

CLESSE (UK) LIMITED TERMS AND CONDITIONS

These terms and conditions (**Conditions**) constitute the basis on which Clesse (UK) Limited with registered office at Drakes Broughton Business Park, Worcester Road, Drakes Broughton, Pershore, Worcestershire, WR10 2AG and company registration number 4535858 (**Clesse**) agrees to supply goods to Customers.

1. DEFINITIONS

a) In the Agreement the following terms have the following meanings:

Agreement means the agreement between Clesse and the Customer for the supply of the Goods comprising these Conditions and the Order Confirmation;

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

Charges means the charges the Customer will pay for the Goods as set out in the Order Confirmation;

Customer means the individual, business, firm or company who purchases the Goods and who is identified in the Order Confirmation;

Goods means the goods to be supplied to the Customer by Clesse, as set out in the Order Confirmation;

Intellectual Property Rights means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

Order means the Customer's order for the supply of Goods; and

Order Confirmation means the form detailing the Goods ordered by the Customer and the Charges payable.

b) In the event of any conflict between these Conditions and any Order Confirmation, these Conditions shall take precedence.

2. BASIS OF AGREEMENT

a) An Order by the Customer constitutes an offer by the Customer to purchase Goods in accordance with this Agreement.

b) The Order shall only be deemed to be accepted when Clesse issues an Order Confirmation in writing or by email at which point the Agreement shall come into existence. If Clesse is unable to accept the Customer's Order, Clesse will notify the Customer by email.

c) No quotation or explanation provided by Clesse to the Customer shall constitute an Order Confirmation, including where the Customer wishes to request Goods which are modified or designed to the Customer's specific requirements.

d) These Conditions apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, including in any Order, specification or other document, or which are implied by trade, custom, practice or course of dealing.

e) Any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by an authorised representative of Clesse.

3. GOODS

a) The Customer acknowledges that any images of the Goods on Clesse's website or in any quotation, description, Order Confirmation or catalogue are for illustrative purposes only.

b) Clesse may make modifications to the Goods which do not materially affect the Customer's use of the Goods:

- i) to reflect changes in relevant laws and regulatory requirements; and
- ii) to implement minor technical adjustments and improvements.

4. DELIVERY

a) Clesse or Clesse's transport agent will contact the Customer with an estimated delivery date of the Goods. Any dates quoted for delivery of the Goods are approximate only and time for delivery shall not be of the essence.

b) No delivery will be made until: (i) any advance payment or letter of credit which Clesse requires has been made or presented; or (ii) until receipt of any import license, where necessary, has been notified to Clesse.

c) Delivery shall be deemed to have been effected when the Goods have been made available to the Customer at the location stated in the Order Confirmation or such other location as the parties may have agreed in writing, or, in the case of collection by the Customer, upon collection by the Customer.

- d) Where the Customer has requested in writing to collect the Goods from Clesse's premises, the Customer may do so at any time during Clesse's working hours of 09.00 to 16.30pm on Business Days.
- e) Any costs of delivery of any Goods will be as set out in the Order Confirmation.
- f) If nobody is available at the Customer's address to take delivery and the Goods cannot be posted through the Customer's letterbox, Clesse or Clesse's transport agent will notify the Customer, informing the Customer of how to rearrange delivery or collect the Goods.
- g) Where the Customer does not rearrange delivery or collect the Goods following a failed delivery, Clesse or Clesse's transport agent will contact the Customer for further instructions and may charge the Customer for storage costs and any further delivery costs. If, despite Clesse's or Clesse's transport agent's reasonable efforts, Clesse or Clesse's transport agent is unable to contact the Customer or re-arrange delivery or collection Clesse may end the Agreement.
- h) Risk in the Goods shall pass to the Customer upon delivery pursuant to Condition 4(c) or delivery to a carrier organised by the Customer. Title in the Goods shall pass to the Customer on receipt by Clesse of full and cleared payment of the Charges for the Goods.

5. PRICES AND TERMS OF PAYMENT

- a) Clesse shall supply the Goods and the Customer shall pay the Charges in accordance with the terms of this Agreement.
- b) Unless agreed otherwise in writing all Charges are payable by the end of the month following the month in which delivery of the goods take place. All Charges will be payable in Sterling (unless a prior agreement is made in writing to the commercial manager) and shall be paid by the Customer without deduction or set off.
- c) The Customer shall pay on request any increase in packing and transportation costs arising between the date of quotation and the date of delivery.
- d) Clesse shall be entitled to raise invoices in respect of an Order Confirmation notwithstanding that items specified in the Order Confirmation have at the date of invoice not been delivered.
- e) All prices and Charges stated are exclusive of value added tax, sales tax, gross tax, withholding tax any other similar tax which may be applicable and the Customer shall be liable for such taxes at the prevailing rates.
- f) Failure of the Customer to pay the Charges or any other sum due under this Agreement shall entitle Clesse without prejudice to any other rights and remedies to charge interest on a daily basis from the date due at the annual rate of five percent above the Bank of England's base rate in force from time to time.

6. TERMINATION AND RETURNS

Without prejudice to any other rights or remedies Clesse may have under the Agreement Clesse may terminate the Agreement immediately upon notice to the Customer if:

- a) the Customer does not make a payment to Clesse when it is due and the Customer still does not make payment within seven days of Clesse reminding the Customer that the payment is due;
- b) the Customer is made bankrupt, a receiver or administrative receiver is appointed over the Customer or over any part of the Customer's undertaking or assets or if the Customer passes a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or if a court of competent jurisdiction makes an order to that effect or if the Customer enters into any voluntary arrangement with its creditors or becomes subject to an administration order;
- c) the Customer does not, within a reasonable time of Clesse's request, provide Clesse with information that is necessary for Clesse to supply the Goods; and/or
- d) the Customer does not, within a reasonable time, allow Clesse or Clesse's transport agent to deliver the Goods or the Customer does not collect them from Clesse.

