

## Tapflo UK Ltd STANDARD TERMS OF SALE

Company **Tapflo UK Ltd** of Sutherland House, 1759 London Road,  
Leigh On Sea, Essex, England, SS9 2RZ.  
Company Number: 03380971

### CONDITIONS OF SALE

#### 1. Basis of Contract

- 1.1 The following terms and conditions (**Conditions**) apply to the contract between the Supplier and Customer, each as identified in the Order Acknowledgement) for the purchase of the Goods (as defined below) as specified in the Order Acknowledgement. These Conditions and the Order Acknowledgement apply to exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 1.2 A purchase order submitted by the Customer is an offer to purchase the Goods from the Supplier in accordance with these Conditions and the Order Acknowledgement. Such purchase order is accepted by the Supplier on issue of the Order Acknowledgement and these Conditions, signed by the Supplier, and the Contract shall come into effect on that date, or such other date as is specified in the Order Acknowledgement.
- 1.3 The Customer waives any right it may have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

#### 2. Interpretation

##### 2.1 Definitions

**Business Day:** a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Contract:** the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with the Order Acknowledgement and these Conditions.

**Delivery Date:** the date specified for delivery of the Goods in accordance with clause 3.

**Delivery Location:** the address for delivery of the Goods, as set out in the Order Acknowledgement.

**Force Majeure Event:** events, circumstances or causes beyond a party's reasonable control.

**Goods:** the goods (or any part of them), as set out in the Order Acknowledgement.

**Price:** the price for the Goods, as set out in the Order Acknowledgement.

**Specification:** the specification for the Goods, including any related technical drawings that are agreed in writing by the Customer and the Supplier as set out in the Order Acknowledgement.

**VAT:** value added tax or any equivalent tax chargeable in the UK.

## **2.2 Interpretation:**

- (a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted from time to time. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- (b) any phrase introduced by the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) a reference to **writing** or **written** includes emails.

## **3. Orders**

- 3.1 The Customer is responsible for ensuring that the Order Acknowledgement, and any applicable Specifications, are complete and accurate, and shall have one (1) Business Day from the date on the Order Acknowledgement to notify the Supplier of any errors or inaccuracies.
- 3.2 The Supplier shall supply and the Customer shall purchase the Goods in accordance with these Conditions and the Order Acknowledgement.

## **4. The Goods**

- 4.1 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in any Supplier catalogues, websites or other materials are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 4.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 4.2 shall survive termination of the Contract.
- 4.3 The Supplier shall maintain all licences, permission, authorisations and consents to manufacture, supply and deliver the Goods in accordance with these Conditions.

- 4.4 The Supplier shall ensure that the Goods shall:
- (a) correspond with their description and any applicable Specification;
  - (b) be of satisfactory quality;
  - (c) where they are manufactured products, be free from defects in design, material and workmanship and remain so for the Warranty Period; and
  - (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

**5. Delivery**

- 5.1 The Supplier shall ensure that the Goods are properly packed and secured to enable them to reach their destination in good condition.
- 5.2 The Supplier shall ensure that each delivery of Goods is accompanied by a delivery note that shows the order number, the type and quantity of Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the relevant order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 5.3 The Supplier shall use reasonable efforts to deliver Goods to the Delivery Location on the relevant Delivery Date. Delivery is completed at the Delivery Location on the completion of unloading. Delivery Dates are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of any Goods.
- 5.4 If the Supplier fails to deliver Goods, its sole responsibility to the Customer shall be to procure the delivery of the Goods as soon as possible after the relevant Delivery Date. The Supplier shall have no liability for any failure to deliver Goods to the extent that such failure is caused by either (a) a Force Majeure Event; or (b) the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.5 The Supplier reserves the right to charge for storage of Goods that are unable to be delivered within five Business Days of the due date for delivery. Any Goods that remain undelivered after 10 Business Days may be resold.
- 5.6 The Supplier may deliver orders by instalments, which shall be invoiced and paid for separately. The Customer may not cancel an instalment because of any delay in delivery or defect in another instalment.
- 5.7 The Customer may not reject and order if the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered, and an adjustment to the invoice shall be made to reflect the actual quantity delivered.

**6. Quality and fitness for purpose**

6.1 The Supplier warrants that, for the Warranty Period specified in the Order Acknowledgement the Goods shall:

- (a) conform in all material respects with their description and any Specification;
- (b) be free from material defects in design, material and workmanship; and
- (c) be fit for any purpose held out by the Supplier in writing in the Order Acknowledgement.

6.2 Subject to clause 6.3, if:

- (a) the Customer notified the Supplier in writing during the warranty period, that some or all of the Goods do not comply with the warranties set out in clause 6.1;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,

the Supplier's sole remedy shall be, at its option, to repair or replace any Goods that are found to be defective, or refund the price of such defective Goods in full.

