

TERMS AND CONDITIONS OF SALE – COBORN ENGINEERING CO. LTD

As we can accept your order and make a legally enforceable agreement without further reference to you, you must read these terms and conditions to make sure that they contain all that you want and nothing that you are not happy with. If you are not sure about anything, please contact us by phone on +44 (0) 1708 744 666 or send an email to sales@coborn.com with your enquiry.

We are Coborn Engineering Co. Ltd (the **Supplier**), a company registered in England and Wales under registration number 00376609 whose registered office is at Chesham Close, Cedar Road, Romford, Essex, RM7 7PJ.

Our contact details are:

- Email to sales@coborn.com
- or telephone +44 (0) 1708 744 666
- fax number +44 (0) 1708 725187

These are the terms and conditions on which we sell all Products to you. By ordering any of the Products, you agree to be bound by these terms and conditions.

The customer's attention is drawn in particular to the provisions of clause 8.

1. Interpretation

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England, 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 12.4.

Contract: each contract between the Supplier and the Customer for the sale and purchase of the Products in accordance with these Conditions.

Customer: the person or firm who purchases the Products from the Supplier.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and any other European Union legislation relating to personal data.

Delivery Location: means the Customer's premises or other location where the Products are to be supplied, as set out in the Order;

Force Majeure Event: an event, circumstance or cause beyond a party's reasonable control.

Products: the Products (or any part of them) set out in the Order.

Order means the Customer's order for the Products from the Supplier as set out in the Customer's written order or in the Customer's written acceptance of the Supplier's quotation.

Order Confirmation: an order confirmation document or written confirmation of order, sent by the Supplier to the Customer, agreeing to fulfil an Order and confirming the Order Number of the Order.

Order Form: an order form, sent by the Customer to the Supplier, requesting the supply of Products.

Order Number: the number applied to an Order by the Supplier on receipt of an Order Form.

Specification: any specification for the Products, including any related plans and drawings, which is agreed in writing by the Customer and the Supplier.

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its successors and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing or written** includes fax and email.

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 law, trade custom, practice or course of dealing.
- 2.2 When the Customer wishes to place an Order, it shall send a written Order Form to the Supplier.
- 2.3 Each Order shall be deemed to be a separate offer by the Customer to buy Products in accordance with these Conditions, which the Supplier shall be free to accept or decline at its absolute discretion.
- 2.4 The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 2.5 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order by email (or if earlier, the Supplier's delivery of Products to the Customer) at which point the Contract shall come into existence.
- 2.6 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.7 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Products referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.8 A quotation for the Products given by the Supplier shall not constitute an offer. A quotation shall be valid for a period of 30 days from its date of issue (unless the Supplier expressly withdraw it at an earlier time).

3. Products

- 3.1 The Products are described in the Supplier's website and brochures.

- 3.2 To the extent that the Products are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier 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 reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

4. Delivery

- 4.1 The Supplier shall deliver the Products to the Delivery Location.
- 4.2 Delivery is completed on the completion of unloading of the Products at the Delivery Location.
- 4.3 Any dates quoted for delivery are approximate only, and although estimated delivery dates are prepared with the utmost care and attention, any date given for dispatch of the Products is an estimate only and no liability can be accepted by the Supplier for the consequences of any delay. The time of delivery is not of the essence.
- 4.4 If the Supplier fails to deliver the Products, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement Products of similar description and quality in the cheapest market available, less the price of the Products. The Supplier shall have no liability for any failure to deliver the Products 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 Products.
- 4.5 If the Customer fails to accept delivery of the Products then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract then delivery of the Products shall be deemed to have been completed and the Supplier shall store the Products until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.6 If ten Business Days after the day on which the Supplier notified the Customer that the Products were ready for delivery the Customer has not accepted actual delivery of them, the Supplier may resell or otherwise dispose of part or all of the Products and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Products or charge the Customer for any shortfall below the price of the Products.
- 4.7 The Customer is responsible for paying any import duties or other applicable taxes.
- 4.8 The Supplier may deliver the Products by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. Quality

- 5.1 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Products shall:
- (a) conform in all material respects with their description and any applicable Specification; and
 - (b) be free from material defects in design, material and workmanship; and
 - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

- (d) be reasonably fit for any particular purpose for which you buy the Products which, before the Contract is made, you made known to us and be fit for any purpose held out by us or set out in the Contract

5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing to the Supplier during the warranty period within a reasonable time of discovery that some or all of the Products do not comply with the warranty set out in clause 5.1;
- (b) the Supplier is given a reasonable opportunity of examining such Products; and
- (c) the Customer (if asked to do so by the Supplier) returns such Products to the Supplier's place of business at the Customer's cost,

The Supplier shall, at its option, repair or replace the defective Products, or refund the price of the defective Products in full.

