

1. Interpretation

In these terms and conditions, the following expressions shall have the following meanings and cognate expressions shall be construed accordingly:
"Buyer" means the person or entity who places an Order.
"Conditions" means the terms and conditions set out in this document which shall exclusively govern the Order and the Contract, to the exclusion of all other terms and conditions, whether oral or contained in any other document whatsoever.
"Contract" means the contract of sale and purchase of the Goods concluded by the placing of an Order which is accepted by the Seller.
"Goods" means the items or articles the subject of the Order.
"Order" means the order placed by the Buyer with the Seller for the purchase of the Goods from the Seller.
"Price" means the price of the Goods.

2. Scope of Contract

2.1 Notwithstanding any terms and conditions which may be contained or referred to in the Order or used by the Buyer whether in the course of the Buyer's business or otherwise, the Order constitutes an offer by the Buyer to purchase the Goods from the Seller subject only to the Conditions, which shall apply to the Order and the Contract to the exclusion of all other terms and conditions, whether oral or contained in any other document whatsoever.
2.2 The Order once accepted by the Seller shall be irrevocable by the Buyer.
2.3 A charge of S\$50 will be applied to orders under S\$200.
2.4 No statement or representation made at any time prior to the Contract shall form part of the Conditions or be deemed to be an inducement or a collateral contract pursuant to which the Buyer entered into the Contract.
2.5 Any quotations made by the Seller are without obligation and subject to alteration at any time prior to the Contract.
2.6 Neither the Buyer nor the Seller shall be bound by any variation, waiver of or addition to the Conditions except as agreed by both parties in writing.

3. Delivery

3.1 The Seller shall deliver the Goods to the Buyer at the Seller's earliest convenience. Any time or date for delivery, which may be given by the Seller, is an estimate only and may be cancelled or revised at the Seller's option. Time for delivery by the Seller shall not be of the essence of the Contract.
3.2 Delivery of the Goods shall be made by the Seller to the Buyer on FCA Incoterms 1990 at the Buyer's place of works in Singapore or such other address in Singapore, in either case as shall be notified by the Buyer to the Seller in writing at the time of placement of the Order.
3.3 The Buyer shall accept delivery of the Goods as made in accordance with Clause 3.2 above.
3.4 Each delivery shall operate as a separate contract and shall each be governed by the Conditions.
3.5 The Seller shall not be liable to the Buyer for any loss or damage whatsoever suffered directly or indirectly by the Buyer from any delays in delivery howsoever arising.
3.6 The Seller shall have no liability to the Buyer for any loss or damage whatsoever in the event of non-delivery of the whole or any portion of the Goods caused directly or indirectly by any cause or event beyond the Seller's control, including without limitation, (a) acts of God, elements, war, obligation, acts of Government, import or export bans, blockades, strikes or lockouts, fire, flood, breakdown of machinery, (b) non-delivery or delay in delivery by the Seller's suppliers of the Goods or materials required for the Goods, and (c) failure of the Seller's contractors to execute or their delay in executing any work on the Goods.
3.7 Notwithstanding that the Seller may have delayed or failed to deliver the Goods promptly, the Buyer shall be bound to accept delivery and to pay for the Goods in full, provided that delivery shall be tendered at any time within three (3) months of the original date of delivery of the Goods.
3.8 Notwithstanding Clause 3.7 above, if the delivery is delayed due to any of the causes referred to in Clause 3.6 by a period in excess of six (6) months, the Seller may cancel the whole or the undelivered portion of the Contract by written notice without any liability whatsoever to the Buyer.
3.9 Subject to Clause 3.1 above, when Goods are made to the Buyer's order for call-off and no delivery dates are specified, then any Goods not called-off within three months after the date of the Seller's confirmation of Order may be deemed by the Seller at its absolute discretion to have been called-off, and the Seller shall be entitled to deliver the remaining quantity of the Goods. The Buyer shall at all times remain obliged to make full payment for the Goods.

4. Payment and Price

4.1 The Price stated in the Seller's quotation excludes any goods and services tax, licence fee, customs, import or export duty or other governmental charges or levies whatsoever (collectively called the "Additional Charges"). The Buyer shall be responsible for prompt and full payment of any such Additional Charges and shall fully indemnify the Seller against the same.
4.2 The Seller may alter its prices and quotations for the Goods without notice whenever it, at its absolute discretion, considers necessary, as orders are accepted on the condition that the Price is that in force at the time of delivery of the Goods unless otherwise agreed between the parties in writing.
4.3 Payment of the Price shall be made in full without any deduction, withholding or set-off whatsoever in Singapore Dollars (or other currency if negotiated and agreed with seller) in immediately available funds within 30 days of the date of the Seller's invoice (the "invoice due date") to the Seller's account with The Overseas Chinese Banking Corporation Limited, Jalan Sultan Branch as notified by the Seller to the Buyer in writing or to such other account or in such other manner as the Seller may notify to the Buyer in writing.
4.4 Notwithstanding Clause 4.3 above, the Seller may, at its absolute discretion, require payment of the Price to be made in cash prior to or upon delivery of the Goods where the Order is placed by the Buyer for the first time with the Seller.
4.5 The Seller is entitled to interest on any unpaid invoices from the invoice due date until payment at the rate of 10 per cent per month or at such other rate (both before and after judgement) as the Seller may at its absolute discretion determine.
4.6 Where payment is made by means of a bill of exchange, cheque or other negotiable instrument as agreed by the Seller, the Seller shall not be deemed to have received payment until the bill of exchange, cheque or instrument has been honoured on presentation for payment, notwithstanding that the Seller may have negotiated it and received it for value.
4.7 The Seller may at its absolute discretion treat the oldest outstanding invoices as paid first, unless the Seller indicates otherwise.

