

# ULTRAFLEX

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### TERMS AND CONDITIONS OF SALE OF GOODS

#### 1 INTERPRETATION

1.1 The following definitions and rules of interpretation apply to these Conditions.

- (i) **Buyer:** the person, firm or company who purchases the Goods from the Company.
- (ii) **Company:** Ultraflex Europe Limited, a company registered in the United Kingdom under number 2868998 whose registered office is at 2 Hardwick Road Industrial Park, Great Gransden, Bedfordshire SG19 3BJ.
- (iii) **Conditions:** the standard terms and conditions of sale set out in this document.
- (iv) **Contract:** the contract between the Company and the Buyer in respect of an order for Goods under an Order Confirmation, incorporating these Conditions.
- (v) **Contract Price:** has the meaning set out in condition 6.
- (vi) **Delivery Point:** the place where delivery of the Goods is to take place under condition 3.
- (vii) **Goods:** any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).
- (viii) **Order Confirmation:** confirmation of an order for Goods by the Company by way of a written acknowledgement of order issued to the Buyer or (if earlier) delivery of the Goods to the Buyer.
- (ix) **Specification:** the description and quantity of the Goods as set out in the Company's written quotation or any written Order Confirmation, or in the event that it is not so set out, as set out in the written purchase order sent by the Buyer to the Company.

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these Conditions.

#### 2 APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.2 the Contract shall be on the Conditions and (where applicable) the terms of any written Order Confirmation to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply).

2.2 The Conditions apply to all the Company's sales and any variation to the Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by an authorised representative of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.3 Each purchase order from the Buyer or acceptance of a written quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these Conditions.

2.4 No purchase order placed by the Buyer shall be deemed to be accepted by the Company until Order Confirmation occurs.

2.5 The Buyer shall ensure that the terms of its purchase order are complete and accurate and that the purchase order is in writing.

2.6 Any written quotation is given by the Company on the basis that no Contract shall come into existence until, following an acceptance of that quotation from the Buyer, Order Confirmation occurs. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

2.7 Sales literature, brochures and price lists issued by the Company in relation to the Goods are subject to alteration without notice and do not constitute offers to sell the Goods which are capable of acceptance.

2.8 No order in respect of which Order Confirmation has occurred may be cancelled by the Buyer except with the agreement in writing of the Company and on terms that the Buyer shall indemnify the Company 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 Company as a result of cancellation.

#### 3 DELIVERY

3.1 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates

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- are so specified, delivery shall be within a reasonable time.
- 3.2 The Delivery Point shall be that which is specified in the Buyer's written purchase order or the Company's written acknowledgement of order or if no place of delivery is so specified, by the Buyer collecting the Goods at the Company's premises after the Company has notified the Buyer that the Goods are ready for collection. Goods despatched by post will be delivered when the Goods are accepted by the post office in the United Kingdom.
- 3.3 Where the Delivery Point is the Company's premises, the Buyer shall take delivery of the Goods within 30 days of the Company giving it notice that the Goods are ready for delivery.
- 3.4 Subject to the other provisions of the Conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 3.5 If for any reason the Buyer fails to accept delivery of any of the Goods when they arrive at the Delivery Point, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
- 3.5.1 risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
- 3.5.2 the Goods shall be deemed to have been delivered; and
- 3.5.3 the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 3.6 The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for unloading the Goods.
- 3.7 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the relevant Contract.
- 3.8 Unless otherwise agreed in writing by the Buyer and the Company, shipment and insurance of all Goods ordered will be arranged by the Company on behalf of the Buyer.
- 3.9 The Company shall use reasonable endeavours to comply with the shipping instructions given by the Buyer, where relevant, with its written purchase order but the Company reserves the right to make part shipments and to ship by vessels of the Company's choice from any port in the United Kingdom or elsewhere.
- 3.10 Where the Buyer is to provide a vessel for shipment the Company shall not be responsible for any charges resulting from failure by the Buyer to give due notice of the vessel's time of arrival.
- 3.11 Import or customs duty or other official taxes or charges arising from or necessary to enable delivery of the Goods shall be for the Buyer's account and shall be reimbursed forthwith where necessarily paid by the Company.
- 4 NON-DELIVERY OF GOODS**
- 4.1 The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 4.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company'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 and this is not a sale by sample.
- 4.3 The Company reserves the right to make any changes to the Specification which are required to conform with any applicable safety or other statutory or regulatory requirements and which do not materially affect their quality or performance.
- 4.4 The Company shall not be liable for any non-delivery of Goods or delivery of goods not complying with the Specification (even if caused by the Company's negligence) unless the Buyer gives notice to the Company of the non-delivery or the non-compliance with the Specification within 24 hours of the date when the Goods were or would in the ordinary course of events have been received.
- 4.5 Any liability of the Company for non-delivery of the Goods or non-compliance with the Specification shall be limited to replacing the Goods within a reasonable time or issuing a credit note for the Contract Price.