7. LIABILITY

- a) The Customer acknowledges that the Goods have not been developed to meet the Customer's individual requirements, and that it is therefore the Customer's responsibility to ensure that the facilities and functions of the Goods meet the Customer's requirements.
- b) Clesse warrants that on delivery and for a period of 24 months from the date of manufacture of the Goods (the **Warranty Period**) the Goods shall:
 - i) conform in all material respects with their description; and
 - ii) be free from material defects in design, material and workmanship.
- c) Clesse's returns procedure is as follows:
 - i) the Customer must give Clesse notice in writing during the Warranty Period and within a reasonable time of discovery that in its opinion the Goods do not comply with the warranty set out in Condition 7b;
 - ii) the Customer must return the Goods to Clesse for inspection as soon as reasonably practicable, at the Customer's cost;

- iii) Clesse will, within a reasonable time, examine the Goods and determine, acting reasonably, if the Goods comply with the warranty set out in Condition 7b;
 - iv) if Clesse determines, acting reasonably, that the Goods do not comply with the warranty set out in Condition 7b then Clesse shall, at its option and subject to Condition 7d, repair or replace the defective Goods, or refund the price of the defective Goods in full (including any delivery charge); and
 - v) if Clesse determines, acting reasonably, that the Goods do comply with the warranty set out in Condition 7b then Clesse will make the relevant Goods available for the Customer to collect or include such Goods in the Customer's next Order, subject to Customer's payment of any additional delivery charges.
- d) Clesse will not be liable for the failure of any Goods to comply with the warranty in Condition 7b if:
- i) the Customer makes any further use of such Goods after giving notice in accordance with Condition 7c;
 - ii) the defect arises because the Customer failed to follow Clesse's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - iii) the defect arises as a result of Clesse following any drawing, design or specification supplied by the Customer;
 - iv) the Customer alters or repairs the Goods without Clesse's prior written consent; or
 - v) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions.
- e) Where Clesse is not the manufacturer of the Goods, Clesse will use its reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee offered by the manufacturer.
- f) Clesse warrants it has the right to provide or procure the provision of the Goods to the Customer and that the Customer shall have the right to use the Goods.
- g) Except as provided in these Conditions 7a to 7k, Clesse shall have no liability to the Customer in respect of a failure of the Goods to comply with the warranty in Condition 7b.
- h) These terms shall apply to any repaired or replacement Goods supplied by Clesse under Condition 7c.
- i) Nothing in these Conditions shall limit or exclude Clesse's liability for:
- i) death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors (as applicable);
 - ii) fraud or fraudulent misrepresentation; or
 - iii) any other liability that cannot be excluded or limited by law.
- j) Except to the extent expressly stated in Condition 7i all terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3 to 5 of the Supply of Goods and Services Act 1982 are excluded.
- k) Subject to Condition 7i:
- i) Clesse shall not under any circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with any Agreement between the parties for loss of profits, sales, business, or revenue; business interruption; loss of anticipated savings; loss or corruption of data or information; loss of business opportunity, goodwill or reputation; or any indirect or consequential loss or damage; and
 - ii) Clesse's total liability under or in connection with any Agreement between the parties whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to a sum equal to the total sums paid by the Customer for Goods under such Agreement.
- l) Other than as set out in this Condition 7 the Customer may not return Goods with Clesse's prior written consent and all orders are non-refundable. Any return of Goods may be subject to Customer's payment of a restocking fee.

8. INTELLECTUAL PROPERTY AND DATA PROTECTION

- a) Neither party shall acquire any right, title or interest in the other's Intellectual Property Rights.
- b) Clesse shall own and be fully entitled to use in any way it deems fit any Intellectual Property Rights, skills, techniques, materials, concepts or know-how acquired, developed or used in the course of performing its obligations under the Agreement.
- c) The Customer agrees and acknowledges that Clesse may use a Customer's personal information which a Customer provides:
 - i) to fulfil its obligations under any Agreement;
 - ii) to process payments under any Agreement; and
 - iii) to provide the Customer information about similar products that Clesse provides.
- d) Where Clesse extends credit to a Customer for Goods Clesse may pass a Customer's personal information to credit reference agencies and they may keep a record of any search.

9. CONFIDENTIALITY

The Customer 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 Customer by Clesse or its agents and any other confidential information concerning Clesse's business or its products which the

Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Customer's obligations to Clesse and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Customer.

10. GENERAL

- a) If Clesse is delayed from performing any of its obligations under this Agreement by an event outside its control then Clesse will contact the Customer as soon as possible take steps to minimise the effect of the delay. Clesse will not be liable to the Customer for any failure to meet its obligations under this Agreement which are caused by an event outside of its control.
- b) The parties hereby expressly exclude the provisions of the Contracts (Rights of Third Parties) Act 1999.
- c) No failure or delay of either party in exercising any right, power, or privilege under any Agreement shall operate as a waiver thereof.
- d) The invalidity of any individual Condition of this Agreement shall not affect the validity of the remaining Conditions.
- e) This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby agree to submit to the exclusive jurisdiction of the English Courts.
- f) If the Customer wishes to make a complaint regarding any aspect of the Goods or the Agreement, the Customer should contact Adam Dziamarski, Managing Director by email at adam@clesse.co.uk or by post at Drakes Broughton Business Park, Worcester Road, Drakes Broughton, Pershore, Worcestershire, WR10 2AG.