

All transactions are subject to the terms and conditions set out below.

1 INTERPRETATION

1.1 In these Conditions "Buyer" means, the person, firm, company or body referred to overleaf. "Conditions" means the standard terms and conditions of sale set out in this document and includes any special terms and conditions agreed in writing between the Buyer and the Seller. "Contract" means the contract for the purchase and sale of the Goods. "Goods" mean the Goods (including any instalment of the Goods or any parts for them) which the Seller is to supply in accordance with these Conditions. "Seller" means Burkert Contromatic Limited whose registered office is at Fluid Control Centre, Brimscombe Port Business Park, Brimscombe, Stroud, Glos, GL5 2QQ. "Writing" includes email, cable, facsimile transmission and comparable means of communication. "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date of the Contract. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

2 BASIS OF THE SALE

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of the Buyer's or any other party's terms and conditions.

2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

2.3 Any representations, advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed. In entering into the Contract, the Buyer acknowledges that it does not rely on any such representations that are not confirmed.

2.4 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

2.5 The Seller, in supplying Goods manufactured by a person other than the Seller, acts as agent for that person.

3 ORDERS AND SPECIFICATIONS

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until the time of delivery of the goods.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).

3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer or any third party on behalf of the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform to any applicable safety or other statutory requirements, or where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

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

3.7 Orders accepted by the Seller or quotations accepted by the Buyer for Goods which are not currently stocked by the Seller or which in the sole discretion of the Seller require special tooling, material or additional operations shall be accepted or made by the Seller only on the basis that the Seller shall be entitled to deliver + or - 10% of the Goods and the price shall increase or abate pro rata.

4 PRICE OF THE GOODS

4.1 Subject to Clause 4.2 the price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's price list current at the date of acceptance of the order. Where the Goods are supplied for export from the United Kingdom, the Seller's export price list shall apply. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer. Prices listed in the Seller's price list or quoted to the Buyer shall not apply to quantities of the Goods that are less than that in respect of which the price or quotation was given by the Seller.

4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis as defined by Incoterms. Where the Seller agrees to arrange carriage for the Buyer, the Buyer shall, subject to clause 6.1, be liable to pay the Seller's charges for transport, packaging and insurance.

4.4 In the event that the Seller shall obtain Goods from any third party at the request of the Buyer, the Seller shall be entitled to obtain from the Buyer at the date of the Contract a deposit of 25% of the price in respect thereof.

4.5 The Seller reserves the right to make a minimum charge in respect of any order.

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

5 TERMS OF PAYMENT

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

5.2 The Buyer shall pay the price of the Goods (without any deduction or set-off whatsoever) within 30 days of the date of the Seller's invoice, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will only be issued upon request. In the case of delivery by instalment, the Seller shall be entitled to invoice the Buyer for each separate instalment.

5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

5.3.1 cancel the contract or suspend any further deliveries to the Buyer;

5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

5.3.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 5 per cent per annum above Barclays Bank Plc base rate from time to time in force, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

5.4 If delivery of the Goods is delayed at the Buyer's request for more than 30 days after the first day of the week in which delivery is due the Seller will be entitled to increase the price of the Goods if appropriate to that shown in the current price list of the Seller at the actual date of delivery.

6 DELIVERY

6.1 The Seller may arrange carriage of the Goods to the Buyer's address as the Buyer's agent. The Seller shall be entitled to recover all reasonable expenses of carriage, packaging and insurance from the Buyer where the Buyer requests delivery of the Goods on an expedited basis. It shall be at the Seller's sole discretion to determine whether the Buyer has requested delivery of the Goods to be on an expedited basis.

6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence. The Seller may deliver the Goods in advance of the quoted delivery date upon giving reasonable notice to the Buyer. In addition, the Seller shall be entitled to defer delivery or performance until all monies due from the Buyer have been received.

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

6.4 If the Seller fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control (which shall, without limitation include computer failure) or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

6.5 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

6.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of the storage; or

6.5.2 sell the Goods at the best price readily obtainable and (after deducting all storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

6.6 The Seller reserves the right to recall the Goods once delivered, the return carriage to be at its own expense but otherwise such recall shall be treated as a failure to deliver and shall be governed by these Conditions.

