

SPANOPTIC LIMITED - GENERAL TERMS AND CONDITIONS OF SALE OF GOODS

1. "Seller" means Spanoptic Limited. "Purchaser" means the immediate Purchaser of any goods under a contract of sale with Seller. "Contract price" means the agreed price (stated in a contract of sale to which these conditions apply) at the time such contract came into effect. Unless otherwise agreed Seller's prices as at the date of the order acknowledgement and as shown thereon shall be the agreed price. "Goods" means goods sold under a contract of sale to which these conditions apply.
2. These conditions govern all sales and negotiations for sale of goods by Seller as described above and unless expressly accepted in writing no condition or qualification inconsistent herewith, whether agreed to by Seller's agents or not, shall form any terms of a sale hereunder.
3. The law of Scotland govern the formation, performance and interpretation of all contract to which these conditions apply.
4. All quotations are without engagement and may be withdrawn at any time. Unless otherwise agreed, each quotation issued by Seller is withdrawn 30 days after its date of issue by Seller.
5. All orders from Purchaser require Seller's acceptance in writing.
6. All amendments to Purchaser's orders require Seller's acceptance in writing and will be executed only upon these terms and conditions (unless otherwise agreed by Seller in writing).
7. The titles used herein are for convenience only and shall not affect the construction hereof.

PERFORMANCE OF CONTRACT

8. (i) If by reason of Act of God, war, government control, storm, fire tempest, strike, lockout or any other cause beyond its reasonable control Seller is prevented from performing any obligation under this contract, Seller shall be entitled to suspend deliveries and, at its option, should such suspension continue for a period of six months by written notice to cancel the unfulfilled part of the contract at no liability to Seller to any costs or expenses of whatever nature.
(ii) In the event of any failure by Purchaser to perform its obligations under the contract Seller shall be entitled without prejudice to any other remedy or Seller or to the obligation of Purchaser to pay for goods already delivered or manufactured: (a) to suspend delivery to Purchaser so long as such failure shall continue and/or (b) by notice to Purchaser to cancel any further obligation of Seller under the contract.
9. Delivery dates are approximate only and are without engagement by Seller. Seller will however make all reasonable endeavours to carry out Purchaser's requirements provided that all necessary information is given to Seller at the time the order is placed.
10. Each delivery shall constitute a separate contract upon these conditions and a failure to make any delivery or to make any delivery on the due date shall not vitiate the contract.
11. The delivery by Seller of a quantity of goods which is from 90% and 110% of the quantity ordered shall, unless otherwise agreed, be accepted by Purchaser as satisfaction of the quantity ordered and Purchaser shall pay pro rate for the quantity accepted.
12. Risk of damage to or loss of the goods shall pass to the Purchaser on receipt of the goods at the Purchaser's premises.

13.(i) 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 Purchaser until Seller has received in cash or cleared funds payment in full of the price of the goods for which payment is then due.

(ii) Until such time as the property in the goods passes to Purchaser, Purchaser shall hold the goods as Seller's fiduciary agent and shall keep the goods separate from those of Purchaser and third parties and properly stored, protected and insured and indemnified as Seller's property.

(iii) Until that time Purchaser shall be entitled to resell or reuse the goods in the ordinary course of its business, but shall account to Seller for the proceeds of sale or otherwise of the goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of Purchaser and third parties and, in the case of tangible proceeds, properly stored protected and insured. Until such time as the property in the goods passes to Purchaser (and provided the goods are still in existence and have not been resold). Seller shall be entitled at any time to require Purchaser to deliver up the goods to Seller and if Purchaser fails to do so forthwith, to enter upon any premises of Purchaser or any third party where the goods are stored and repossess the goods.

(iv) Purchaser 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 Seller, but if Purchaser does so any monies owing by Purchase to Seller shall (without prejudice to any other right or remedy of Seller) forthwith become due and payable.

14. It is the responsibility of Purchaser to examine the goods on receipt of the goods and notify Seller in writing of any damage, short delivery or loss occurring in transit as follows:

(i) where there is a short delivery of goods or where this is a visible damage to the goods. Purchaser must immediately make the appropriate endorsement on the delivery documents and notify Seller within 48 hours of receipt of the goods;

(ii) where the damage to the goods is not visible, Purchaser must notify Seller of such damage within 48 hours of receipt of the goods;

(iii) in the event that Purchaser does not receive the goods, Purchaser must notify Seller within 14 days of the date of the invoice issued in respect of those lost goods. Any claim made after the aforesaid time limits will not be accepted by Seller.

