

# JOALPE INTERNATIONAL UK LIMITED

## GENERAL CONDITIONS OF SALE

### ("The Terms")

WHEREBY IT IS AGREED AND DECLARED as follows:-

#### 1 INTERPRETATION

1.1 In the Terms (unless the context requires otherwise) the following expressions shall have the following meanings, namely:

"Buyer"	the party identified as the Buyer on the Order Confirmation;
"Contract"	the contract for the sale and purchase of the Goods as described in clause 2.1;
"Goods"	the goods identified on the Order Confirmation (including any instalment of the goods or any parts for them) that Joalpe is to supply to the Buyer in accordance with the Terms;
"Incoterms"	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;
"Joalpe"	Joalpe International UK Limited (Registered in England under number 3580122) whose registered office is at Unit 9 Ing's Mill, Ossett, West Yorkshire, WF5 9HQ
"Order Confirmation"	the written acceptance by Joalpe of any order placed by the Buyer; and
"Terms"	the General Conditions of Sale set out in this document and (unless the context otherwise requires) including any special terms agreed in writing between the Buyer and Joalpe

1.2 References to the singular shall include the plural and to the masculine shall include the feminine and vice versa and reference to persons shall include bodies corporate and unincorporated

1.3 References to the provision of any legislation shall include any such legislation as from time to time may be amended, extended or replaced whether before or after the date hereof

1.4 References to clauses shall be references to clauses in this Agreement The clause headings in the Terms are for convenience only and shall not affect their interpretation

#### 2 AGREEMENT

2.1 Joalpe shall sell and the Buyer shall purchase the Goods subject to the Terms and the Order Confirmation which together shall form the Contract and the Contract shall form the entire agreement between the parties to the exclusion of any other terms which the Buyer may purport to apply. If the Terms are varied with the agreement of the parties, the details of such variation may be set out in the Order Confirmation. Otherwise, no variation to the Terms shall be binding unless agreed by a director of Joalpe

2.2 The agents of Joalpe are not authorised to make any representations concerning the Goods and any such representation shall not have effect unless confirmed by Joalpe in writing and in entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed. Furthermore any advice or recommendation given to the Buyer by agents of Joalpe as to the storage, application or use of the Goods which is not confirmed in writing by Joalpe is followed or acted on entirely at the Buyer's own risk, and accordingly Joalpe shall not be liable for any such advice or recommendation which is not so confirmed

2.3 Any typographical, clerical or other error or omission in any sales literature, price list, Order Confirmation, invoice or other document or information issued by Joalpe shall be subject to correction without any liability on the part of Joalpe

#### 3 ORDERS AND SPECIFICATIONS

3.1 Joalpe will not accept verbal orders from the Buyer and any order submitted by the Buyer shall not be deemed to be accepted by Joalpe unless and until an Order Confirmation is issued by Joalpe

3.2 The quantity, quality and description of the Goods and any specification for them shall be as set out in the Buyer's order (subject to acceptance by Joalpe). The Buyer shall be responsible to Joalpe for ensuring the accuracy of the terms of any order submitted by the Buyer, and for giving Joalpe any necessary information relating to the Goods within a sufficient time to enable Joalpe to perform its obligations in accordance with the terms of the Contract

3.3 Joalpe reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EU requirements

3.4 No order which has been accepted by Joalpe may be cancelled by the Buyer except with the agreement in writing of Joalpe and on terms that the Buyer shall indemnify Joalpe in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Joalpe as a result of cancellation

#### 4 PRICE

4.1 The price of the Goods shall be the quoted price as notified to the Buyer by Joalpe. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by Joalpe without giving notice to the Buyer. Where no price has been quoted to the Buyer (or a quoted price is no longer valid), the price of the Goods shall be the price listed in Joalpe's published price list current at the date of issue of the Order Confirmation

4.2 Joalpe 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 Joalpe which is due to any factor beyond the control of Joalpe (including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture, any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give Joalpe adequate information or instructions)

4.3 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to Joalpe

#### 5 PAYMENT TERMS

5.1 Subject to any special terms agreed in writing between the Buyer and Joalpe, Joalpe may invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, (unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods in which event Joalpe shall be entitled to invoice the Buyer for the price at any time after Joalpe has notified the Buyer that the Goods are ready for collection or (as the case may be) Joalpe has tendered delivery of the Goods).

5.2 The Buyer shall pay the price of the Goods (less any discount to which the

Buyer is entitled, but without any other deduction) within 30 days of the date of Joalpe's invoice, and Joalpe shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The parties agree that the time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only on request

5.3 If the Buyer fails to make any payment on the due date as described in clause 5.2 then, without limiting any other right or remedy available to Joalpe, Joalpe may at its sole option;

- (1) cancel the Contract and/or suspend any further deliveries to the Buyer; and
- (2) charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 2% per cent per annum above Co-operative Bank plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest)

#### 6 DELIVERY

6.1 Delivery of the Goods shall be made as described in the Order Confirmation, which may be the Buyer collecting the Goods at Joalpe's premises at any time after Joalpe has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by Joalpe, by Joalpe delivering the Goods to that place

6.2 Any dates quoted for delivery of the Goods are approximate only and Joalpe shall not be liable for any delay in delivery of the Goods however caused. The Goods may be delivered by Joalpe in advance of the quoted delivery date on Joalpe giving reasonable notice to the Buyer. Unless previously agreed by Joalpe in writing, the parties agree that time for delivery shall not be of the essence of the Contract

6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by Joalpe to deliver any one or more of the instalments in accordance with the Terms or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated

6.4 If the Buyer fails to take delivery of the Goods or fails to give Joalpe adequate delivery instructions (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of Joalpe's fault) then, without limiting any other right or remedy available to Joalpe, Joalpe may:

