

TERMS AND CONDITIONS FOR THE SALE OF GOODS  
SEYCHELL ENGINEERING AND FABRICATION LIMITED

**The customer's attention is drawn in particular to the provisions of clause 10.**

## **1 Interpretation**

**1.1 Definitions.** In these Conditions, the following definitions apply:

**Agreed Tolerance:** the percentage agreed (if any) for the purposes of clause 4.8.

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

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 12.6.

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

**Customer:** the person or firm who purchases the Goods from Seychell.

**Force Majeure Event:** has the meaning given in clause 11.

**Goods:** the goods (or any part of them) set out in the Order and includes, where the contract so requires, any tooling.

**Order:** the Customer's order for the Goods. **Specification:** the drawing(s) or specification for the Goods that is agreed by the Customer and Seychell.

**Seychell:** Seychell Engineering and Fabrication Limited (registered in England and Wales with company number 02656515).

**1.2 Construction.** In these Conditions, the following rules apply:

**1.2.1** A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

**1.2.2** A reference to a party includes its personal representatives, successors or permitted assigns.

**1.2.3** A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

**1.2.4** Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

**1.2.5** A reference to **writing** or **written** includes faxes and e-mails.

## **2 Basis of contract**

- 2.1** These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2** The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.
- 2.3** The Order shall only be deemed to be accepted when Seychell issues a written acceptance or confirmation of the Order, or despatches the Goods, the earlier of which time the Contract shall come into existence.
- 2.4** The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Seychell which is not set out in the Contract.
- 2.5** Any samples, drawings, descriptive matter, or advertising produced by Seychell and any descriptions or illustrations contained in Seychell's catalogues or brochures 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.
- 2.6** A quotation for the Goods given by Seychell shall not constitute an offer. A quotation shall only be valid for a period of 28 days from its date of issue.

## **3 Goods**

- 3.1** The Goods are described in the Specification.
- 3.2** The Customer shall indemnify Seychell 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 and other professional costs and expenses) suffered or incurred by Seychell in connection with any claim made against Seychell for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Seychell's use of the Specification. This clause 3.2 shall survive termination of the Contract
- 3.3** Seychell reserves the right to amend the description of the Goods or the Specification if required by any applicable statutory or regulatory requirements.

## **4 Delivery**

- 4.1** Seychell shall ensure that:
  - 4.1.1** each delivery of the Goods is accompanied by a delivery note which shows all relevant Customer and Seychell reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable); and
  - 4.1.2** if Seychell requires the Customer to return any packaging materials to Seychell, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times

as Seychell shall reasonably request. Returns of packaging materials shall be at the Customer's expense.

- 4.2** Seychell shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after Seychell notifies the Customer that the Goods are ready.
- 4.3** Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location (where Seychell delivers) **or** on the completion of loading of the Goods at the Delivery Location (where the Customer collects).
- 4.4** Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Seychell shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Seychell with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5** If Seychell fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Seychell shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or 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.
- 4.6** If the Customer fails to accept delivery of the Goods within 3 Business Days of Seychell notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Seychell's failure to comply with its obligations under the Contract:
- 4.6.1** delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which Seychell notified the Customer that the Goods were ready; and
- 4.6.2** Seychell shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7** If 10 Business Days after the day on which Seychell notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, Seychell may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.8** The Customer shall not be entitled to reject the Goods if Seychell delivers up to and including the Agreed Tolerance more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- 4.9** Seychell may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## **5 Quality**

**5.1** Seychell warrants that on delivery, and for a period of 3 months from the date of delivery (**warranty period**), the Goods shall:

**5.1.1** conform in all material respects with the Specification; and

**5.1.2** be free from material defects in material and workmanship.

**5.2** Subject to clause 5.3, if:

**5.2.1** the Customer gives notice in writing to Seychell within 3 Business Days of discovery and in any event during the warranty period that some or all of the Goods do not comply with the warranty set out in clause 5.1;

**5.2.2** Seychell is given a reasonable opportunity of examining such Goods; and

**5.2.3** the Customer (if asked to do so by Seychell) returns such Goods to Seychell's place of business at the Customer's cost,

Seychell shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full. If the Goods have been incorporated into any other product not supplied by Seychell, the Customer shall be responsible for the cost of removing the Goods from that product before returning it to Seychell in accordance with this clause 5.2.

**5.3** Seychell shall not be liable for Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:

**5.3.1** the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;

**5.3.2** the defect arises because the Customer failed to follow Seychell'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;

**5.3.3** the defect arises as a result of Seychell following any drawing, design or Specification supplied by the Customer;

**5.3.4** the Customer alters or repairs such Goods without the written consent of Seychell;

**5.3.5** the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

**5.3.6** 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.

**5.4** Except as provided in this clause 5, Seychell shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

**5.5** These Conditions shall apply to any repaired or replacement Goods supplied by Seychell.

- 5.6** No warranty is given or any liability accepted by Seychell in respect of any technical information or advice given to the Customer by Seychell or any of its employees.

