

HOME SALES

1 INTERPRETATION AND CONSTRUCTION

1.1 Definitions

In these Conditions, the following definitions apply:

Business Day:

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

Company:

Victor Manufacturing Limited registered in England and Wales with registered number 00390738 whose registered office is at Prospect Works, Off South Street, Keighley, BD21 5AA.

Conditions:

The terms and conditions set out in this document as amended from time to time.

Contract:

The contract between the Company 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 the Company.

Force Majeure Event:

Has the meaning given in clause 16.

Goods:

The goods (or any part of them) set out in the Order.

Order:

The Customer's order for the Goods, as set out in the Customer's purchase order form.

Specification:

Any specification for the Goods, including any related plans and drawings, provided by the Customer or a third party on behalf of the Customer.

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 GENERAL

2.1 The Company will sell and the Customer will buy the Goods in accordance with these terms and conditions.

2.2 These Conditions supersede any purchase conditions printed on any documents, invoices, orders, etc., supplied by the Customer, whether or not signed by an official of the Company and, any other terms that the Customer seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing.

2.3 All quotations made and Orders received are subject to these Conditions and no alterations will take effect unless confirmed by the Company in writing.

2.4 The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.

2.5 The Company's employees or agents are not authorised to make any statement, promise, representation, warranty or undertaking concerning the Goods that is not confirmed by a Company director in writing. In entering into the Contract the Customer acknowledges that it does not rely on any such statement, promise, representation, warranty or undertaking which is not so confirmed and, that the Contract constitutes the entire agreement between the parties.

3 VALIDITY

3.1 Unless otherwise stated any quotation issued by the Company will remain valid for 30 days, and will then lapse. A quotation shall not constitute an offer. The Order made by the Customer based on a quotation or, an Order for Goods directly from the Company's brochures (as appropriate) shall be the Offer.

3.2 The Order shall be deemed to be accepted when the Company issues a written acceptance of the Order or, delivers the Goods (whichever is the earlier) at which point the Contract will come into existence.

4 PRICES

4.1 Unless otherwise agreed by the Company, the price of the Goods will be the Company's quoted price as stated in the price list current at the time of the Order. The Company

reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Company due to:

4.1.1 any fault or error or omission or delay caused by the Customer, failing to give adequate or accurate information or instructions; or

4.1.2 any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); or

4.1.3 any request by the Customer to change the delivery date(s), quantities or types of Goods, the Order, (or the Specification).

4.2 Unless otherwise specified, prices include the cost of supply and delivery of the Goods (within mainland United Kingdom), but exclude their off-loading, positioning or installation.

4.3 All prices are exclusive of Value Added Tax (VAT), which will be charged as applicable.

5 PAYMENT

5.1 The Company will be entitled to invoice the Customer for the price of the Goods before or after delivery of the Goods. The time of payment of the price will be of the essence of the Contract.

5.2 Unless the Company agrees otherwise, all Orders must be paid by the Customer to the Company in full, in cleared funds, as a condition precedent to despatching the Goods. In all other cases (unless special terms are agreed by a director of the Company in writing at or before the placing of the Order, payment must be received in full, in cleared funds, not later than the end of the month following that in which the Goods have been invoiced.

5.3 Where payment is not received by the due date the Company reserves the right to charge interest at the rate of 2% of the full outstanding invoice price charged for each month or part of a month that payment is overdue, which will be compounded monthly, until the date of actual payment and whether before or after any judgment and/or, at the Company's option, to suspend all deliveries of all Goods to the Customer, against any Contract and/or to terminate the Contract, and/or any other Contracts. Nothing in this Condition will prevent or restrict the Company recovering any sums due or damages from the Customer.

5.4 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 the Company in order to

justify withholding payment of any such amount in whole or in part. The Company 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 the Company to the Customer.

5.5 Should the Company be prevented by the Customer, from effecting delivery on the agreed date, delivery shall be deemed to have been completed and the provisions of Condition 6.4 shall apply.

6 DELIVERY

6.1 The Company shall deliver the Goods, subject to the remainder of this Condition 6, to the place and at the times set out in the Order.

6.2 Any time expressed for delivery will be deemed to be an estimate only, delivery time not being of the essence of the Contract unless separately agreed to in writing by the Company.

6.3 Where the Goods are to be delivered in instalments, each delivery will constitute a separate Contract and will be invoiced and paid for separately. Any failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments will not entitle the Customer to cancel any other instalment, or to treat the Contract as a whole as repudiated.

