

Terms and conditions for the supply of goods

The Customer's attention is drawn in particular to the provisions of clause 10 (Limitation of Liability).

1. Interpretation

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.

Conditions: the terms and conditions set out in this document.

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

Customer: the person who purchases the Goods from the Supplier.

Delivery: completion of delivery by the Supplier or collection by the Customer of the Goods in accordance with clause 4.3 and/or clause 4.9(a).

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

Goods: the goods (or any part of them) set out in the Quotation.

Quotation: the written quotation provided by the Supplier to the Customer in relation to the supply of the Goods.

Specification: any specification for the Goods including any related plans and drawings, that are agreed in writing by the Customer and the Supplier.

Supplier: Enovation Controls Limited (registered in England and Wales with company number 00761162 and whose registered office is at Nightingale House, 46/48 East Street, Epsom, Surrey KT17 1HQ).

Supplier's Group: the Supplier, its subsidiaries, any company of which it is a subsidiary (its holding company) and any other subsidiaries of such holding company. For the purposes of this definition, the terms **holding company** and **subsidiary** shall have the meanings ascribed to them by section 1159 and schedule 6 of the Companies Act 2006 (as amended).

Supplier's Premises: Church Road, Laverstock, Salisbury SP1 1QZ United Kingdom.

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

(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 personal representatives, successors or permitted assigns.

(c) 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.

(d) 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.

(e) 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 Quotation constitutes an offer by the Supplier to the Customer to sell the Goods in accordance with these Conditions.

2.3 By signing and returning the Quotation, or issuing a purchase order, the Customer confirms that the information contained therein is complete and accurate.

2.4 The Quotation shall be accepted when it is signed by the Customer and returned to, and received by, the Supplier at which point the Contract shall come into existence.

2.5 The Contract is subject to and conditional upon the availability of the Goods. If the Supplier does not have the stock and/or parts necessary to provide the Goods to the Customer it will notify the Customer within 30 Business Days of receiving the Customer's acceptance of the Quotation, at which point the Contract will automatically terminate and the Supplier will return to the Customer any advance payment of monies received by the Supplier from the Customer. The Supplier will have no liability whatsoever to the Customer for termination of the Contract in accordance with the provisions of this clause 2.5.

2.6 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 the Supplier which is not set out in the Contract.

2.7 Any samples, drawings, descriptive matter, or advertising produced or provided by the Supplier 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.

2.8 A Quotation shall only be valid and capable of acceptance for a period of 30 Business Days from its date of issue whereupon it will automatically lapse.

2.9 If there is any conflict between the provisions of these Conditions and the provisions of the Quotation, the provisions of the Quotation will prevail.

3. Goods

3.1 The Supplier reserves the right to amend any Specification of the Goods (including any Specification) up to the point of Delivery if required by any applicable statutory or regulatory requirements.

3.2 Any changes which the Customer requests to the Goods and/or any Specification after the Customer has accepted the Quotation will be accepted by the Supplier at its absolute discretion. In the event that any such change will increase the costs for the Goods, the Supplier shall notify the Customer in writing of such increased costs which shall, for the avoidance of doubt, be payable by the Customer in addition to the price set out in the Quotation.

3.3 To the extent that the Goods 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 3.3 shall survive termination of the Contract.

4. Delivery

4.1 The Supplier shall use reasonable endeavours to ensure that each delivery of the Goods is accompanied by a delivery note.