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- 5 **RISK/TITLE** principal when making such a sale.
- 5.1 The Goods are at the risk of the Buyer from the time of delivery to the Delivery Point. In the event that:
- 5.1.1 the Delivery Point is the Company's premises, the Goods are at the risk of the Buyer from the time when the Company notifies the Buyer that the Goods are available for collection;
- 5.1.2 the Buyer fails to take delivery of the Goods in accordance with clause 3, the Goods are at the risk of the Buyer from the time when the Company has tendered delivery of the Goods.
- 5.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) the Contract Price and all other sums which are or which become due to the Company from the Buyer on any account.
- 5.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
- 5.3.1 hold the Goods on a fiduciary basis on behalf of the Company;
- 5.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
- 5.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 5.3.4 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.
- 5.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
- 5.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
- 5.4.2 any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as
- 5.5 The Buyer's right to possession of the Goods shall terminate immediately if:
- 5.5.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
- 5.5.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
- 5.5.3 the Buyer encumbers or in any way charges any of the Goods.

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5.6 In the event that the Goods have been delivered but not paid for and the Buyer's right to possession of the Goods has terminated under clause 5.5, the Contract Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary. The Company shall be entitled to recover the Contract Price and all other sums which are due to the Company from the Buyer on any account notwithstanding that ownership of any of the Goods has not passed from the Company.

5.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

5.8 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 5 shall remain in effect.

### **6 PRICE**

6.1 The Contract Price shall be:

6.1.1 where a written quotation has been received by the Buyer from the Company, the price set out in the written quotation;

6.1.2 where a written purchase order has been received by the Company from the Buyer, and Order Confirmation has occurred, the price set out in any written Order Confirmation or (if there is no written Order Confirmation) in the relevant purchase order.

6.2 The Company reserves the right, by giving notice to the Buyer at any time before delivery, to increase the Contract Price to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation or alteration of duties, 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 Company adequate information or instructions).

6.3 The Contract Price shall be exclusive of any value added tax, sales or taxes or levies of a similar nature which are imposed or charged by any competent fiscal authority in respect of the Goods which the Buyer shall be additionally liable to pay to the Company. The Buyer shall also be liable for all costs or charges in relation to packaging, loading, unloading, carriage and insurance, and,

where relevant, shall pay them when it is due to pay for the Goods.

### **7 PAYMENT**

7.1 Subject to any special terms agreed in writing between the Buyer and the Company, the Company shall invoice the Buyer for the Contract Price on or at any time after despatch of the Goods. Receipts for payment will be issued only upon request.

7.2 The Buyer shall pay the Contract Price within 30 days after the date of invoice, unless otherwise agreed in writing between the parties, notwithstanding that the property in the Goods has not passed to the Buyer. Time for payment shall be of the essence.

7.3 All payments shall be made to the Company in the currency of the price stated in the written quotation, any written Order Confirmation or the invoice issued by the Seller.

7.4 No payment shall be deemed to have been received until the Company has received cleared funds.

7.5 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

7.6 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

7.7 The Company is not obliged to accept orders from any customer or buyer who has not supplied the Company with references satisfactory to the Company. If at any time the Company is not satisfied as to the creditworthiness of the Buyer it may give notice in writing to the Buyer that no further credit will be allowed to the Buyer in which event the Buyer shall be required to give security deposits in respect of Goods already shipped and/or all future Contracts.