15. Without prejudice to any right of Seller or remedies available to Seller, Seller may at its own sole discretion by written notice to Purchaser terminate the contract or cease to observe or perform any terms or conditions in the contract on its part to be observed or performed and/or stop any goods in transit in the event that Purchaser becomes insolvent, or compounds with its creditors (or being an individual, files a petition in bankruptcy or is adjudged bankrupt or shall be sequestrated or be apparently insolvent or shall enter into any scheme arrangement or makes any composition with any creditors or signs a trust deed for and on behalf of creditors or takes or suffers any similar action in consequent of a debt) or commences to be wound up or has a receiver appointed of the whole or in part of its assets or a debenture holder takes possession of the whole or part of its assets or has any distress, decree or diligence of execution levied against it or give rise to any apprehension that any terms of credit any need not be extended (otherwise that in accordance with the terms of the relevant contract) by Seller or fail to pay any sum due to Seller.

16. Unless otherwise agreed in writing, patterns, jigs, tools and fixtures manufactured by Seller for carrying out Purchaser's orders will be the property of Seller notwithstanding any charge made by Seller for their manufacture. Where Seller at Purchaser's request uses Purchaser's patterns, jigs, tools or fixtures, replacement of or alterations or repairs due to normal wear and tear or to their condition being in Seller's opinion unsuitable for productions of satisfactory goods shall be paid for by Purchaser.

17. Plans, drawings and specifications submitted by Seller to Purchaser or prepared by Seller for Purchaser's requirements shall remain Seller's property and Seller reserves all rights vested in Seller by way of letters patent, registered designs, copyright or trademarks or trade secrets and all other rights by whatever name called affording equivalent or similar protection in any such plans, drawings and specifications. Such plans, drawings and specifications must not be copied, disclosed to any third party or otherwise used without Seller's written permissions and where submitted to Purchaser must be returned to Seller at Seller's request made at any time hereafter. In addition, Seller retains all rights it may have in and to all know how, information relating to secret processes and manufacturing techniques, inventions, patents and applications for patents, trademarks, trade names, licences, copyrights, designs and drawings, design rights and applications for registered design, plans, brochures, technical publications, computer data and other technical matters and all other rights by whatever name called affording equivalent or similar protection in respect of the goods or arising out of work done in connection with a contract between Seller and Purchaser and all products developed as a result thereof.

18. Unless Seller agrees in writing to work to Purchaser's drawings or specifications Seller's normal tolerances and material specifications will apply.

PAYMENTS

19. Contract prices are strictly net unless otherwise stated. When deliveries are made over a period, each invoice will be treated as a separate account and will be payable accordingly. Unless otherwise agreed all deliveries within United Kingdom shall become due for payment by the 20th date of the month following month of delivery. Payment at due date is a condition precedent to subsequent deliveries and time of payment is of the essence of the contract. In the event of later payment by the Purchaser the Seller has the right to charge the Purchaser interest at the rate of 2% above the base rate of National Westminster Bank Plc prevailing at the time of the interest charged.

20. (i) Where contract price is c.i.f. price, delivery will be made to the port stated in tender, using carriers of Seller's choice except where specifically agreed otherwise. No lighterage, landing charges, dock and wharf customs dues or taxes are included. Freight and insurance charges are based on rates obtainable at tender date. If these rates increase or decrease between date of tender and date of shipment Seller will adjust contract price by the net amount of this increase or decrease.

(ii) Where contract price is F.O.B. price or price delivers to a place in Great Britain delivery will be made to the place in Great Britain agreed with Purchaser. Seller will pay costs or transport to the place of delivery and Goods will remain at Seller's risk until delivered. Purchaser will promptly notify Seller of any damage, shortage or loss occurring in transit in time to enable Seller to comply with any time limit to which the contract of carriage may be subject.

21. Any alternation by Purchaser in design or specification and any suspension of work following on Purchaser's instructions or Purchaser's failure to give instructions will involve increase in contract price if the costs of manufacture and/or delivery are thereby increased.

22. Special delivery charges being more than those that would normally be incurred by Seller and which are in fact incurred to comply with Purchaser's instructions will be charged extra to Purchaser. No allowance for carriage will be made by Seller for goods collected from Seller's work by Purchaser.

23. Unless otherwise specified, all packing cases and other containers are nonreturnable. Where specified as being returnable, packing cases and containers when charged will be credited on return in good condition carriage paid within the month of receipt by Purchaser, provided that return is duly notified to Seller in advance of material being received by Seller.

