

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 as amended from time to time in accordance with clause 10.6;
- “**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 or firm who purchases the Goods from the Supplier;
- “**Force Majeure Event**” has the meaning given in clause 9;
- “**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 or the Customer's written acceptance of the Supplier's quotation as the case may be;
- “**Specification**” any specification for the Goods, including any related plans and drawings, that is supplied to the Supplier by the Customer, or produced by the Supplier and agreed in writing by the Customer.
- “**Supplier**” the supplier named in the Supplier's written acceptance of the Order, being Keraflo Limited (registered in England and Wales with Company number 1774986).
- “**Warranty Period**” one year from the date of manufacture thereof which, subject to registration as required by the Supplier, can be extended within one year of date of manufacture to three years from the date of installation at no extra cost to 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. 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 Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer shall ensure that the terms of the Order and any relevant Specification are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 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. Any samples, drawings, descriptive matter, or advertising issued by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or any other contract between the Supplier and the Customer for the sale of the Goods.
- 2.5 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue unless otherwise stated in writing when the quotation is given.

3. DELIVERY

- 3.1 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the serial number of the Goods, where applicable) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 3.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (“**Delivery Location**”) at any time after the Supplier notifies the Customer that the Goods are ready.
- 3.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 3.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier 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 Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 3.5 If the Supplier fails to deliver the Goods, its 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. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 3.6 The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- 3.7 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.

- 3.8 If the Delivery Location is neither a registered delivery address nor the invoice address of the Customer then the Customer may request the Supplier to deliver to another address ("Site Address") provided that:
- 3.8.1 The Site Address is a current UK address with a valid postcode.
 - 3.8.2 A contact name & telephone number of an individual ("Named Contact") is supplied at the time of ordering who will be available to accept delivery by the Supplier's courier at the Site Address.
 - 3.8.3 The Named Contact personally signs for the delivery. If the signature on the delivery documentation at the Site Address is not that of the Named Contact then the Customer shall not be entitled to claim non-delivery of the Goods and shall be liable for the full price of the Goods per clause 6.2.

4. QUALITY

- 4.1 The Supplier warrants that on delivery and for the applicable Warranty Periods the Goods shall:
- 4.2 conform in all material respects with their description and any applicable Specification;
- 4.2.1 be free from material defects in design, material and workmanship; and
 - 4.2.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 4.3 Subject to clause 4.3, if:
- 4.3.1 the Customer gives notice in writing to the Supplier during the applicable Warranty Periods within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 4.1; and
 - 4.3.2 the Supplier is given a reasonable opportunity of examining such Goods; and
 - 4.3.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost,
- the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 4.4 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 4.1 if:
- 4.4.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 4.2; or
 - 4.4.2 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; or
 - 4.4.3 the Customer alters or repairs such Goods without the written consent of the Supplier; or
 - 4.4.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.
- 4.5 Except as provided in this clause 4, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 4.1.
- 4.6 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.
- 4.7 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

5. TITLE AND RISK

- 5.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 5.2 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.
- 5.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 5.3.1 hold the Goods on a fiduciary basis as the Supplier's bailee;
 - 5.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - 5.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 5.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - 5.3.5 notify the Supplier immediately if it becomes subject to any of the events listed in clause 7.2; and
 - 5.3.6 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.
- 5.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 7.2, 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.

6. PRICE AND PAYMENT

- 6.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.
- 6.2 The price of the Goods is inclusive of the costs and charges of packaging, insurance and transport of the Goods.
- 6.3 The price of the Goods is exclusive of amounts in respect of value added tax ("VAT"). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 6.4 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 6.5 The Customer shall pay the invoice in full and in cleared funds by the end of the month following the month the invoice was dated. Time of payment is of the essence.
- 6.6 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment ("due date"), then the Customer shall pay interest on the overdue amount at the rate of 2% per annum above National Westminster Bank Plc base lending 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.

6.7 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.

7. CUSTOMER'S INSOLVENCY OR INCAPACITY

7.1 If the Customer becomes subject to any of the events listed in clause 7.2, 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.

7.2 For the purposes of clause 7.1, the relevant events are:

- 7.2.1 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; or
- 7.2.2 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 other than (where the Customer is a company) these events take place 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; or
- 7.2.3 (being an individual) the Customer is the subject of a bankruptcy petition or order; or
- 7.2.4 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; or
- 7.2.5 (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; or
- 7.2.6 (being a company) a floating charge holder over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver; or
- 7.2.7 a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer; or
- 7.2.8 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 7.2.1 to clause 7.2.7 (inclusive); or
- 7.2.9 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or
- 7.2.10 the financial position of the Supplier deteriorates to such an extent that in the opinion of the Customer the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy; or
- 7.2.11 (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.

8. LIMITATION OF LIABILITY

8.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- 8.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 8.1.2 fraud or fraudulent misrepresentation; or
- 8.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- 8.1.4 defective products under the Consumer Protection Act 1987.

8.2 Subject to clause 8.1:

- 8.2.1 the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or indirect or consequential loss arising under or in connection with the Contract; and
- 8.2.2 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 not exceed the price of the Goods.

8.3 In the event that the Customer requires that the limitation set out in clause 8.2.1 is less restrictive the Supplier shall use all reasonable endeavours to arrange insurance terms to meet the Customer's requirements, provided the Supplier's insurance premium relating specifically thereto is paid by the Customer to the Supplier.

9. 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.

10. GENERAL

10.1 Assignment and subcontracting.

10.1.1 The Supplier 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.

10.1.2 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 Supplier.

10.2 Notices.

10.2.1 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.

10.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 10.2.1; 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.

10.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

10.3 Severance.

10.3.1 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.

10.3.2 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.

10.4 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.

10.5 Third party rights. A person who is not a party to the Contract shall not have any rights under or in connection with it.

10.6 Variation. 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 Customer.

10.7 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.

10.8 When supplied as B2B EEE the supplier invokes **regulation 12.2** and passes all WEEE obligations to the B2B end user.