

## CONDITIONS OF SALE

### 1. DEFINITIONS

- 1.1 "the Buyer" means the party which agrees or has agreed to buy the Goods.  
1.2 "Conditions" means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller.  
1.3 "the Goods" means any goods, items or services to be sold or supplied by the Seller.  
1.4 "Order" means any order placed by the Buyer for the Goods.  
1.5 "the Price" means the price of the Goods.  
1.6 "the Seller" means John Monaghan Limited or any company in the group.

### 2. CONDITIONS APPLICABLE

These Conditions shall apply to all Orders and contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order confirmation of order or similar document unless the Seller otherwise agrees in writing.

### 3. QUOTATIONS AND PRICES

- 3.1 Unless otherwise stated in writing quotations are available for acceptance within 30 days from the day of issue.  
3.2 Prices to be charged are those ruling at the time of despatch. If any increase occurs between the date of quotation and the date of despatch, be it manufacturer's own or from any other source beyond the control of the seller, the seller shall be entitled to increase any such prices by such amount as is reasonable having regard to such increases in costs.  
3.3 Unless otherwise stated in writing all Prices shall be exclusive of value added tax and are subject to current ruling VAT regulations.

### 4. CARRIAGE AND DELIVERY

- 4.1 Any date for despatch or delivery of the Goods specified by the Seller (whether orally or in writing) is given as an estimate only and it is hereby expressly agreed that such date shall not be of the essence of the contract. Delivery dates are given in good faith and the seller will strive to maintain any date given but cannot be held responsible for non-delivery for reasons outside the control of the seller.  
4.2 If the Buyer should fail to give all necessary instructions and documents for the Goods to be delivered or the Buyer should otherwise cause or request delay in the delivery of the Goods the Buyer shall pay in addition to the Price all storage and other costs incurred by the Seller as a result thereof.  
4.3 Unless otherwise stated in writing the Seller shall be entitled to make partial delivery of the Goods or delivery of the Goods by instalments and these Conditions shall apply to each such partial delivery.  
4.7 To the extent that it is inconsistent with the provisions set out in these Conditions section 32 of the Sale of Goods Act 1979 shall not apply.  
4.8 If Goods are collected by the Buyer delivery shall take place at the time of collection.  
4.9 For Goods despatched in the Seller's own transport and within the Seller's normal area of operations carriage may be waived. For Goods despatched via carrier or post a charge will be incurred. Carriage paid orders can be obtained. The charge for carriage will vary depending on the product type of Goods and delivery destination. Goods being despatched via overnight delivery or special service are not covered by the carriage paid ruling, unless the Seller is at fault or has agreed otherwise in writing.  
4.10 Orders accepted by the seller are done so on the understanding that any additional charges brought about through the procurement, assembly and delivery of goods to the buyer will be passed on at point of invoice or via supplementary invoice. Whenever possible the seller will inform the buyer of any impending additional charges if know.

### 5. RISK AND PASSING OF TITLE

- 5.1 The Goods shall be at the risk of the Buyer as soon as they are delivered by the Seller to the Buyer's premises or otherwise to the order of the Buyer or are collected by the Buyer and shall thenceforth be insured by the Buyer in the full replacement value thereof.  
5.2 Until such time as payment has been made in full by the Buyer, the goods shall remain the sole and absolute property of the Seller as legal and equitable owner and shall be held by the Buyer as bailee for the Seller and the Seller shall have the right to enter any premises of the Buyer on which the Goods are or are reasonably thought to be situated for the purpose of retaking possession of the Goods for which monies are outstanding.

### 6. DAMAGE/LOSS/SHORTAGE IN TRANSIT

- 6.1 Except where the seller arranges delivery by his own vehicle, the seller cannot be held responsible for loss or damage in transit. Any damage, loss or shortage must be reported to the seller within three working days of delivery in writing.

