



Terms and Conditions of Sale

The customer's attention is drawn in particular to the provisions of 9.7.

1. Interpretation

1.1. In these Terms:

"Buyer"	means the person who accepts the Seller's Written quotation for the sale of the Goods or whose Written order for the Goods is accepted by the Seller;
"Contract"	means the contract for the sale and purchase of the Goods;
"Excluded Loss"	means any of the following: (a) loss of profit; (b) loss of anticipated profit; (c) loss of production; (d) loss of, product use; (e) loss of turnover; (f) loss of business opportunity; (g) loss of goodwill; in each case whether the same shall arise directly or indirectly, or any indirect, special or consequential loss or damage, costs, expense or claims for compensation whatsoever;
"Force Majeure Event"	means an event beyond the reasonable control of the Seller including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Seller or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors;
"Goods"	means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Terms and which are described in the order acknowledgment sent by the Seller to the Buyer;
"Intellectual Property Rights"	means any patent, registered design, copyright, database right, design right, topography right, trade mark, service mark, application to register any of the aforementioned rights, trade secret, right in unpatented know-how, right of confidence any other intellectual or industrial property right of any nature whatsoever in any part of the world;
"Seller"	means CMP Products Limited registered in England and Wales under number 06143400;
"Terms"	means the standard terms of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Seller;
"Writing" and any similar expression	includes facsimile transmission and comparable means of communication, but not electronic mail.

1.2.A reference in these Terms to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3.The headings in these Terms are for convenience only and shall not affect their interpretation.

2. Basis of the sale

- 2.1. The Seller shall sell and the Buyer shall purchase the Goods in accordance with the Seller's Written quotation (if accepted by the Buyer), or the Buyer's Written order (if accepted by the Seller), subject in either case to these Terms, which shall govern the Contract to the exclusion of any other terms subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.
- 2.2. No variation to these Terms shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.
- 2.3. The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations, which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.
- 2.4. Any 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.
- 2.5. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, order acknowledgement, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. Orders and specifications

- 3.1. No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative.
- 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 the Goods and any specification for them shall be as set out in the Seller's quotation (if accepted by the Buyer) or the Seller's acknowledgment of the Buyer's order (if the Buyer's order is 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, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred

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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 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 with any applicable statutory or E.U. 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.

4. Price of the Goods

- 4.1. The price of the Goods shall be the Seller's quoted price, or such other price as may have been agreed between the Buyer and the Seller in Writing. 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.
- 4.2. The Seller reserves the right, by giving Written 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 the 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 accurate or adequate information or instructions.
- 4.3. Except as otherwise stated in the Seller's Written 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, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.
- 4.4. The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.
- 4.5. The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.

5. Terms of payment

- 5.1. Subject to any special terms agreed in Writing between the Buyer and the Seller, Seller may 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 within 30 days of the date of the Seller's invoice, unless otherwise agreed in Writing, and the Seller shall be entitled to recover the price, 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.
- 5.3. If the Buyer fails to make any payment on the due date then, without limiting any other right or remedy available to the Seller, the Seller may:
 - 5.3.1. cancel the Contract;
 - 5.3.2. suspend work on the Contract, and/or suspend any further deliveries to the Buyer;
 - 5.3.3. 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
 - 5.3.4. charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 6 per cent per annum above National Westminster Bank plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest). The Seller reserves the right to claim interest under the Late Payment of Commercial Debt (Interest) Act 1998.

6. Export Terms

- 6.1 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 6 shall (subject to any special terms agreed in Writing between the Buyer and the Seller) apply notwithstanding any other provision of these Terms.
- 6.2 The Buyer shall be responsible for complying with the legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.
- 6.3 The Buyer shall be responsible for arranging for testing and inspection of the Goods 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 is made after shipment, or in respect of any damage during transit.
- 6.4 Unless otherwise explicitly agreed in Writing, payment of all amounts due to the Seller shall be made by irrevocable documentary letter of credit opened by the Buyer in favour of the Seller and confirmed by a bank in the United Kingdom acceptable to the Seller within 14 days after the Contract is concluded. All bank charges in the applicant's country associated with the opening of the letter of credit shall be borne by the Buyer.
- 6.5 The Buyer shall pay the price for the Goods in the agreed currency as detailed in the invoice.

7. Delivery

- 7.1. Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.
- 7.2. Where no date has been specified for delivery of the Goods, the Buyer shall give the Seller all necessary instructions and authorities and make all necessary arrangements so that delivery may take place within 7 days after the Seller has notified the Buyer that the Goods are ready for delivery.

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- 7.3. 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 however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in Writing. The Seller reserves the right to make partial deliveries of the Goods, and to invoice each instalment of the Goods delivered separately. The Goods may be delivered by the Seller in advance of the quoted delivery date on giving reasonable notice to the Buyer.
- 7.4. Where the Goods are 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 Terms 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.
- 7.5. If the Seller fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control 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.
- 7.6. 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 limiting any other right or remedy available to the Seller, the Seller may:
 - 7.6.1. store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - 7.6.2. sell the Goods at the best price readily obtainable and (after deducting all reasonable 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.
- 7.7. The Buyer may not return any Goods to the Seller prior to receipt from the Seller of a returns note setting out the quantity of Goods to be returned and the reason for the return. Issue of a returns note shall not be construed as any admission of liability by the Seller.