### **8 QUALITY**

8.1 The Company warrants that (subject to the other provisions of these conditions) on delivery the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979.

8.2 The Company shall not be liable for a breach of the warranty in condition 8.1 unless the Buyer gives written notice of the defect to the Company within 30 days of delivery (unless agreed otherwise in writing between the parties) and the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost.

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- 8.3 The Company shall not be liable for a breach of the warranty in condition 8.1 if:
- 8.3.1 the Buyer makes any use of such Goods after delivery of the Goods; or
- 8.3.2 the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
- 8.3.3 the Buyer alters or repairs such Goods without the written consent of the Company.
- 8.4 Subject to condition 8.2 and 8.3 if any of the Goods do not conform with the warranty in condition 8.1 the Company shall at its option replace such Goods (or the defective part) or refund the Contract Price provided that, if the Company so requests, the Buyer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.
- 8.5 If the Company complies with condition 8.4 it shall have no further liability for a breach of the warranty in condition 8.1 in respect of such Goods.
- 9 LIMITATION OF LIABILITY**
- 9.1 The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- 9.1.1 any breach of these Conditions;
- 9.1.2 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
- 9.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 9.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 9.3 Nothing in these Conditions excludes or limits the liability of the Company:
- 9.3.1 for death or personal injury caused by the Company's negligence; or
- 9.3.2 for any matter which it would be illegal for the Company to
- 9.3.3 for fraud or fraudulent misrepresentation.
- 9.4 Subject to conditions 9.2 and 9.3:
- 9.4.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract Price; and
- 9.4.2 the Company shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect, economic or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 9.5 The Buyer shall ensure that, except to the extent that instructions as to the use or sale of the Goods are contained in the packaging or labelling of the Goods, any use or sale of the Goods by the Buyer is in compliance with all applicable statutory and other regulatory requirements and that the storage and handling of the Goods by the Buyer is carried out, where applicable, in accordance with directions given by the Company or any competent governmental or regulatory authority and the Buyer will indemnify the Company against any liability loss or damage which the Company might suffer as a result of the Buyer's failure to comply with this condition.
- 10 BUYER'S DEFAULT**
- 10.1 If the Buyer fails to make any payment within thirty days of the receipt of an invoice or the Buyer's right to possession of the Goods terminates under clause 5.5 then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
- 10.1.1 terminate the Contract or suspend any further deliveries to the Buyer without liability to the Buyer;
- 10.1.2 charge interest at a daily rate on all sums outstanding until payment in full is received whether before or after judgment at a rate of 4% above the UK base lending rate of Barclays Bank plc from

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- time to time and to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
- 10.1.3 where the Contract Price is to be paid in a currency other than Sterling, charge to the Buyer the reduction in the amount of pounds sterling receivable by the Company on conversion of the proceeds by the Company's bankers as a result of variations in the rate of exchange between the due date and the date of actual payment.
- 11 GENERAL**
- 11.1 When placing the order the Buyer must advise the Company in writing of any special, legal, administrative or regulatory requirements applying in the territory in which the Buyer is to import, use or sell the Goods as to composition labelling distributors or sale of the Goods and the Buyer must advise the Company immediately of any change made in such requirements.
- 11.2 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.
- 11.3 The Company may assign the Contract or any part of it to any person, firm or company. The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 11.4 The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of [30] days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.
- 11.5 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 11.6 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 11.7 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 11.8 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 11.9 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 11.10 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.
- 11.11 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or e-mail:
- 11.11.1 (in case of communications to the Company) to its registered office as detailed above or such changed address as shall be notified to the Buyer by the Company and such fax number or e-mail address as may be notified to the Buyer by the Company; or
- 11.11.2 (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer and such fax number or e-mail address as may be notified to the Company by the Buyer. Communications shall be deemed to have been received:

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- (i) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- (ii) if delivered by hand, on the day of delivery; or
- (iii) if sent by fax or e-mail on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.