## **6 Title and risk**

- 6.1** The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2** Title to the Goods shall not pass to the Customer until Seychell has received payment in full (in cash or cleared funds) for:
- 6.2.1** the Goods; and
  - 6.2.2** any other goods or services that Seychell has supplied to the Customer in respect of which payment has become due.
- 6.3** Until title to the Goods has passed to the Customer, the Customer shall:
- 6.3.1** hold the Goods on a fiduciary basis as Seychell's bailee;
  - 6.3.2** store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Seychell's property;
  - 6.3.3** not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 6.3.4** maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - 6.3.5** notify Seychell immediately if it becomes subject to any of the events listed in clause 9.2; and
  - 6.3.6** give Seychell such information relating to the Goods as Seychell may require from time to time,
- but the Customer may resell or use the Goods in the ordinary course of its business.
- 6.4** If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 9.2, or Seychell reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Seychell may have, Seychell may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **7 Tooling**

- 7.1** In the event that any tooling needs (in Seychell's opinion) to be repaired or replaced, Seychell shall be entitled to charge the Customer in respect of such repair or replacement (including but not limited to any replacement parts).
- 7.2** If any tooling (owned by the Customer) is not used by Seychell for a period of three years or more, Seychell shall give to the Customer no less than one month's notice in writing requesting the Customer to, at its own expense, remove such tooling from

Seychell's premises. If, by the expiry of such notice, the Customer has not removed all of the relevant tooling from Seychell's premises, Seychell shall at its discretion be entitled to sell or otherwise dispose of such tooling itself and retain all proceeds of sale in respect of the same or charge such storage fee as Seychell considers appropriate.

- 7.3** In the event that any tooling needs (in Seychell's opinion) to be maintained excessively, Seychell shall be entitled to charge the Customer for such maintenance.
- 7.4** Without prejudice to any other right or remedy that it may have, Seychell shall be entitled to retain possession of any tooling belonging to the Customer until such time as the Customer has paid all sums due to Seychell under the Contract.
- 7.5** For the avoidance of doubt, if tooling is supplied by Seychell at no charge to the Customer, title to such tooling shall at all times belong to Seychell.

## **8 Price and payment**

- 8.1** The price of the Goods shall be the price set out in the relevant quotation provided by Seychell to the Customer, or, if no price is quoted or if the quote has expired, the price stipulated by Seychell.
- 8.2** Seychell may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
  - 8.2.1** any factor beyond Seychell's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - 8.2.2** any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
  - 8.2.3** any delay caused by any instructions of the Customer or failure of the Customer to give Seychell adequate or accurate information or instructions.
- 8.3** The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 8.4** The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from Seychell, pay to Seychell such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 8.5** The price of the Goods is for the stipulated quantities only and shall not be taken to apply to any order for different quantities.
- 8.6** Seychell may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 8.7** The Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by Seychell. Time of payment is of the essence.

- 8.8** If the Customer fails to make any payment due to Seychell under the Contract by the due date for payment (**due date**), then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 8.9** The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Seychell in order to justify withholding payment of any such amount in whole or in part. Seychell may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Seychell to the Customer.

## **9 Customer's insolvency or incapacity**

- 9.1** If the Customer becomes subject to any of the events listed in clause 9.2, or Seychell reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to Seychell, Seychell may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and Seychell without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.
- 9.2** For the purposes of clause 9.1, the relevant events are:
- 9.2.1** the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
  - 9.2.2** the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
  - 9.2.3** (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
  - 9.2.4** (being an individual) the Customer is the subject of a bankruptcy petition or order;

- 9.2.5 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - 9.2.6 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
  - 9.2.7 (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
  - 9.2.8 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
  - 9.2.9 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2.1 to clause 9.2.8 (inclusive);
  - 9.2.10 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
  - 9.2.11 the Customer's financial position or credit rating deteriorates to such an extent that in Seychell's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
  - 9.2.12 (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 9.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## 10 Limitation of liability

- 10.1 This clause sets out the entire financial liability of the parties (including any liability for the acts or omissions of their respective employees, agents and subcontractors) to each other in respect of:
- 10.1.1 any breach of the Contract however arising;
  - 10.1.2 any use made or resale of the Goods by the Customer, or of any product incorporating any of the Goods; and
  - 10.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 10.2 Nothing in this agreement shall limit or exclude the liability of either party for:
- 10.2.1 death or personal injury resulting from negligence; or
  - 10.2.2 fraud or fraudulent misrepresentation; or
  - 10.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - 10.2.4 breach of section 2 of the Consumer Protection Act 1987; or



10.2.5 any matter in respect of which it would be unlawful for Seychell to exclude or restrict liability.

10.3 Without prejudice to clause 10.2, Seychell shall not under any circumstances whatever be liable to the Customer, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:

10.3.1 loss of profit; or

10.3.2 loss of goodwill; or

10.3.3 loss of business; or

10.3.4 loss of business opportunity; or

10.3.5 loss of anticipated saving; or

10.3.6 loss of use; or

10.3.7 any cost, loss, damage or expense incurred by the Customer arising out of or in connection with the removal of any defective Goods and/or the installation of any replacement goods; or

10.3.8 wasted costs or expenditure; or

10.3.9 special, indirect, consequential or pure economic loss, cost, damages, charges or expense; and

suffered by the Customer that arises under or in connection with the Contract.

10.4 Without prejudice to clause 10.2 or clause 10.3, and subject to clause 10.5 Seychell's total liability to the Customer in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount paid by the Customer to Seychell for the Goods in respect of which the claim relates.

10.5 Where a claim relates to loss, stolen, damaged or destroyed goods of the Customer (not being Goods) whilst in the possession of Seychell, Seychell's total liability arising in connection with such Goods shall be limited to the replacement cost of the same.

10.6 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

10.7 This clause 10 shall survive termination of the Contract.

## 11 Force majeure

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war,

terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

## **12 General**

### **12.1 Assignment and subcontracting.**

**12.1.1** Seychell may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

**12.1.2** The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Seychell.

### **12.2 Notices.**

**12.2.1** Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail(to sales@seychell.group.com).

**12.2.2** A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2.1; if sent by pre-paid first class post or recorded delivery, 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 fax or e-mail (to sales@seychell.group.com)., one Business Day after transmission.

**12.2.3** The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### **12.3 Severance.**

**12.3.1** If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

**12.3.2** If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

**12.4 Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

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 preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

**12.5 Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.

**12.6 Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by Seychell.

**12.7 Governing law and jurisdiction.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.