7 RISK AND PROPERTY

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
- 7.1.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection or
- 7.1.2 in the case of Goods for which the Seller agrees to arrange carriage, at the time when the Goods leave the Seller's premises.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods together with VAT thereon and all other sums whatever due from the Buyer to the Seller.
- 7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and clearly identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured as trustee and agent for the Seller.
- 7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

8 WARRANTIES AND LIABILITY

- 8.1 Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.2 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller with reasonable particulars thereof:
- 8.2.1 within 7 days from the date of delivery; or
- 8.2.2 (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure, and in any event within 6 months of the date of delivery.
- 8.3 If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.4 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller undertakes to replace or repair the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.
- 8.5 Except in respect of death or personal injury caused by the Seller's act or omission, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use or resale by the Buyer, except as expressly provided in these Conditions. The entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions.
- 8.6 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control - Act of God, explosion, flood, fire, accident, war or threat of war, sabotage, civil disturbance or requisition, acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind by any governmental, parliamentary or local authority, strikes, or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party), difficulties in obtaining raw materials, labour, fuel, parts or machinery, power failure, breakdown in machinery or partial or total computer failure.
- 8.7 Should any of the above exclusions or limitations of liability be held to be invalid or unenforceable in whole or in part, or otherwise the Seller is found to be liable to the Buyer for an amount in excess of the price of the Goods (or a proportionate part of the price as mentioned in clause 8.3 above) then the Seller's liability shall in any event (save in respect of death or personal injury caused by the Seller's act or omission) be limited to £100,000.00.

9 INSOLVENCY OF BUYER

- 9.1 This clause applies if:
- 9.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 9.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer, or the Buyer ceases, or
- 9.1.3 threatens to cease, to carry on business; or
- 9.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly; or
- 9.1.5 if the Buyer commits any breach of this contract and fails to remedy it (if remediable) within 14 days of receipt by the Buyer of notice from the Seller complaining of such breach.
- 9.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

10 INDEMNITY

- 10.1 If a claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of a drawing, design or specification supplied by the Buyer, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:
- 10.1.1 the Seller is given full control of any proceedings or negotiations in connection with the claim;
- 10.1.2 the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;
- 10.1.3 except pursuant to a final award, the Buyer shall not pay or accept the claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);
- 10.2 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);
- 10.3 The Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and
- 10.4 Without limiting any duty of the Buyer at common law, the Seller may require the Buyer to take such steps as the Seller may reasonably require to litigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

11 EUROPEAN CURRENCY

- 11.1 The Seller and the Buyer confirm to each other that the occurrence or non-occurrence of an event associated with economic and monetary union in the European Community will not have the effect of altering any term of, or discharging or excusing performance under this Agreement, nor give either party the right unilaterally to alter or terminate the Contract. An "event associated with economic and monetary union in the European Community" includes, without limitation:
- 11.1.1 the introduction of a single or unified European currency;
- 11.1.2 the fixing of conversion rates between a member state's currency and a new currency or between the currencies of member states;
- 11.1.3 the substitution of a new currency for the ECU as the unit of account of the European Community;
- 11.1.4 the introduction of a new currency as lawful currency in a member state or the withdrawal from legal tender of any currency which, before that, was lawful currency in a member state and/or
- 11.1.5 the disappearance or replacement of a relevant price source for the ECU or the national currency of any member state, or the failure of the agreed sponsor or any successor to publish a relevant rate, index, price, page or screen.

12 EXPORT TERMS

- 12.1 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 11 shall apply (subject to any special terms agreed in Writing between the Buyer and the Seller) notwithstanding any other provision of these Conditions.
- 12.2 The Buyer shall be responsible for complying with any legalisation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.
- 12.3 Unless otherwise agreed in Writing between the Buyer and the Seller, the Goods shall be delivered fob the air or seaport of shipment and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 12.4 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which are made after shipment, or in respect of any damage during transit.
- 12.5 Payment of all amounts due to the Seller shall be made by irrevocable letter of credit opened by the Buyer in favour of the Seller and confirmed by a bank in England acceptable to the Seller or, if the Seller has agreed in Writing on or before acceptance of the Buyer's order to waive this requirement, by acceptance by the Buyer and delivery to the Seller of a bill of exchange drawn on the Buyer payable 60 days after sight to the order of the Seller at such branch of Barclays Bank in England as may be specified in the bill of exchange.
- 12.6 The Buyer undertakes not to offer the Goods for resale in any other country or any country or territory notified by the Seller to the Buyer at or before the time the Buyer's order is placed, or to sell the Goods to any person, body, entity or company if the Buyer knows or has reason to believe that that person, body, entity or company intends to resell the Goods in any such country or territory.

13 GENERAL

- 13.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office, principal place of business or such other address as may have been notified at the relevant time pursuant to this provision to the party giving the notice.
- 13.2 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 13.3 The rights that each of the parties have under this agreement shall not be prejudiced or restricted to any indulgence or forbearance extended to another party. No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 13.4 The Contract shall be governed by the laws of England and the parties hereto irrevocably agree to submit to the non-exclusive jurisdiction of the Courts of England.