- (1) store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- (2) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract

#### 7 RISK AND PROPERTY

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

- (1) in the case of Goods to be delivered at Joalpe's premises at the time when Joalpe notifies the Buyer that the Goods are available for collection; or
- (2) in the case of Goods to be delivered otherwise than at Joalpe's premises at the time of delivery (or if the Buyer wrongfully fails to take delivery of the Goods the time when Joalpe has tendered delivery of the Goods)

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of the Terms, the property in the Goods shall not pass to the Buyer until Joalpe has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by Joalpe to the Buyer for which payment is then due

7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as Joalpe's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as Joalpe's property, but the Buyer may resell or use the Goods in the ordinary course of its business

7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), Joalpe may at any time require the Buyer to deliver up the Goods to Joalpe and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the Goods are stored and repossess the Goods

7.5 The Buyer 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 Joalpe, but if the Buyer does so all moneys owing by the Buyer to Joalpe shall (without limiting any other right or remedy of Joalpe) forthwith become due and payable

#### 8 WARRANTIES AND LIABILITY

8.1 Subject to the following provisions, Joalpe warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship

8.2 Joalpe shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment

8.3 Subject as expressly provided in the Terms, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law

8.4 A claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to Joalpe within seven days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify Joalpe accordingly, the Buyer shall not be entitled to reject the Goods and Joalpe shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract

8.5 Where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods or their failure to meet specification is notified to Joalpe in accordance with the Terms, Joalpe may replace the Goods (or the part in question) free of charge or at its sole option refund to the Buyer the price of the Goods (or a proportionate part of the price) in which case Joalpe shall have no further liability to the Buyer

8.6 Except in respect of death or personal injury caused by Joalpe's negligence, or liability for defective products under the Consumer Protection Act 1987, Joalpe shall not be liable to the Buyer by reason of any representation (unless fraudulent) or any implied warranty condition or other term or any duty at common law or under the express terms of the Contract for loss of profit or for any indirect special or consequential loss or damage costs expenses or other claims for compensation whatsoever (whether caused by the negligence of Joalpe, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use or resale by the Buyer and the entire liability of Joalpe under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in the Terms

8.7 Joalpe shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of Joalpe's obligations in relation to the Goods if the delay or failure was due to any cause beyond Joalpe's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond Joalpe's reasonable control:

- (1) act of God, explosion, flood, tempest, fire or accident;
- (2) war or threat of war, sabotage, insurrection, civil disturbance or requisition, acts, restrictions, regulations, bye-laws, prohibitions, import or export regulations or embargoes or measures of any kind on the part of any governmental, parliamentary or local authority; or
- (3) strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of Joalpe or of a third party) or difficulties in obtaining raw materials, labour, fuel, parts or machinery or power failure or breakdown in machinery

#### 9 INDEMNITY

9.1 If a claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person then Joalpe shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:

- (1) Joalpe is given full control of any proceedings or negotiations in connection with the claim;
- (2) the Buyer shall give Joalpe all reasonable assistance for the purposes of any such proceedings or negotiations;
- (3) except pursuant to a final award, the Buyer shall not pay or accept the claim, or compromise any such proceedings without the consent of Joalpe (which shall not be unreasonably withheld);
- (4) the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);
- (5) Joalpe shall be entitled to the benefit of, and the Buyer shall accordingly account to Joalpe for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and
- (6) without limiting any duty of the Buyer at common law, Joalpe may require the Buyer to take such steps as Joalpe may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which Joalpe is liable to indemnify the Buyer under this clause

#### 10 INSOLVENCY OF BUYER

If the Buyer makes a voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer or the Buyer ceases, or threatens to cease, to carry on business or Joalpe reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly then without limiting any other right or remedy available to Joalpe Joalpe may cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary

#### 11 EXPORT TERMS

11.1 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 the Terms, but if there is any conflict between the provisions of Incoterms and the Terms, the latter shall prevail

11.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 11 shall (subject to any special terms agreed in writing between the Buyer and Joalpe) apply notwithstanding any other provision of the Terms

11.3 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

11.4 Unless otherwise agreed in writing between the Buyer and Joalpe, the Goods shall be delivered FOB the air or sea port of shipment and Joalpe shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979

11.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods at Joalpe's premises before shipment. Joalpe 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

11.6 Payment of all amounts due to Joalpe shall be made by irrevocable letter of credit opened by the Buyer in favour of Joalpe and confirmed by a bank in England acceptable to Joalpe or, if Joalpe has agreed in writing on or before acceptance of the Buyer's order to waive this requirement, by acceptance by the Buyer and delivery to Joalpe of a bill of exchange drawn on the Buyer payable 60 days after sight to the order of Joalpe at such branch of Bank in England as may be specified in the bill of exchange

11.7 Unless otherwise agreed in advance by Joalpe, the Buyer shall not offer the Goods for resale outside the United Kingdom or Republic of Ireland or sell the Goods to any person if the Buyer knows or has reason to believe that that person intends to resell the Goods outside such territories

#### 12 GENERAL

12.1 A notice required or permitted to be given by either party to the other under the Contract shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice and such notice shall be deemed effectively given two days after the day of posting or if delivered by hand at the time that it would first be received by the addressee in normal business hours

12.2 No waiver by Joalpe of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision

12.3 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected

12.4 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) nominated on the application of either party by the Director General for the time being of the Chartered Institute of Arbitrators in accordance with and subject to the provisions of the Arbitration Act 1996 (or any statutory modification or re-enactment thereof for the time being in force)

12.5 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts