

Terms and Conditions of Sale for TAPESWITCH LIMITED

The buyer's attention is in particular drawn to the provisions of condition 10.5.

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

Buyer: the person, firm or company who purchases the Goods from the Company.

Company: TAPESWITCH LIMITED whose registered office is Unit 38 Drumhead Road, Chorley North Industrial Estate, Chorley, Lancashire, PR6 7BX (company number 2481808).

Contract: any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions.

Delivery Point: the place where delivery of the Goods is to take place under condition 4.

Goods: any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

Incoterms: means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these conditions.

2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a [director of] the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.4 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.

2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.

2.6 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

2.7 If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with, or paid or agreed to be paid by the Company in settlement of, any claim for infringement of any patent, copyright, design, trade mark

or other industrial or intellectual property rights of any other person which results from the Company's use of the Buyer's specifications

2.8 Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 60 days only from its date, provided that the Company has not previously withdrawn it.

3. DESCRIPTION

3.1 The quantity and description of the Goods shall be as set out in the Company's quotation or acknowledgement of order.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

4. DELIVERY

4.1 Unless otherwise agreed in writing by the Company, the Delivery Point shall be the Company's place of business.

4.2 The Buyer shall take delivery of the Goods within 30 days of the Company giving it notice that the Goods are ready for delivery.

4.3 Where the Company agrees to deliver the Goods otherwise than at the Delivery Point, the Buyer shall be liable to pay the Company's charges for transport, packaging and insurance.

4.4 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

4.5 The Company shall not be liable for any loss whether direct, indirect, consequential or otherwise (all of which terms include, without limitation, economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 90 days.

4.6 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

(a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);

(b) the Goods shall be deemed to have been delivered; and

(c) the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.7 The Buyer shall be responsible for ensuring the suitability of facilities at the Delivery Point and shall at its expense provide adequate and appropriate equipment and labour for unloading, loading and delivery of the Goods.

4.8 If the Company delivers to the Buyer a quantity of Goods of up to 5% more or less than the quantity accepted by the Company, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.

4.9 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

4.10 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

5. NON-DELIVERY

5.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary within 3 working days following delivery.

5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 3 working days of the date when the Goods would in the ordinary course of events have been received.

5.3 Any liability of the Company for non-delivery of the Goods shall in any event be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

5.4 Subject to the foregoing, the Company's liability (if any) in respect of loss of or damage to Goods whilst in course of transit shall not exceed the invoiced price of the Goods or £10,000.00 (Ten Thousand Pounds) for any one carriage/consignment, whichever is the lower

6. RISK/TITLE

6.1 The Goods are at the risk of the Buyer from the time of delivery.

6.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

(a) the Goods; and
(b) all other sums which are or which become due to the Company from the Buyer on any account.

6.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:

(a) hold the Goods on a fiduciary basis as the Company's bailee;
(b) store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
(c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
(d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.

6.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

(a) any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
(b) any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

6.5 The Buyer's right to possession of the Goods shall terminate immediately if:

(a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court

for the winding-up of the Buyer or for the grant-ing of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

(b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or

(c) the Buyer encumbers or in any way charges any of the Goods.

6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

6.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

6.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

6.9 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 6 shall remain in effect.

7. PRICE

7.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Company's price list published on the date of delivery or deemed delivery.

7.2 The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.

7.3 The Company reserves the right, by giving written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor outside the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture)

8. PAYMENT

8.1 Subject to condition 8.4, payment of the price for the Goods is due in pounds sterling no later than the end of the month following the month during which the Company's invoice is issued.

8.2 Time for payment shall be of the essence.

8.3 No payment shall be deemed to have been received until the Company has received cleared funds.

8.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

8.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer and.

(a) If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the rate applicable under the Late payment of Commercial Debts (Interest) Act 1998 (or any statutory re-enactment or modification thereof) accruing on a daily basis until payment is made, whether before or after any judgment

(b) if the Buyer fails to pay any sum due under the Contract the Company shall be entitled to suspend further deliveries to the Buyer.

9. QUALITY

9.1 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.

9.2 The Company warrants that (subject to the other provisions of these conditions) upon delivery the Goods shall:

(a) be of satisfactory quality within the meaning of the Sale of Goods Act 1979;

(b) be reasonably fit for any particular purpose notified to the Company in writing and accepted by the Company in writing

9.3 The Company shall not be liable for a breach of any of the warranties in condition 9.2 unless:

(a) the Buyer gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit, to the carrier, within 3 working days of the time when the Buyer discovers or ought to have discovered the defect or within 7 days from delivery if earlier; and

(b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's cost for the examination to take place there.