6.4 Where a time for delivery is agreed and the Customer fails, for whatever reason (excluding a Force Majeure Event) to accept delivery, the Company reserves the right to make a reasonable charge for further delivery, storage and insurance of the Goods and will not be required to deliver the Goods afterwards unless that reasonable charge is met. If after 10 Business Days the Customer has not taken delivery of the Goods, and those Goods are not to the Specification of the Customer, the Company 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, paid in cleared funds, or charge the Customer for any shortfall below the price of the Goods. If the Goods are manufactured to the Customer's Specification and the Customer fails, for whatever reason, to accept delivery, the Goods shall be treated as Bespoke Items and the Order shall be treated as cancelled and, the provisions of clause 7.3 shall apply.

6.5 The Customer will provide, at its own risk and expense, adequate unloading facilities at the place of delivery. If, at the request of the Customer or because the Customer has failed to provide adequate labour for unloading, the Company unloads the Goods, the Company will not be liable for any damages to

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the Goods caused or constituted by the acts or omissions of the Company during off-loading which shall be limited as set out in Condition 8.1.

6.6 If advance notice of the approximate arrival time is required, this must be stated on the Order.

6.7 The Company 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 the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

6.8 The Company reserves the right to appoint, where it deems appropriate, third party carriers to deliver the Goods. In such circumstances, the Company's liability shall be limited as set out in clause 8.5.

7 CANCELLATION

7.1 "Bespoke Items" means any Goods which are manufactured by the Company to the Specification of the Customer.

7.2 On all Goods which are not Bespoke Items (and as a genuine attempt to estimate the net loss, including administration and other costs suffered by the Company as a result of cancellation), a cancellation charge of 30% of the trade price of the relevant Good(s) will be charged to the Customer.

7.3 If manufacture has commenced of any Bespoke Item(s) (and as a genuine attempt to estimate the net loss suffered by the Company as a result of cancellation) a cancellation charge of an amount equal to all reasonable manufacturing costs (incurred by the Company up to the time when the Company received from the Customer notice of cancellation) will be charged to the Customer. If the relevant Goods have been despatched the Company may levy a charge to the Customer equal to all reasonable costs of carriage by the Company in regard to the relevant Goods.

7.4 Without prejudice to the remainder of this clause 7, the Company shall have the right, upon one week's notice, to terminate the Contract. In those circumstances, the Company will only charge for Goods provided to the date of termination.

8 DAMAGE OR LOSS IN TRANSIT

8.1 The Company's responsibility ends with the arrival of Goods at the designated delivery point. The Company is not liable for any damage or loss caused during unloading, unless caused by the Company's negligence or wilful default.

8.2 Goods must be examined on arrival by the Customer and any damage or loss entered on the delivery note or if the Goods are not examined the delivery note must be signed "*unexamined*".

8.3 Damaged Goods will not be replaced or repaired if they have been used.

8.4 In the event of damage to the Goods or part of the Goods, provided this is not as a result of a Force Majeure Event, or any acts or omissions of the Customer, they will be replaced free of charge providing that:

8.4.1 the Company and, where appropriate, any third party carrier are notified, in writing, of such damage within three days of receipt of Goods;

8.4.2 the Goods and packing are returned to the Company carriage paid within fourteen days clearly marked "free for repair";

8.4.3 the Company is notified of the name and address of the carrier returning the Goods and the date the Goods were collected for return;

8.4.4 in the event of non-arrival or shortage of Goods, no claim will be entertained by the Company, unless notification is given to the Company within three days from the date of the Company's invoice.

8.5 Where the Company uses a third party carrier to deliver the Goods, the provisions of clauses 8.2 to 8.4 will continue to apply, save that the Company's entire liability shall, so far as it is legally able, be limited to the transfer of such rights as the Company has against the third party carrier, to the Customer.

9 CARRIAGE

9.1 Save for the provisions of Condition 9.2 all prices are inclusive of delivery, provided this is within the mainland of the United Kingdom. For delivery outside the mainland of the United Kingdom an additional charge for carriage will be made.

9.2 For Goods which are not manufactured by the Company a handling charge, inclusive of postage and packing, will be made.

10 PACKING

All packing is non-returnable unless specifically stated on an invoice.