### 7. DEFECTIVE GOODS

- 7.1 Goods represented by the Buyer to be defective or not to conform to contract which are returned to and accepted by the Seller as such will be replaced or repaired at the Seller's option but shall not form the subject of any claim for work done by the Buyer, transport costs incurred by the Buyer in returning the Goods, or any loss, damage or expense or loss of profit on or any claim arising through the inability of the Buyer to re-sell the Goods or any other loss, damage or expenses whatsoever or howsoever incurred by the Buyer.  
7.2 No claim in respect of defective Goods will be valid unless made and the alleged defective Goods returned by the Buyer to the Seller at the Buyer's expenses within 14 days of the date of despatch.  
7.3 The liability of the Seller in respect of any defective Goods supplied to the Buyer shall be limited to this obligation and there shall be no liability at all for any defect notified to the Seller otherwise than as specified in this clause and on liability beyond such obligation in respect of any matter so specified nor shall the Seller have any further liability once Goods are repaired or replaced.  
7.4 The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of this contract. In the event of any breach by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.  
7.5 All warranties and conditions implied by statute or otherwise relating to the Goods are excluded from these Conditions provided nothing in these Conditions shall restrict or exclude liability for death or personal injury caused by the negligence of the Seller.

### 8. RETURNS AND CANCELLATION

- 8.1 The Seller in its discretion may allow the Buyer to take advantage of its returns document (credit processing) procedure which document must be issued for Goods to be returned for credit. The Buyer must provide an invoice/delivery note, number, date of purchase and reason for return before the Seller issues a credit processing document and is prepared to collect the Goods (such costs to be borne by the Buyer). The Buyer must ensure that the Goods for return are of merchantable quality, are fit for their purpose and are in their original containers or packaging. Goods will not be credited if there has been any damage or failure caused by the Buyer, including bad fitting, misuse or underspecification. It is the seller's policy to impose a restocking charge on all returns where the buyer is liable.  
8.2 Cancellation of an Order may be accepted without charge at the sole discretion of the Seller. In the event of the Seller accepting cancellation of Goods which are non-standard or have been made to special order the Buyer shall indemnify the Seller in accordance with this clause including paying the whole cost of work involved to the date of cancellation.

### 9. SAMPLES AND SETTLEMENT

- 9.1 Samples will be charged to the Buyer at normal Price and the value credited in full (in the Seller's discretion) if returned in good condition.  
9.2 Discounts will not be given unless agreed in writing by the Seller.

### 10. AMENDMENT AND VARIATION

- 10.1 Orders accepted by the Seller can only be amended with the Seller's consent and only on terms which indemnify the Seller against all costs, claims, demands and expenses so arising, including the procurement of non-standard or special items being held on stock for the Buyer.