5.3 The Supplier shall not be liable for the Products' failure to comply with the warranty set out in clause 5.1 in any of the following events:

- (a) the Customer makes any further use of such Products after giving notice in accordance with clause 5.1 (a);
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Products or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
- (d) the Customer alters or repairs such Products without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the equipment is transferred to another site other than the original delivery address, or any defect is caused by faulty materials or workmanship used on the Products.

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

5.5 The terms implied by sections 13 to 15 of the Sale of Products Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any repaired or replacement Products supplied by the Supplier.

6. Title and risk

6.1 The risk in the Products shall pass to the Customer on completion of delivery. The Customer is strongly advised to take out appropriate insurances.

6.2 Title to the Products shall not pass to the Customer until the earlier of:

- (a) the Supplier receives payment in full (in cash or cleared funds) for the Products, in which case title to the Products shall pass at the time of payment; and
- (b) the Customer resells the Products, in which case title to the Products shall pass to the Customer at the time specified in clause 6.4

6.3 Until title to the Products has passed to the Customer, the Customer shall:

- (a) store the Products separately from all other Products held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
- (c) maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d); and
- (e) give the Supplier such information relating to the Products as the Supplier may require from time to time.

6.4 Subject to clause 6.5, the Customer may resell or use the Products in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Products. However, if the Customer resells the Products before that time:

- (a) it does so as principal and not as the Supplier's agent; and
- (b) title to the Products shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

6.5 If before title to the Products passes to the Customer the Customer becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d), then, without limiting any other right or remedy the Supplier may have:

- (a) the Customer's right to resell the Products or use them in the ordinary course of its business ceases immediately; and
- (b) the Supplier may at any time:
 - (i) require the Customer to deliver up all Products in its possession that have not been resold, or irrevocably incorporated into another product; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them.

7. Price and payment

7.1 The price of the Products and any additional delivery or other charges is that set out in our price list current at the date we accepted the Order or such other price as we may agree in writing.

7.2 The Supplier may, by giving notice to the Customer at any time up to 10 Business Days before delivery, increase the price of the Products to reflect any increase in the cost of the Products that is due to:

- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Products ordered, or the Specification; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

7.3 The price of the Products:

- (a) exclude VAT (or any other applicable sales tax) at the rate applicable at the time of the Order, which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and

- (b) excludes the costs and charges of packaging, insurance and transport of the Products, which shall be invoiced to the Customer.

7.4 The Customer shall pay each invoice submitted by the Supplier:

- (a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

7.5 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 9 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.5 will accrue each day at 4% a year above the Bank of England's base rate from time to time.

7.6 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8. Limitation of liability

8.1 The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £5,000,000 GBP per claim. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

8.2 The restrictions on liability in this clause 8 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

8.3 Nothing in the Contract limits any liability which cannot legally be limited.

Subject to Clause 8.3 the Supplier's total liability to the Customer shall not exceed the cap.

(a) In this Clause 8.4:

- (i) **cap.** The cap is the greater of £250 and 75% of the total charges in the 12 month period prior to the relevant breaches occurring (subject always to the cap being limited in all cases to the sum set out in clause 8.1);
- (ii) **total charges.** The total charges means all sums paid by the Customer to the Supplier in respect of Goods actually supplied by the Supplier.

8.4 Subject to clause 8.3, the following types of loss are wholly excluded:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

8.5 This clause 8 shall survive termination of the Contract.

9. Termination

- 9.1 Without limiting its other rights or remedies, the Supplier may terminate any Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
 - (b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 9.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Products under any Contract if the Customer becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under any Contract on the due date for payment.
- 9.3 Without limiting its other rights or remedies, the Supplier may terminate any Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 9.4 On termination of Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Products supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 9.5 Termination of a Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Any provision of a Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

10. Force majeure

Neither party shall be in breach of Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for four months, the party not affected may terminate this agreement by giving 14 days' written notice to the affected party.

11. Data Protection

- 11.1 Both parties will comply with all applicable requirements of the **Data Protection Legislation**. This **clause 11.1** is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the **Data Protection Legislation**.

- 11.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor.
- 11.3 The Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of any Personal Data that it provides to the Supplier.
- 11.4 If the Supplier processes Personal Data provided by the Customer in order to provide Goods to the Customer the Supplier will process such Personal Data in accordance with the Supplier's privacy policy which can be found on its website at www.coborn.com/privacy-policy.

12. General

12.1 Assignment and other dealings.

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

12.2 Confidentiality.

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.2(b).
- (b) Each party may disclose the other party's confidential information:
- (i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 12.2; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

12.3 Entire agreement.

- (a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

12.4 Variation. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

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

12.6 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision of the Contract is deemed deleted under this clause 12.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

12.7 Notices.

- (a) Any notice given to a party under or in connection with this agreement shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by fax to its main fax number or sent by email to the address set out below
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
 - (iii) if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 12.7(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

12.8 Third party rights. Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

12.9 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

12.10 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.