4.2 The Supplier shall either:

(a) make the Goods available for collection at the Supplier's Premises or such other location as the parties may agree; or

(b) if specified in the Quotation, deliver the Goods to the Customer at the location specified in the Quotation or such other location as the parties may agree

- 4.3 Delivery of the Goods shall be completed:
- (a) when the Goods are collected by the Customer or the Customer's carrier from the Supplier's Premises or, if the Supplier assists in the loading of the Goods onto a vehicle, from completion of the loading of the Goods; or
 - (b) if required pursuant to clause 4.2(b), on delivery by the Supplier of the Goods to the Customer.
- 4.4 The Customer will be responsible for the payment of any excise duties, custom duties or import sales taxes and for the preparation of any import documentation.
- 4.5 Any dates quoted by the Supplier for Delivery are approximate only, and time of Delivery is not of the essence. For the avoidance of doubt, the Supplier shall not be liable for any delay in Delivery that is caused by:
- (a) a Force Majeure Event; or
 - (b) the Customer's failure to accept delivery; or
 - (c) the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the delivery/collection of the Goods.
- 4.6 The Customer must inspect the Goods on Delivery and notify the Supplier within 15 days of any shortage, loss or damage to Goods (**Notification Period**). Where the Customer notifies the Supplier within the Notification Period of any shortage, loss or damage to the Goods, the Supplier shall, at its option, provide replacement Goods, repair the Goods or issue a credit note to the Customer. This clause 4.6 constitutes the Customer's exclusive remedy and the Supplier's only liability in respect of such failure and, for the avoidance of doubt, is subject to clause 10.
- 4.7 Where the Supplier is delivering the Goods in accordance with clause 4.2(b), the Customer must notify the Supplier within 14 days of the date of the relevant invoice if Goods have not been received. If no such notice is received by the Supplier, the Customer will be deemed to have received and accepted the Goods.
- 4.8 If the Supplier fails to deliver the Goods in accordance with clause 4.2(b) (other than any failure caused by the Customer), or fails to make the Goods available for collection in accordance with clause 4.2(a), within 30 days after any estimated delivery or collection date (as applicable) stated in the Quotation, the Supplier's 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. This clause 4.8 constitutes the Customer's exclusive remedy and the Supplier's only liability in respect of such failure and, for the avoidance of doubt, is subject to clause 10.
- 4.9 If the Customer fails to collect the Goods in accordance with clause 4.2(a) within three Business Days of the Supplier notifying the Customer that the Goods are ready for collection or the Supplier is unable to successfully deliver the Goods to the Customer (as applicable) 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:
- (a) Delivery of the Goods shall be deemed to have been completed at 9.00am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready for collection, or where the Goods were to be delivered by the Supplier in accordance with clause 4.2(b) on attempted delivery; and
 - (b) the Supplier shall store the Goods until delivery actually takes place, and charge the Customer for all related costs and expenses (including insurance); and
 - (c) the Customer shall reimburse the Supplier for any wasted delivery costs reasonably incurred by the Supplier.
- 4.10 If:
- (a) within 10 Business Days after the date on which the Supplier notified the Customer that the Goods were ready for collection the Customer has not taken delivery of them; or
 - (b) within 10 Business Days after the Supplier has tried to deliver the Goods to the Customer, the Customer has not accepted delivery of the Goods;
- the Supplier may resell or otherwise dispose of part or all of the Goods.
- 4.11 The Supplier 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 The warranty set out in clause 5.2 shall apply for a period of 24 months from the date of Delivery (**Warranty Period**).
- 5.2 The Supplier warrants that on Delivery and for the duration of the Warranty Period the Goods shall:
- (a) conform in all material respects with their description and any applicable Specification;
 - (b) be free from material defects in design, material and workmanship; and
 - (c) be of satisfactory quality (within the meaning of the Sale or Goods Act 1979).
- 5.3 Subject to clause 5.4, the Supplier shall, at its option, repair or replace any defective Goods 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 Goods do not comply with the warranty set out in clause 5.2;
 - (b) the Supplier is given a reasonable opportunity of examining such Goods; and
 - (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost.
- 5.4 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.2 in any of the following events:
- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.3;
 - (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 Goods 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 Goods without the prior written consent of the Supplier; or
 - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal storage or working conditions.
- 5.5 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.2.
- 5.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 5.7 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.
- 6. Title and risk**
- 6.1 The risk in the Goods shall pass to the Customer on Delivery.
- 6.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for the Goods.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) hold the Goods on a fiduciary basis as the Supplier's bailee;
 - (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