11 PROPERTY AND RISK

11.1 Risk of damage to or loss of the Goods will pass at the time of delivery to the Customer or to any carrier or agent acting on its behalf. If the Customer wrongfully fails to take delivery of the Goods risk passes at the time when the Company has tendered delivery of the Goods.

11.2 Notwithstanding the passing of risk in the Goods, property in the Goods will not pass to the Customer until the Company

has received in full in cash or cleared funds, payment in full of the price:

11.2.1 of the Goods; and

11.2.2 all other Goods agreed to be sold by the Company to the Customer, for which payment is due and any applicable interest.

11.3 Until such time as the property in the Goods passes to the Customer, the Customer will:

11.3.1 hold the Goods as the Company's fiduciary agent and bailee;

11.3.2 store the Goods separately from those of the Customer and third parties, so they remain readily identifiable as the Company's property;

11.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

11.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

11.3.5 notify the Company immediately if it becomes subject to any of the events listed in Condition 17.2; and

11.3.6 give the Company such information relating to the Goods as the Company may require from time to time.

11.4 The Goods will be stored, protected and insured and identified as the Company's property. Until that time the Customer will be entitled to re-sell or use the Goods in the ordinary course of its business.

11.5 Until such time as the property in the Goods passes to the Customer, the Company will be entitled at any time, including if the Customer becomes subject to any of those events set out in Condition 17.2 upon written notice, to require the Customer to deliver up those Goods which have not been resold or irrevocably incorporated into any other Goods, to the Company. If the Customer fails to do so promptly, the Company may enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

12 DRAWINGS

All drawings and Specifications, unless agreed otherwise in writing, will remain the Company's sole property and must not be wholly or partially used or copied without the Company's written permission, which may be revoked by the Company in writing at any time and without thereby providing any reason.

13 DESCRIPTION

Illustrations, descriptions, dimensions, samples, drawings or advertising produced by the Company, in the Company's catalogues or documents, are produced for the sole purpose of giving an approximate idea of the Goods described. They shall not form part of the Contract or have contractual force and, do not constitute a sale by description. The Company's policy is one of continuing improvement and the Company reserves the right to vary or modify the design specification or finish of the Goods without notice, unless a written undertaking has been given to the contrary, except in circumstances where it is required to amend the Specification by any applicable statutory or regulatory requirements.

14 WARRANTIES AND LIABILITY

14.1 Where the Goods and components supplied by the Company are of the Company's design and manufacture, the Company warrants that they will be free from material defects in design, material and workmanship and that it will, or will procure that a service engineer will, subject to the remainder of this Condition 14, make good any defects in those Goods provided that the Company's liability will be limited to the free replacement of materials and components manufactured by the Company within a period of 24 months from the date of the Company's invoice.

14.2 The warranty in Condition 14.1 when applying to refrigerated Goods, is only valid provided that the Customer has:

14.2.1 carried out six monthly product maintenance using a competent qualified refrigeration engineer; and

14.2.2 kept a record of such product maintenance in a service log book, which is available for review by the Company on reasonable request.

14.3 Where the Goods and components supplied by the Company are not of the Company's design and manufacture, the Company's liability will be limited to transfer, so far as it is legally able to the Customer of the guarantee provided by the manufacturer of the Goods and components.

14.4 Where the Goods are damaged during their installation by a third party or the Goods are otherwise damaged by the Customer or a third party, the Company shall not be liable for such damages to the Goods but, may in its entire discretion, agree, for additional costs, to repair or replace the Goods so damaged, subject to these Conditions.

14.5 The Customer will notify the Company, in writing, as soon as is practical after the defect has become known and in any event, if it is a patent defect, within 5 Business Days of it coming

to the attention or when it ought reasonably to have come to the attention of the Customer.

14.6 The Company will be provided with a reasonable opportunity to examine the Goods.

14.7 The Company will not be obliged to replace any Goods or make any allowance or other arrangement if, in the reasonable opinion of the Company:

14.7.1 the defect has arisen from accident, neglect, incorrect installation, or lack of reasonable maintenance by the Customer; or

14.7.2 the defect arises as a result of the Company following any drawing, design or Specification supplied by the Customer; or

14.7.3 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

14.8 Where the defect is reasonably attributable to the fault of the Company, the Company will replace or repair the defective Goods, but will not be liable to the Customer for any costs of removal of the defective Goods, or for installation of replacement Goods.

14.9 Service calls to Goods under warranty will be carried out in accordance with these Conditions. Unless otherwise specified, a maximum of 15 minutes of administrative time, not spent directly carrying out servicing work, is provided for within the warranty. Any requirement for staff attending the call to spend greater time than 15 minutes due to administrative requirements, including health and safety risk assessments, will be chargeable at the rate prevailing at the date of the service call.

14.10 The Company will not be under any duty arising from this Condition if the Customer is in material breach of any provision of the Contract with the Company until the Customer has remedied the breach.

14.11 Nothing in these Conditions shall limit or exclude the Company's liability for:

14.11.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

14.11.2 fraud or fraudulent misrepresentation;

14.11.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;

14.11.4 any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.

14.12 Subject to Condition 14.10:

14.12.1 the Company shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

14.12.2 the Company's total liability to the Customer in respect of all other 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 £2 million.

14.13 The Company will be under no liability in respect of any defect arising from fair wear and tear, wilful damage or negligence, abnormal conditions of use or storage, failure to follow the Company's instructions (oral or written) or misuse or alteration or repair of the Goods without the Company's written approval.

14.14 These Conditions shall apply to any repaired or replacement Goods supplied by the Company.

14.15 The Company will be under no liability, under any warranty or guarantee if the total price for the Goods has not been paid by the due date for payment.

14.16 All conditions and warranties which are implied by statute or common law or otherwise in to the Contract, or otherwise relating to the sale of Goods, are excluded to the maximum extent permissible in law.

15 INDEMNITY

The Customer will indemnify the Company against all liabilities, losses, including any indirect, direct or consequential losses, loss of profit, loss of reputation, damages, penalties, costs and expenses which the Company may suffer or incur if any work done in accordance with the Customer's Specification results in any actual or alleged infringement of any third party intellectual property rights.

16 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.

17 INSOLVENCY

17.1 If the Customer becomes subject to any of the events listed in Condition 17.2, or the Company 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 the Company, the Company may cancel or suspend all further deliveries under the Contract or under any other Contract between the Customer and the Company without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

17.2 For the purposes of Condition 17.1, the relevant events are:

17.2.1 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;

17.2.2 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;

17.2.3 (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;

17.2.4 (being an individual) the Customer is the subject of a bankruptcy petition or order;

17.2.5 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;

17.2.6 (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;

17.2.7 (being a company) a floating charge holder over the

Customer's assets has become entitled to appoint or has appointed an administrative receiver;

17.2.8 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;

17.2.9 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 Condition 17.2.1 to Condition 17.2.8 (inclusive);

17.2.10 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;

17.2.11 the Customer's financial position deteriorates to such an extent that in the Company's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and

17.2.12 (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.

17.3 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.

18 MEDIATION

The Company and the Customer will use their best efforts to negotiate in good faith and settle amicably any dispute that may arise out of or relate to the Contract or any breach of it. If any such dispute cannot be settled amicably through ordinary negotiations by appropriate representatives of the Company and the Customer, the dispute will be referred to the Chief Executive Officer of the Company and the Customer who will meet in order to attempt to resolve the dispute in good faith. If any such meeting fails to result in a settlement, the parties will attempt to settle the dispute by the use of the procedure known as Alternative Dispute Resolution ("**ADR**"). The parties agree that they will appoint a mediator by mutual agreement or (failing mutual agreement) will apply to the President of the London Chamber of Commerce to appoint a mediator, to assist them in such negotiations. Both parties agree to co-operate fully with such a mediator, to provide such assistance as is necessary to enable the mediator to discharge his duties, and to bear equally between them the fees and expenses of the mediator.

19 INTELLECTUAL PROPERTY

The Customer acknowledges that unless specifically agreed by the Company, in writing, all intellectual property rights in the Goods and any parts of the Goods and in all the documents provided by the Company is and remains at all times the sole property of the Company.

20 RIGHTS OF THIRD PARTIES

For the purposes of the Contracts (Rights of Third Parties) Act 1999 the Customer agrees that it does not intend any terms of this deed to be enforceable by any third party who, but for the Act, would not have been entitled to enforce such terms.

21 GENERAL

21.1 Assignment and subcontracting

21.1.1 The Company 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.

21.1.2 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 the Company.

21.2 Notices

21.2.1 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.

21.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in the Contract; 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, one Business Day after transmission.

21.3 Severance

21.3.1 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.

21.3.2 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.

21.4 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.

21.5 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 the Company.

21.6 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.



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