

Terms and Conditions of Sale - Bernstein Limited

Nothing in these Conditions affects the statutory rights of any consumer.

1. Definitions

In these Conditions, the following words and expressions will have the following meanings:

“Bernstein” means Bernstein Limited, the supplier of the Goods;

“Buyer” means the person who purchases the Goods from Bernstein;

“Conditions” means the terms and conditions set out in this document;

“Contract” means the contract between Bernstein and the Buyer for the sale and purchase of the Goods incorporating these Conditions;

“Goods” means the goods (or any part of them) set out in the Order;

“Intellectual Property Rights” means any design rights, utility models, patents, inventions, logos, business names, trademarks, domain names, copyright, moral rights, rights in databases, source codes, reports, drawings, specifications, know how, trade secrets, rights in software, rights in the nature of unfair competition and the right to sue for passing off and any other equivalent or similar rights to any of the foregoing in any jurisdiction, whether registered or unregistered;

“Order” means the Buyer’s order for the Goods as set out in the Buyer’s purchase order form.

A reference to a clause is to a clause of these Conditions. Clause headings shall not affect the interpretation of these Conditions. Any reference to "parties" means the parties to the Contract and "party" shall be construed accordingly. 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. Words in the singular include the plural and in the plural include the singular.

2. Basis of Contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Buyer 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 Buyer to purchase the Goods in accordance with these Conditions. The Buyer shall ensure that the terms of the Order are complete and accurate.

2.3 The Order shall only be deemed to be accepted when Bernstein 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 with respect to its subject matter and supersedes all prior and contemporaneous agreements and understandings between the parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Bernstein which is not set out in the Contract. Any samples, drawings, descriptive matter, or advertising issued by Bernstein and any descriptions or illustrations contained in Bernstein'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 Bernstein and the Buyer for the sale of the Goods.

2.5 A quotation for the Goods given by Bernstein shall not constitute an offer. A quotation shall only be valid for a period of 60 days from its date of issue, provided that Bernstein has not previously withdrawn it.

2.6 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 authorised representatives of Bernstein and the Buyer.

2.7 If the Goods are to be manufactured, designed, built or configured or any process is to be applied to the Goods by Bernstein in accordance with a specification, drawing or sample submitted by, or any instructions of, the Buyer, the Buyer shall hold Bernstein harmless and shall fully and promptly indemnify Bernstein against all loss, damages, costs and expenses awarded against or incurred by Bernstein in connection with, or paid or agreed to be paid by Bernstein in settlement of any claim for infringement of any Intellectual Property Rights of any other person which results from Bernstein's use of the Buyer's specification, drawing or sample, or otherwise from the Buyer's express or implied instructions.

2.8 Any and all Intellectual Property Rights (howsoever arising), in relation to the Goods shall at all times vest in and belong solely to Bernstein.

3. Call off and Scheduled Orders

Call off or scheduled Orders are only accepted on condition that the full quantity ordered will be delivered to the Buyer within a maximum of 12 months from the date of the first scheduled or call off delivery.

4. Price

4.1 Prices of the Goods, howsoever given, are based on conditions ruling on the date of their giving and are subject to change. The effective price for the Goods shall be the price confirmed by Bernstein in its written acceptance of the Order pursuant to clause 2.3 and shall be for the quantity mentioned in that written acceptance.

4.2 Unless agreed otherwise, the price shall be ex-works and, accordingly, the Buyer shall, in addition to the price, be liable for arranging and paying all costs of transport (save as provided in clause 5.4) and insurance. Such prices do not include VAT or any other tax, levy or duty, these will be charged extra.

4.3 Bernstein reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to Bernstein which is due to any factor beyond the control of Bernstein (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 Bernstein adequate information or instructions. There is a minimum net invoice value of £50.00 for all Orders.

5. Delivery

5.1 Unless otherwise agreed, Bernstein shall deliver the Goods to the location set out in the Order or to such other location as the parties may agree at any time after Bernstein notifies the Buyer that the Goods are ready. Where Bernstein is to deliver the Goods otherwise than at its own premises, it shall be under no obligation under section 32(2) of the Sale of Goods Act 1979.

5.2 Any times quoted for delivery are to be treated as estimates only; time for delivery shall not be of the essence of the Contract. Bernstein shall not be liable for any failure to deliver within the estimated delivery times. In all cases whether an estimated time for delivery has been quoted or not, the time for delivery shall be extended by a reasonable period if delay in delivery is caused by instructions or lack of instructions from the Buyer, or by industrial dispute, or by any cause whatsoever beyond Bernstein's reasonable control.

5.3 Bernstein may make partial delivery of an Order or deliver an Order by instalments and these Conditions shall apply to each. Each delivery shall be deemed to be a separate contract.

5.4 Delivery shall be accepted by the Buyer when tendered. Bernstein shall be entitled to assume that the person accepting delivery has authority from the Buyer to do so.