- (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of Delivery;
 - (e) notify the Supplier immediately if it becomes subject to any of the events listed in clause 9.2; and
 - (f) give the Supplier such information relating to the Goods as the Supplier 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 the Supplier 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 the Supplier may have, the Supplier 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. Customer obligations

- 7.1 The Customer shall:
- (a) co-operate with the Supplier in all matters relating to the delivery or collection of the Goods; and
 - (b) provide the Supplier (including its employees, agents, consultants and sub-contractors) with access to the Customer's premises at all reasonable times and as may be reasonably required by the Supplier in order for the Supplier to deliver the Goods.
 - (c) be the exporter of legal record and be responsible for obtaining any export licence that may be required for goods sold to them by the Supplier, if these goods are then re-sold or moved out of the UK or the EU.

8. Price and payment

- 8.1 The price of the Goods shall be the price set out in the Quotation (as may be amended in accordance with these Conditions) exclusive of VAT (unless otherwise stated).
- 8.2 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods and all of the taxes referred to in clause 4.4, which shall be payable by the Customer.
- 8.3 The Supplier may invoice the Customer for the Goods on or at any time after Delivery of the Goods, in accordance with clause 4.
- 8.4 The Customer shall pay all the invoices in full and in cleared funds by the end of the calendar month following the month in which the invoice was dated. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.
- 8.5 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment set out in clause 8.4 or in the Quotation (if different) (**Due Date**), then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Lloyds TSB Bank plc'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.
- 8.6 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 Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier 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 Supplier to the Customer.
- 8.7 If the Customer fails to pay an invoice within 10 days from the Due Date (**Customer Default**), the Supplier shall without limiting its other rights or remedies have the right to suspend delivery of the Goods under the Contract (and any other contract between the Customer and the Supplier) until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its other obligations under the Contract.

9. Customer's insolvency or incapacity

- 9.1 If the Customer becomes subject to any of the events listed in clause 9.2, or the Supplier 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 Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Supplier 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:
- (a) 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;
 - (b) 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;
 - (c) (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;
 - (d) (being an individual) the Customer is the subject of a bankruptcy petition or order;
 - (e) 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;
 - (f) (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;
 - (g) (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
 - (h) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
 - (i) 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(a) to clause 9.2(h) inclusive.
 - (j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
 - (k) 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; and
 - (l) (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 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) defective products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

10.2 Subject to clause 10.1:

- (a) the Supplier 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
- (b) the Supplier'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 the price of the Goods paid for by the Customer.

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 The Customer shall not, without the prior written consent of the Supplier, assign, transfer or subcontract all or any of its rights or obligations under the Contract.
- 12.2 The Supplier shall be entitled to exercise any of its rights or fulfil any of its obligations in the Contract through any company within the Supplier's Group. In addition, the Supplier shall be entitled to assign, transfer and/or sub-license its rights and obligations under the Contract to any company within the Supplier's Group without the Customer's consent.
- 12.3 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 email.
- 12.4 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.3; if sent by pre-paid first class post or recorded delivery, at 11.00 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 email one Business Day after transmission.
- 12.5 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 12.6 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.
- 12.7 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.
- 12.8 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.
- 12.9 In accordance with section 1 Contracts (Rights of Third Parties) Act 1999, the Supplier's Group shall be entitled to enforce all of the rights and benefits under the Contract at all times as if the Supplier's Group were a party to the Contract. The consent of the Supplier's Group is not required for any rescission or variation of the Contract agreed to by the Supplier and the Customer, or any termination of the Contract by the Supplier and the Customer.
- 12.10 Except as otherwise expressly stated in clauses 12.2 and 12.9, the Contract does not confer any rights on any person or party (other than the parties to the Contract) under the Contracts (Rights of Third Parties) Act 1999;
- 12.11 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 Supplier.
- 12.12 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.