5. Inspection

5.1 The Buyer shall inspect the Goods immediately when they are delivered and the signature of the Buyer or of any person acting on its behalf on the delivery note shall be deemed to be an acknowledgement by the Buyer that the Goods are of satisfactory quality, undamaged, complete and in all respects in accordance with the Contract, and the Seller shall not be under any liability whatsoever to replace the Goods nor deliver any missing part, unless the Buyer:
(a) states on the delivery note that the Goods or part of them are not of a satisfactory quality or are damaged ("Affected Goods"), or missing ("Missing

Goods"); and

- (b) notifies the Seller in writing within three (3) days of the delivery of the Goods of the nature of damage and the extent to which the Goods are damaged or missing, except that, in the case of latent or hidden defects which cannot reasonably be discovered on the delivery inspection, such notification must be made by the Buyer within six (6) months of the date of delivery.
- 5.2 Where the Buyer has complied with Clause 5.1 above, the Buyer may return the Affected Goods to the Seller, provided that
- (a) the Seller has agreed in writing to receive the Affected Goods;
- (b) the Buyer makes the Goods available for collection by the Seller; and
- (c) the Affected Goods are properly and securely packed by the Buyer and, in the case of Affected Goods, which had been purchased for onward sale by the Buyer to third parties, the Goods are properly and securely packed in their original packaging.
- 5.3 Where the Affected Goods are returned to the Seller in accordance with Clause 5.2 above, the Seller may, at its absolute discretion, repair or replace the Affected Goods as originally ordered, or issue an appropriate credit note to the Buyer in respect of them.
- 5.4 In the case of Missing Goods, the Seller may, at its absolute discretion, replace the Missing Goods provided that the Buyer has complied with Clause 5.1 above.
- 5.5 In no event shall the Seller be obliged to accept the return of Affected Goods which have been repaired or modified by a third party or be liable to the Buyer for any expense incurred by the Buyer in relation to the repair or modification of the Affected Goods by any third party.

6. Risk

The risk in the Goods shall pass to the Buyer upon delivery of the Goods by the Seller to the Buyer in accordance with Clause 3.2 above. It is the sole responsibility of the Buyer to insure the Goods against any and all risks. The Buyer shall be liable for all and any damage to the Goods whatsoever and howsoever arising from the time of delivery.

7. Title

- 7.1 The Seller shall retain title to and ownership of the Goods until the Buyer has paid the Price in full.
- 7.2 Furthermore, the property in the Goods shall not pass to the Buyer unless and until the full price of any other goods (the "Other Goods") the subject of any other business transaction between the Buyer and Seller (the "Other Transactions") has been paid. In this Clause 7, the Price and the price of the Other Goods shall collectively be called the "Value".
- 7.3 Until the Value has been received in full by the Seller, the Buyer shall hold the Goods and the Other Goods as trustee and bailee for the Seller, and the Buyer acknowledges that there shall be a fiduciary relationship in respect of the Goods and the Other Goods between the Buyer and the Seller. Accordingly, until the Value has been received in full by the Seller:
- (a) The Buyer shall, without charge to the Seller, store the Goods and the Other Goods on its premises separately from its own goods or those of any other person, and marked in such a way that they can be readily identified as goods belonging to the Seller. The Buyer shall not do or permit to be done anything, which may render the Goods and the Other Goods liable to attachment or subject to any lien or encumbrance whatsoever.
- (b) The Buyer shall, at the Buyer's own cost, take all necessary measures for the protection of the Goods and the Other Goods, including their insurance against all usual risks (including without limitation, fire and theft) with an insurance company approved by the Seller for the full replacement value of the Goods and the Other Goods until full payment for them is made. The Buyer shall procure that the interest of the Seller is noted upon any such insurance policy and that a copy of the policy is supplied to the Seller on its creation. The Buyer shall hold the proceeds of any such insurance in a separate account on behalf of the Seller as trustee for the Seller.
- (c) The Buyer shall not sell or use the Goods or the Other Goods in any way for whatever purpose.
- 7.4 If (a) the Buyer fails to make payment for the Goods or the Other Goods in accordance with the Contract or the Other Transactions, or commits any other breach of the Contract or the Other Transactions, or (b) any distress or execution shall be levied upon any of the Buyer's goods, or (c) the Buyer offers to make any arrangement with its creditors or commits an act of bankruptcy, or (d) any petition in bankruptcy is presented against the Buyer, or (e) the Buyer is unable to pay its debts as they fall due, or being a limited company, any resolution or petition to wind up the Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented, or (f) a receiver and/or manager, or judicial manager, liquidator, or administrator shall be appointed over the whole or any part of the Buyer's business or assets, or (g) the Buyer ceases to carry on business or makes any threat to cease carrying on business, or (h) the Buyer suffers any analogous proceedings under foreign law, or (i) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer, then all sums outstanding in respect of the Goods and/or the Other Goods shall become immediately due and payable without demand notwithstanding any previous agreement or arrangement to the contrary. In any of the above events, the Seller shall be entitled without prejudice to any other rights or remedies available to it:-
- (1) to terminate the Contract and/or any of the Other Transactions by immediate notice in writing and/or without any prior notice, suspend or withhold delivery of any of the Goods or the Other Goods that are undelivered to the Buyer and stop any of such goods in transit, all without any liability whatsoever to the Buyer;
- (2) without any prior notice, enter any premises where the Goods and/or the Other Goods owned by the Seller may be and repossess and dispose of any of the Goods and/or the Other Goods so as to discharge any sums owed to it by the Buyer under this Contract or the Other Transactions. For this purpose, the Buyer hereby grants to the Seller, its agents and representatives an irrevocable licence to enter upon the Buyer's or other premises where the Goods and/or the Other Goods may be stored;
- (3) require the Buyer not to resell or part with possession of any of the Goods and/or the Other Goods owned by the Seller until the Buyer has paid in full the Price, the price of the Other Goods or the Value due to the Seller; and
- (4) vary by notice in writing with immediate effect, the credit terms, if any, granted by the Seller to the Buyer in such manner as the Seller may at its absolute discretion determine.
- 7.4 In the event of late payment, the Seller may treat the Contract as wrongfully repudiated by the Buyer without prejudice to the Seller's right to payment for any of the Goods delivered and to damages for the Buyer's breach of contract or any other rights or remedies available to the Seller.

8. Severability

Each of the Conditions shall be construed separately and in the event of one or more such clauses herein being held ineffective, this shall not affect the validity of the remaining clauses.

9. Warranties and Representations

- 9.1 The Seller warrants that it has title to the Goods or will have such title at the time when property in the Goods is to pass to the Buyer under the Contract.
- 9.2 Save for the express conditions and warranties herein contained, all other conditions and warranties (whether as to quality, fitness for purpose or any other matter whatsoever) expressed or implied by statute, the common law, equity, trade, custom or usage or otherwise howsoever arising are

hereby expressly excluded, provided that nothing in these terms and conditions shall exclude or limit liability for any breach of a term or condition implied by law, the exclusion or limitation of which is not permitted by law.

9.3 For the avoidance of doubt, measurements, dimensions, weights, colours and other details contained in the Seller's catalogues, sales manuals, photographs, drawings, illustrations, price lists, samples and in any correspondence from the Seller constitute only an approximate guide and do not form part of the Contract. No warranty is given that the Goods will correspond exactly with those specified.

10. Liability

The maximum liability of the Seller under the Contract shall not in any circumstances whatsoever and howsoever arising exceed the Price. To the fullest extent permitted by applicable laws, the Seller shall not, be liable in contract or tort or otherwise howsoever for any indirect or consequential damage, loss or expense howsoever caused whether to the Buyer or any other person or thing, whether arising directly or indirectly from the negligence of the Seller or anyone for whom the Seller is vicariously liable (other than claims in respect of personal injury or death).

11. General

11.1 The Seller will not be affected by any delay or failure in exercising or any partial exercising of its rights under the Contract unless it has signed an express written waiver or release.

11.2 The Buyer shall not assign its rights or transfer any of its obligations or liabilities under the Contract without the prior written consent of the Seller.

11.3 Any notice given under the Conditions shall be duly served on the Buyer if it is left at or sent by registered post to its address last known to the Seller or on the Seller if it is left at or sent by registered post to its address last known to the Buyer. Any notice sent by post as aforesaid shall be deemed delivered on the second working day after posting.

11.4 The Contract shall be construed in accordance with the laws of Singapore to the exclusion of any international conventions on the law relating to sale of goods.

11.5 In respect of any proceedings arising under or in relation to the Contract, the Seller and the Buyer submit to the non-exclusive jurisdiction of the Singapore courts.

11.6 In the event of any inconsistency or conflict between the Conditions and the FCA Incoterms 1990, the Conditions shall prevail.

Acknowledgment of Schurter Conditions of Sale (05122000)