8. Risk and property

- 8.1. Risk of damage to or loss of the Goods shall pass to the Buyer:
 - 8.1.1. 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
 - 8.1.2. in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 8.2. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, 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 and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 8.3. 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 identified as the Seller's property, but the Buyer may resell or use the Goods in the ordinary course of its business.
- 8.4. 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 or irrevocably incorporated into another product), the Seller may at any time require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 8.5. 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 limiting any other right or remedy of the Seller) forthwith become due and payable.

9. Warranties and liability

- 9.1. Subject to the following provisions the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of their initial use or 18 months from delivery, whichever is the first to expire.
- 9.2. The above warranty is given by the Seller subject to the following conditions:
 - 9.2.1. the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
 - 9.2.2. the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in Writing), misuse or alteration or repair of the Goods without the Seller's approval;
 - 9.2.3. the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
 - 9.2.4. the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.
- 9.3. Subject as expressly provided in these Terms, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 9.4. A 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 within 48 hours from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. 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.
- 9.5. Where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Terms, the Seller may replace 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), in which case the Seller shall have no further liability to the Buyer.
- 9.6. Nothing in these Terms shall limit or exclude the liability of the Seller for:

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- 9.6.1. death or personal injury caused by its negligence or the negligence of its employees, agents or subcontractors;
- 9.6.2. fraud or fraudulent misrepresentation;
- 9.6.3. breach of the terms implied by section 2 of the Sale of Goods and Services Act 1982; or
- 9.6.4. breach of the terms implied by section 12 of the Sale of Goods Act 1979.
- 9.7. Subject to the provisions of clause 9.6:
 - 9.7.1. the Seller shall not be liable to the Buyer in any circumstances whether in contract, tort (including negligence), breach of statutory duty or otherwise on the part of the Seller for any Excluded Loss arising under or in connection with the Contract; and
 - 9.7.2. the entire liability of the Seller arising under or in connection with the Contract whether in contract, tort (including negligence) breach of statutory duty or otherwise shall not exceed the price of the Goods that are the subject of the claim in question, except as expressly provided in these Terms.

10. Indemnity

- 10.1. If a claim is made against the Buyer that the Goods infringe or that their use or resale infringes the 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. 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);
 - 10.1.4. 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);
 - 10.1.5. 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 consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and
 - 10.1.6. 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 mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

11. Intellectual Property Rights

The Intellectual Property Rights in the Goods, unless otherwise agreed in Writing by the Seller, belong to the Seller. Any invention, discovery, or improvement, whether patentable or not, made by the Seller, its employees or agents, in connection with the Contract, shall belong wholly and exclusively to the Seller. The Seller shall retain the Intellectual Property Rights in all documents, data, and other materials supplied or produced to the Buyer in connection with the Contract, and it shall be a condition of such supply or productions that such documents, data and materials, and any part thereof shall not be communicated either directly or indirectly to any other person, firm or company without the Seller's consent.

12. Termination

- 12.1. Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if:
 - 12.1.1. the Buyer commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing of the breach;
 - 12.1.2. the Buyer 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 is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 12.1.3. the Buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
 - 12.1.4. 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 Buyer other than for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
 - 12.1.5. a creditor or encumbrancer of the Buyer 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;
 - 12.1.6. 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 Buyer;
 - 12.1.7. a floating charge holder over the assets of the Buyer has become entitled to appoint or has appointed an administrative receiver;
 - 12.1.8. a person becomes entitled to appoint a receiver over the assets of the Buyer or a receiver is appointed over the assets of the Buyer;
 - 12.1.9. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in 12.1.2 to 12.1.8 (inclusive); or
 - 12.1.10. the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business.
- 12.2. Without limiting its other rights or remedies, the Seller shall have the right to suspend all further deliveries of Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer becomes subject to any of the events listed in clause 12.1.2 to 12.1.9 inclusive, or the Seller reasonably believes that the Buyer is about to become subject to any of them and if the Goods have been

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delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

13. **General**

13.1. Force majeure:

13.1.1. The Seller shall not be liable to the Buyer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

13.1.2. If the Force Majeure Event prevents the Seller from supplying any of the Goods for more than 5 weeks, the Seller shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Buyer.

13.2. A notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

13.3. 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. If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.

13.5. A person who is not a party to this Agreement has no right under the Contracts (Right of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

13.6. The Buyer shall not be entitled to assign or otherwise transfer the Contract or any of its rights or obligations thereunder without the prior consent in writing of the Seller.

14. **Governing law and jurisdiction**

14.1. Where the Buyer is incorporated in a country which is a member of the European Union, the English courts shall have exclusive jurisdiction to settle any dispute, controversy or claim arising out of or relating to the Contract, including any question regarding its breach, existence, validity or termination or the legal relationships established by the Contract.

14.2. Where the Buyer is incorporated in a country which is not a member of the European Union, any dispute, controversy or claim arising out of or relating to the Contract, including any question regarding its breach, existence, validity or termination or the legal relationships established by this agreement, shall be finally resolved by arbitration under the UNCITRAL Rules in force at the date of the Contract. It is agreed that:

14.2.1. the tribunal shall consist of one arbitrator (who is to be a chartered member of the Institute of Mechanical Engineers);

14.2.2. in default of the parties' agreement as to the arbitrator, the appointing authority shall be the Chartered Institute of Arbitrators in London;

14.2.3. the seat of the arbitration shall be London; and

14.2.4. the language of the arbitration shall be English.

14.3. This Contract shall be governed by and construed in all respects in accordance with the law of England and Wales.

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