10.2 Amendment of any Order may be accepted without charge only at the sole discretion of the Seller.

### 11. PAYMENT

- 11.1 Unless specified in writing by the Seller payment of the Price by the Buyer is due by the end of the month following the month of despatch of the Goods. Payment is not deemed to be made until the Seller is in receipt of cleared funds from the Buyer. In the event that any payment shall not be made by the Buyer to the Seller by the date on which such payment falls due then the following provisions of these Conditions shall take effect:
- 11.1.1 the Buyer shall forthwith pay to the Seller the Price under this or any other Order irrespective of any agreement for credit previously made between the Seller and the Buyer and the Seller will suspend any credit terms offered to the Buyer until payment in full has been made by the Buyer;  
11.1.2 the Seller shall be at liberty to cancel an Order (and/or any other Order subsisting between the Seller and the Buyer) in accordance with conditions herein.
- 11.2 If the Buyer fails to provide the required payment on the due date then without prejudice to any of the Seller's other rights the Seller may appropriate any payment made by the Buyer against such of the Goods (or Goods supplied under any other contract with the Buyer) as the Seller may in its own discretion think fit and;
- 11.2.1 suspend or cancel deliveries of any Goods due to the Buyer and/or;  
11.2.2 withdraw any services being provided to the Buyer until full payment for the goods has been received by the Seller and the Buyer shall be liable for any additional costs incurred by the Seller in completing the Order.
- 11.3 The Buyer may not withhold payment of any invoice or other amount due to the Seller by reason of any right of set-off or counterclaim which the Buyer may have or allege to have or for any reason whatever.  
11.4 It is the Buyer's responsibility to provide the seller with official order numbers if required and a list of the Buyer's authorised signatories.  
11.5 The seller reserves the statutory right to claim interest and compensation for late payment and debt recovery costs using entitlements provided by late payment legislation.  
11.6 The seller reserves the right to refuse or withdraw credit facilities without prior notice or explanation as to why such action has been taken.
12. TERMINATION  
The Seller will be entitled to terminate the relationship forthwith and without giving prior notice to the Buyer if the Buyer is in breach of any of its obligations herein.  
12.1 This shall be without prejudice to all other rights of the Seller under these Conditions which have accrued at the date of termination.  
12.2 The Seller shall not incur any liability whatsoever to the Buyer for any loss (whether consequential or otherwise) suffered by the Buyer as a result of such determination;  
12.3 such determination shall not affect the right of the Seller to full payment for any of the Goods delivered to the Buyer;  
12.4 The Buyer shall pay to the Seller the cost of all materials acquired and of all work done by the Seller in pursuance of this or any other Order whether or not any specific or ascertainable goods shall have resulted from such materials of work.
13. BUYER'S INSOLVENCY  
The Buyer hereby acknowledges that before placing an Order it has expressly represented and warranted to the Seller that it is not insolvent and is not the subject to any type of Insolvency Event.
14. EXPORT CONTRACTS  
14.1 In the case of an FOB transaction risk in the Goods shall pass to the Buyer when Goods are placed on board ship notwithstanding that property in the Goods may not have passed to the Buyer and the Seller shall be under no obligation to give to the Buyer the notice specified in section 32(3) of the Sale of Goods Act 1979.  
14.2 The Buyer shall be solely responsible for the payment of all import duties, charges, assessments and the obtaining of any necessary export and import licences in respect of the Goods and the Seller shall be under no liability whatsoever in respect of the Goods exported without the necessary export licences.  
14.3 All contracts made between the Buyer and the Seller shall be governed and construed in accordance with English Law in substitution to any other Laws or international sales.
15. ADVERTISING MATERIAL  
All specifications, designs, colours, illustrations, drawings, diagrams and the like in any catalogue, trade literature, advertising or other published materials are of a general informative nature only and do not form part of an Order.
16. PRODUCT SPECIFICATION  
The Seller has the right as part of its policy of improvement or should conditions so dictate to change specifications of the Goods without notice.
17. INTELLECTUAL PROPERTY  
17.1 The specifications and designs of the Goods (including the copyright, design right or the intellectual property in them) shall as between the parties be the property of the Seller. Where any designs or specifications have been supplied by the Buyer for manufacture by or to the order of the Seller then the Buyer warrants that the use of those designs or specifications for the manufacture, processing, assembly, or supply of the Goods shall not infringe the rights of any third party.  
17.2 The Buyer will indemnify and keep indemnified the Seller against any claim that the use of the designs or specifications supplied by the Buyer contravenes any third party's intellectual property rights.
18. INDEMNITY  
The Buyer agrees to indemnify and to keep indemnified the Seller against all loss, damage, actions, claims, expenses and costs (including but not limited to financial loss) whatsoever and however arising whether directly or indirectly out of or in connection with any breach, non-observance, or non-performance by the Buyer under these Conditions.
19. ASSIGNMENT  
The Buyer shall not assign or transfer an Order or the benefit thereof to any other party whatsoever.
20. FORCE MAJEURE  
Neither the Buyer or the Seller shall be liable for any loss or damage resulting from either party being delayed in its obligations by reasons or circumstances known generally as "force majeure".
21. ARBITRATION  
Any disagreements arising from the execution of any contract entered into shall be settled if not agreed by mutual consent by arbitration carried out in accordance with the rules of Association of British Chamber of Commerce or International Chamber of Commerce by one or more arbitrators in accordance with such rules.
22. LAWS OF CONTRACT  
22.1 These Conditions in all respects shall be general and construed in accordance with English Law and the parties hereby submit to the jurisdiction of the English Courts.  
22.2 Any reference to a statutory provision shall be deemed to include a reference to any statutory modification or re-enactment from time to time in force.