6.3 The Supplier shall not be liable for Goods' failure to comply with the warranties set out in clause 6.1 if:

- (a) the Customer makes any further use of such Goods after giving notice of defects in accordance with clause 6.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

6.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

## **7. Title and risk**

7.1 Risk in Goods shall pass to the Customer on completion of unloading the Goods at the Delivery Location. Title to Goods shall only pass to the Customer once the Supplier receives payment in full (in cash or cleared funds) for them.

7.2 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 12.1(b); and
- (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

7.3 The Supplier may recover Goods in which title has not passed to the Customer. The Customer irrevocably licenses the Supplier, its officers, employees and agents, to enter any premises of the Customer (including with vehicles), in order to satisfy itself that the Customer is complying with the obligations in clause 7.2, and to recover any Goods in which property has not passed to the Customer.

## **8. Product recall**

8.1 If the Customer is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw any Goods from the market (**Recall Notice**) it shall immediately notify the Supplier in writing enclosing a copy of the Recall Notice.

8.2 Unless required by law, the Customer may not undertake any recall or withdrawal without the written permission of the Supplier and only then in strict compliance with the Supplier's instructions as to the process of implementing the withdrawal.

## **9. Price and payment**

9.1 The Customer shall pay for Goods in accordance with this clause 9.

9.2 The Price excludes:

- (a) the costs of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer in addition to the Price; and

- (b) amounts in respect of VAT, which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate (if applicable), subject to the receipt of a valid VAT invoice.
- 9.3 The Supplier may invoice the Customer for the price of Goods plus VAT at the prevailing rate (if applicable) on or at any time after the Order Acknowledgement are agreed, and the order is placed, or the Goods are delivered.
- 9.4 The Customer shall pay invoices in full in cleared funds within 30 days of the date of the invoice, unless otherwise specified in the Order Acknowledgement. Payment shall be made to the bank account nominated in writing by the Supplier.
- 9.5 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then, without limiting the Supplier's remedies under clause 12:
  - (a) the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time.
  - (b) the Supplier may suspend all further deliveries of Goods until payment has been made in full.
- 9.6 All amounts due under this agreement from the Customer to the Supplier shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). The Supplier may at any time, without limiting any of its other rights or remedies, set off any amount owing to it against any amount payable by the Supplier to the Customer.

## **10. Intellectual Property Rights**

- 10.1 The Customer acknowledges that all intellectual property rights (including all patent rights, design rights, technical drawings and specifications, know-how, copyright and other confidential information relating to the design and manufacture of the Goods) originating from the Supplier shall remain the exclusive property of the Supplier or where applicable its third party licensor. All intellectual property in respect of any improvements shall belong to the Supplier.
- 10.2 The Customer shall retain all rights in any Customer Materials made available to the Supplier in connection with this Contract.

## **11. Limitation of liability**

- 11.1 The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess liability.

11.2 Nothing in this Contract shall limit or exclude the Supplier's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); fraud or fraudulent misrepresentation or any other matter in respect of which it is unlawful for the Supplier to exclude or restrict liability.

11.3 Subject to clause 11.2:

- (a) the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), misrepresentation, restitution or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Supplier's total liability to the Customer for all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), misrepresentation, restitution or otherwise, shall not exceed 100% of the total sums paid and/or payable by the Customer for Goods under the Contract.

11.4 Nothing in these Conditions limit the Customer's payment obligations under the Contract.

## **12. Termination**

12.1 Without limiting its other rights or remedies, either party may terminate this Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 20 days of that party being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

12.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.

12.3 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination.

12.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

### **13. General**

**13.1 Force majeure.** Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract (other than an obligation to make a payment) if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for 6 weeks the party not affected may terminate this Contract by giving ten (10) days' written notice to the affected party.

**13.2 Insurance.** The Supplier shall maintain in force appropriate insurance policies with reputable insurance companies respect of public liability insurance and product liability insurance in accordance with good industry practice.

### **13.3 Assignment and other dealings.**

(a) The Customer shall not assign, transfer, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

(b) The Supplier may at any time assign, transfer, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights under this agreement.

### **13.4 Confidentiality.**

(a) Each party undertakes that it shall not during this Contract and for a period of two years after termination of this Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by clause 13.4(b).

(b) Each party may disclose the other party's confidential information:

(i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 13.4; and

(ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.



- (c) No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Contract.

**13.5 Entire agreement.**

- (a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Conditions or the Order Acknowledgement.

**13.6 Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**13.7 Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**13.8 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

**13.9 Notices.**

- (a) Any notice given to under or in connection with the Contract shall be in writing, addressed to that party at the address in the Order Acknowledgement, unless otherwise notified in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier or email.
- (b) A notice or other communication shall be deemed to have been received: if delivered by hand, when left at the address referred in clause 13.9(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the

courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.

- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

**13.10 Third party rights.** No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

**13.11 Governing law and jurisdiction.** This Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it shall be governed by, and construed in accordance with, the law of England and Wales, and the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation.