereof shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Buyer.

15. WARRANTY

Without prejudice to any other remedies of the Buyer, the Seller shall as soon as reasonably practicable repair or replace all Goods which are or become defective during a period commencing on the date of delivery and terminating 15 months after this date where such defects occur under proper usage and are due to faulty design, the Seller's erroneous instructions as to use or erroneous data or inadequate or faulty materials or workmanship, or any other breach of the Seller's warranties or conditions, express or implied. Repairs and replacements shall themselves be subject to the foregoing obligations for the same period. If any Services are found to have been performed defectively within 12 months of the date of their performance the Seller shall forthwith upon notice thereof re-perform the same PROVIDED THAT if the Services shall comprise the performance of work on the Buyer's own goods the warranty given by the Seller hereunder in respect of the Goods shall apply thereto.

16. INDEMNITY

- 16.1 The Seller shall indemnify the Buyer against all claims, demands, costs, charges, damages, losses and expenses suffered or incurred by the Buyer and/or for which it may be liable to any third party due to, arising from or in connection with:
- 16.1.1 the negligent or wilful acts or omissions of the Seller, its servants, agents or contractors in supplying, delivering and installing the Goods or performing the Services;
- 16.1.2 the breach of any provision of the Contract by the Seller;
- 16.1.3 any defects in the workmanship, materials or design of the Goods or their packaging;
- 16.1.4 any infringement or alleged infringement of any Intellectual Property Rights for or relating to the Goods or the Services unless such

infringement has occurred directly as a result of any specification supplied by the Buyer; and

16.1.5 any liability under the Consumer Protection Act 1987 in respect of the Goods or any other statutes and regulations from time to time in force in the UK and relating to product safety.

16.2 The Seller undertakes to maintain adequate insurance cover with a reputable insurance company in respect of any liability under paragraph 16.1.5 of this Condition and if so required at any time produce the policy of insurance and the receipt for the current premium to the Buyer for its inspection.

17. FORCE MAJEURE

The performance by a party of any of its obligations under the Contract shall be deemed suspended in so far as such performance is prevented or hindered by any circumstances beyond its reasonable control including but not limited to strikes, lock-outs, accidents, war, fire, reduction in or unavailability of power, or breakdown of plant or machinery. If the cause of such suspension shall continue for more than six months either party shall have the right to terminate the Contract upon giving not less than seven days' notice to the other and the only liability of the Buyer shall be to pay the Seller for Goods received by the Buyer and/or Services performed prior to the date of such suspension.

18. CANCELLATION

18.1 The Buyer shall have the right to vary the quantity of Goods ordered or the nature of the Services performed and to cancel future supplies of Goods or Services upon giving to the Seller not less than one month's written notice thereof. The Buyer shall have no liability other than to pay for the Goods delivered or Services performed prior to the expiration of the notice and for any forward materials purchased with the Buyer's consent. Any such forward materials will then become the property of the Buyer and should be delivered in accordance with these Conditions.

18.2 Notwithstanding paragraph 18.1 of this Condition, if the Seller shall be in default or commit any breach of its obligations hereunder then the Buyer without prejudice to any other rights or remedies may forthwith by written notice terminate each and every Contract between the Buyer and the Seller without incurring any liability by reason of such termination.

18.3 Upon such termination the rights and liabilities of the Buyer and the Seller shall be the same as if the Seller had repudiated the Contract and the Buyer had by its notice of termination elected to accept such repudiation. Any termination or suspension of the Order shall not prejudice any rights which may have accrued to either party hereunder.

19. CONFIDENTIALITY

19.1 A party ("Receiving Party") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("Disclosing Party"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business, its products and services which the Receiving Party may obtain. The Receiving Party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this Condition as though they were a party to the Contract. The Receiving Party may also disclose such of the Disclosing Party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This Condition shall survive termination of the Contract.

20. NOTICES

20.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this Condition, and shall be delivered by hand or sent (by courier, first class recorded or registered post).

20.2 Any notice or other information given by post under paragraph 20.1 which is not returned to the sender as undelivered shall be deemed to have been given 5 business days after the envelope containing the same was so posted; and proof that the envelope containing any such notice or information was properly addressed, pre-paid, recorded or registered and posted, and that it has not been so returned to the sender, shall be sufficient evidence that such notice or information has been duly given.

20.3 The provisions of this Condition shall not apply to the service of any proceedings or other documents in any legal action.

21. LAW OF CONTRACT

The Contract shall in all respects be governed by and construed in accordance with English Law and shall be deemed to have been made in England and the parties agree to submit to the non-exclusive jurisdiction of the Courts of England. This Condition 21 survives the expiry or earlier termination of the Contract.

22. HEADINGS

The headings in these Conditions are intended for reference only and do not affect their construction.