9.4 The Company shall not be liable for a breach of any of the warranties in condition 9.2 if after becoming aware of any alleged defect:

(a) the Buyer makes any further use of such Goods; or

(b) the defect arises because the Buyer failed to follow the Company'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; or

(c) the Buyer alters or repairs such Goods without the written consent of the Company or

(d) if any defect in the Goods arises from any drawing, design or specification supplied by the Buyer

9.5 Subject to condition 9.3 and condition 9.4, if any of the Goods do not conform with any of the warranties in condition 9.2 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall return the Goods or the part of such Goods which is defective to the Company.

9.6 If the Company complies with condition 9.5 it shall have no further liability for a breach of any of the warranties in condition 9.2 in respect of such Goods.

9.7 Unless otherwise agreed in writing the Company shall have no responsibility for the conditions of use of the Goods or their suitability for any particular application and it is the responsibility of the Buyer to test and verify the suitability of the Goods. If the Company agrees, in writing at the request of the Buyer, to test and verify the suitability of the Goods for any particular purpose the cost of such tests will be paid by the Buyer unless otherwise agreed.

10. LIMITATION OF LIABILITY

10.1 Subject to condition 4, condition 5 and condition 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

(a) any breach of these conditions;

(b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and

(c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these terms and conditions.

10.4 Nothing in these conditions excludes or limits the liability of the Company:

(a) for death or personal injury caused by the Company's negligence; or

(b) under section 2(3), Consumer Protection Act 1987; or

(c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

(d) for fraud or fraudulent misrepresentation.

10.5 Subject to condition 10.2 and condition 10.4:

(a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract or the Goods shall be limited to the invoiced price of the relevant Goods; and

(b) the Company shall not in any event be liable to the Buyer for any indirect or consequential loss which expression shall include but is not limited to:-

(i) any pure economic loss

(ii) loss of profit

(iii) loss of business or anticipated future business

(iv) loss or depletion of goodwill reputation or otherwise

(v) damages, costs or expenses paid or incurred or payable to any third party

11. ASSIGNMENT

11.1 The Company may assign the Contract or any part of it to any person, firm or company.

11.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

12. FORCE MAJEURE

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) and in any event shall be under no liability to the Buyer if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, power failure or breakdown in machinery provided that, if the event in question continues for a continuous period in excess of 30 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

13. EXPORT TERMS

13.1 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Terms, but if there is any conflict between the provisions of Incoterms and these Terms, the latter shall prevail.

13.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 15 shall (subject to any special terms agreed in Writing between the Buyer and the Company) apply notwithstanding any other provision of these Terms.

13.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.

13.4 Unless otherwise agreed in Writing between the Buyer and the Company, the Goods shall be delivered to the air or sea port of shipment and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

13.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Company's premises before shipment. The Company shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

13.6 Unless otherwise required by the Company, payment of all amounts due to the Company shall be made by irrevocable letter of credit, in a form acceptable to the Company, to be opened by the Buyer in favour of the Company and confirmed by a bank in the United Kingdom acceptable to the Seller within 14 days after the Contract is concluded.

13.7 Where goods originate from the U.S all items furnished by Company to Buyer in connection herewith shall at all times be subject to the export control laws and regulations of the U.S. including, but not limited to, 10 CFR Part 810 and U. S. Export Administration Regulations. Buyer agrees and gives assurance that no items, equipment, materials, service, technical data, technology, software or other technical information or assistance furnished by Company, or any good or product resulting there from, shall be exported or re-exported by Buyer or its authorised transferees, if any, directly or indirectly, unless in accordance with applicable U.S. export laws and regulations. The aforesaid obligations shall survive any satisfaction, expiration, termination or discharge of any other contract obligations.

14. GENERAL

14.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

14.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

14.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

14.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

14.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

14.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.

14.7 Any dispute arising under or in connection with the Contract or the sale of the Goods shall be referred to arbitration by a single arbitrator appointed by agreement or in default of agreement to be nominated by the President for the time being of Chartered Institute of Arbitrators in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment of it for the time being in force.

14.8 Company agrees to indemnify Buyer against any proven claim and assessed liability for infringement of any European

Union patent arising from the manufacture or sale of any apparatus furnished by Company to Buyer. THE FOREGOING STATES COMPANY'S ENTIRE LIABILITY FOR CLAIMS OR PATENT INFRINGEMENT. Company shall have no liability whatsoever if the claim of infringement arises out of Company's compliance with Buyer's specifications. Any parts which Company does not manufacture are not hereby covered. Company shall have no liability whatsoever if a claim of infringement is based upon the Buyer's use of the equipment as part of a patented combination where the other elements of the combination are not supplied by Company, or in the practice of a patented process. Where the specifications, process, design are supplied by Buyer, then Buyer agrees to indemnify Company in like manner

15. COMMUNICATIONS

15.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or email:

(a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or

(b) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.

15.2 Communications shall be deemed to have been received:

(a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or

(b) if delivered by hand, on the day of delivery; or

(c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day, or

(d) if sent by email the electronic delivery can be proved by an email delivery receipt sent to the sender notifying the sender that the email has been read.

Revised: March 2013