WARRANTIES, ETC AND UNDERTAKINGS

24.(a) The warranties and undertakings contained in sub-clause (c) below are given by Seller in lieu of, and to the exclusion of any other representations, guarantees, undertakings, conditions or warranties whatsoever as the quality of the goods supplied by Seller or their fitness for any purpose, whether such representations guarantees, undertakings, conditions or warranties: (i) are to be implied by statute, at common law or otherwise and whether they arise from the description of the goods, or from the prior delivery of a sample or otherwise; (ii) (save as provided for in sub-clause (c) below) would otherwise be, or be regarded as being, made or given expressly by Seller.

(b) The remedies available to Purchaser in respect of the warranties and undertakings contained in sub-clause (c) below are limited to the remedies set out in sub-clause (e) and (f) of this clause.

(c) The Seller warrants and undertakes that the goods supplied by Seller will be: (i) manufactured in accordance with the contract description: including where applicable any contract drawing applicable to the subject matter of the order but only in so far as the same are expressly identified and referred to in Seller's quotation: and (ii) of sound material and of good workmanship.

(d) The Seller's liability as to the quality of the goods supplied by Seller shall be confined to, and shall not extend beyond, the specific matters stated in sub-clause (c) above and, in particular (but without prejudice to the generality of sub-clause (a) above) for the avoidance of doubt: (i) it is not a condition of the agreement and Seller does not warrant or represent or otherwise undertake that the goods supplied by Seller will be fit for the specific purpose or purposes for which Purchaser has purchased the goods, whether Purchaser has made such purpose or purposes known to Seller or not, and it is for Purchaser to satisfy himself that the goods supplied by Seller pursuant to the contract are fit for any specific purpose or purposes for which Purchaser wishes to use them: (ii) Seller does not warrant or represent that the goods supplied by Seller will correspond with any sample supplied by Seller to Purchaser, whether before or after the placing of the order pursuant to which the goods are supplied: (iii) Seller shall not be liable for any loss or damage caused by arising out of any alteration or modification or any change whatsoever to the goods on any part thereof by Purchaser or any third party without Seller's prior consent.

(e) If within six months of the date of receipt of any goods by Purchaser, Purchaser notifies Seller in writing that any goods supplied by the Seller were not manufactured in accordance with the contract description or are not of sound material or of good workmanship in accordance with the obligation of Seller as set out in sub-clause (c) above, and if the goods the subject of the notification are returned to Seller's premises within the said six months of within fourteen days thereafter, carriage paid by Purchaser, for examination with a full statement of the respect in which the goods are alleged not to have been manufactured in accordance with the contract description or of sound material or of good workmanship Seller undertakes to: (i) inspect the goods returned as aforesaid: (ii) repair or, at Seller's option, refund the purchase price of the goods, and Seller will refund the cost of returning the goods to Seller: Goods that have been repaired, or replacement goods that have been supplied by the Seller will be delivered free of charge to the same point of delivery as the original goods supplied by Seller, or to such place of equivalent distance as Purchaser reasonably requests and will be subject to the warranty contained in sub-clause (c) above and the remedies provided for in sub-clause (e) and (f).

(f) If Purchaser notifies Seller in writing in accordance with sub-clause (e) above, but does not return the goods to Seller in accordance with sub-clause (c) above by reason of it being unreasonable impracticable for Purchaser to do so, and if the goods have not been manufactured in accordance with the contract description or of sound material or of good workmanship Seller will refund the purchase price of the goods PROVIDED THAT Purchaser shall, if requested by Seller give the Seller full opportunity and access to inspect such goods and in the event of Seller electing to so inspect its costs of and occasioned thereby shall:

(g) Except as provided for in sub-clauses (e) and (f) above, Purchaser shall have no remedy Seller in respect of any claim as to the quality of the goods supplied by Seller and in particularly, and without prejudice to the generality of the foregoing: (i) Purchaser shall have no right to reject any goods supplied by Seller: (ii) Seller shall not be responsible, whether in contract, delict, tort or otherwise, for the following loss or damage howsoever caused and even if foreseeable by or in contemplation of Seller unless the same is loss or damaged in respect of death or personal injury resulting from the negligence of Seller or Seller's employees: (1) economic loss (which shall include but not be limited to loss of use, loss of profits, loss of business revenue of contracts, costs of any product recall, loss of goodwill and anticipated savings) whether caused by or arising out of the use, or non-use of goods supplied by Seller, or the quality of such goods or otherwise: (2) damages in respect of special indirect or consequential loss or damage whether caused by or arising out of the use, or non-use of goods supplied by Seller or the quality of such goods or otherwise: (3) loss or damage arising from or related to direct physical damage to tangible property of Purchaser caused by the goods supplied by Seller: (4) any claim made against Purchaser by any other party. (iii) In no circumstances shall the sum payable by Seller in respect of any claim by Purchaser exceed the contract price paid or payable by Purchaser in respect of the goods the subject of Purchaser's claim.

25. Seller shall not be liable in contract or in delict or in tort or otherwise howsoever for any loss or damage including consequential loss or damage arising from delay in manufacture or delivery howsoever caused or for any delay in failure of delivery after goods have been dispatched from Seller's work (unless otherwise agreed by Seller in writing).

26. Seller shall not be liable in contract or in delict or in tort or otherwise howsoever any loss, damage or injury where patterns, jigs fixtures, drawings, specifications or other particulars supplied by Purchaser are inaccurate or in a defective condition and Purchaser shall indemnify Seller and keep Seller indemnified against any claims, demands, damages, penalties, and expenses suffered by Seller by reason of such inaccuracy or defective condition.

27. Seller will insure patterns, jigs and fixtures owned by Purchaser to their full value against loss, damage or destruction by fire whilst in Seller's possession.

28. Where any design, drawing or specification of Purchaser relating to goods is changed at the request of Purchaser. Seller shall not be liable to Purchaser (in contract or in tort or otherwise howsoever) either: (i) for any loss, damage or injury to persons or property including consequential loss: or (ii) for any injury to person arising out of any defect or default on the part of Seller in any such changed design or drawing.

PURCHASER'S DUTIES

29. In respect of any goods manufacture in accordance with plans, drawings or specifications provided by Purchaser or in accordance with instructions express or implied of Purchaser, Purchaser shall indemnify Seller and keep Seller indemnified against all loss sustained by Seller as a result of any claim for infringement or alleged infringement of letters patent, registered designs, copyrights, trademarks or similar rights. Furthermore in respect of such goods Seller intends to transfer only such title as Seller has and Purchaser undertakes to be satisfied by the transfer of such title.

30. Purchaser shall indemnify Seller and keep Seller indemnified against all damages, penalties, costs, claims and payments incurred by Seller or for which Seller may be liable to third parties arising (in contract or in tort or in delict or otherwise howsoever) out of the use of goods supplied hereunder including, without prejudice to the foregoing, claims in respect of death or injury to persons).

EXPORT TERMS

31. (i) Unless otherwise agreed the goods shall be delivered in accordance with the Incoterms.
(ii) In these conditions "Incoterm" shall mean the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force as the date when the goods are delivered. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of the Incoterms shall have the same meaning in these conditions, but if there is any conflict between the provisions of the Incoterms and these conditions, the later shall prevail.
(iii) Where the goods are supplied for export from the United Kingdom the provisions of this clause 31 shall (subject to any special terms agreed in writing between Seller and Purchaser) apply notwithstanding any other provisions of these conditions.
(iv) Purchaser shall be responsible for complying with any legislation or regulations governing importation of the goods into the country of destination and for the payment of duties thereon.
(v) Unless otherwise agreed in writing between Purchaser and Seller the goods shall be delivered f.o.b. the air or sea port of shipment and Seller shall be under no obligation to give notice under section 32(2) of the Sale of Goods Act 1979.

WORK AT PURCHASER'S SITES

32. When Seller's employees or agents are working on Purchaser's site or at any other location in connection with the use of goods by Purchaser, Seller will indemnify Purchaser and keep Purchaser indemnified against claims for damage to Purchaser's property provided that:
(a) Seller shall not be liable except where damage is wholly and exclusively due to the negligence of Seller's employee or agent; and
(b) Seller shall not be liable except for direct damage to property and not for any further loss or damage whatsoever or howsoever arising; and
(c) the total aggregate liability of Seller for damage to Purchaser's property caused by any employee or agent of Seller shall not exceed the total sum payable to Seller under the contract of sale of the relevant goods.

ASSIGNATION

33. Purchaser shall not assign all or any of its rights or interest under a contract of sale to which these conditions apply or transfer any of its obligations without Seller's prior written consent.

SEPARATE AND SEVERABLE

34. Each clause and sub-clause in these terms and conditions is separate a severable and enforceable accordingly.

NOTICES

35. Any notice to be given or served hereunder shall be sufficiently given or served if sent by first class post by airmail (if to a foreign country) the address of such notice shown in the contract. Any document so sent by post shall be deemed to have been received not later than 48 hours after the time of posting and proof of posting addressed and stamped as aforesaid shall be proof of receipt by the addressee.