5.5 If the Buyer fails to take delivery of the Goods in accordance with the Contract within three days after the Buyer has been notified that the Goods are ready for delivery: (a) risk in the Goods shall pass to the Buyer; (b) delivery of the Goods shall be deemed to have been completed at 9am on the third day following the date of the notification; and (c) for so long as Bernstein's storage facilities permit, Bernstein may store the Goods and the Buyer shall pay a reasonable charge therefor, including any insurance costs.

5.6 Carriage will be charged on all Orders with a net invoice value of less than £250.00 unless otherwise agreed in writing. For Orders with a net invoice value of £250.00 or more, carriage is free of charge.

6. Loss or Damage in Transit

Where Bernstein arranges transportation of the Goods, it shall repair or replace free of charge any Goods that are damaged or lost in transit, provided that Bernstein is given written notification of such damage or loss within 48 hours of delivery.

7. Packing

Packing cases, skids, drums and other packing materials, if charged for in addition to the price of the Goods, will be credited in full if returned in good condition, carriage paid, to Bernstein within one month of delivery of the Goods.

8. Rejection

Unless otherwise agreed, Goods rejected by the Buyer as not complying with the Contract must be so rejected within 48 hours of delivery.

9. Payment

9.1 Bernstein may invoice the Buyer for the Goods on or at any time after delivery. Provided that the Buyer has produced references which in Bernstein's opinion are satisfactory, then unless otherwise agreed in writing, payment in full in respect of the Goods is due 30 days from date of Bernstein's invoice therefor. If the Buyer has not produced satisfactory references, payment shall be made in advance upon submission by Bernstein of a pro-forma invoice.

9.2 Time for payment shall be of the essence of the Contract. Payment shall not be withheld on account of any claim of the Buyer against Bernstein.

9.3 Failure by the Buyer to pay any invoice by its due date shall entitle Bernstein to: (a) charge interest on overdue payments, which shall include any cheques presented for payment and not met by the Buyer's bank, from the date they become due to the date of actual payment, whether before or after judgement, at the rate of 1.5% per month; (b) charge the Buyer with any costs incurred by Bernstein in the course of collecting outstanding monies due to Bernstein from the Buyer; (c) suspend any warranty for the Goods or any other goods supplied by Bernstein to the Buyer, whether or not they have been paid for; and (d) set off any amount owed by Bernstein to the Buyer against any amount owed by the Buyer to Bernstein on any account whatsoever. Bernstein reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

9.4 No cash or other discount will be allowed unless specified by Bernstein and any discount so specified shall apply only where payment is timely received.

9.5 Bernstein reserves the right to withdraw any credit terms agreed with the Buyer and to substitute C.W.O. (Cash With Order) or C.O.D. (Cash On Delivery) terms.

9.6 Bernstein reserves the right to suspend any delivery of the Goods where payment under the Contract or any other contract between Bernstein and the Buyer is not timely received.

10. Return of goods

No Goods may be returned for credit without Bernstein's prior agreement. Bernstein reserves the right to apply a re-stocking charge if such agreement is given.

11. Cancellation of orders and Termination

11.1 The Buyer may only cancel an Order with Bernstein's consent. If the Buyer so cancels an Order it shall be liable to a cancellation charge and to make reasonable and fair compensation to Bernstein for any and all expenditure of money, materials and manpower incurred by Bernstein in execution of the Order. An Order for non-stock items may not be cancelled.

11.2 If at any time the Buyer shall: (a) commit a breach of any obligation arising hereunder; or (b) default in making any payment by its due date; or (c) become insolvent, be subject to a petition in bankruptcy filed by or against him or be placed under the control of a receiver, liquidator or committee of creditors; then Bernstein may, if it so elects, terminate any contract then subsisting by written notice. The Buyer shall have fourteen (14) days to correct the default (if the default is capable of remedy), failing which termination shall take effect at the end of the fourteen (14) day period.

12. Defects after delivery

12.1 Bernstein warrants that on delivery and for a period of twelve calendar months, the Goods shall, under proper use, be free from material defects in design, material and workmanship. Bernstein will make good, by repair (or at its option) by the supply of a replacement, defects which, under proper use, appear in the Goods within a period of twelve calendar months after the Goods have been delivered and arise solely from faulty design, materials or workmanship, provided always that defective parts have been returned to Bernstein if Bernstein shall have so required. Bernstein shall refund the cost of carriage on such returned parts and the repaired or new parts will be delivered by Bernstein free of charge as provided in clause 5 (Delivery).

12.2 Bernstein shall not be liable for any breach of any warranty in clause 12.1, if: (a) the Buyer makes any further use of any Goods which the Buyer has alleged to be defective after

giving notice of any such defect; (b) the Buyer alters or repairs the Goods without the prior written consent of Bernstein; (c) the defect arises because the Buyer failed to follow any oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; (d) the defect arises from any specification, drawing or sample supplied by the Buyer, or from fair wear and tear, wilful damage, negligence, abnormal working conditions or from any misuse of the Goods; (e) the full price for the Goods has not been paid by the time for payment stipulated in clause 9.1; (f) any identification or serial number on the Goods has been altered, defaced or removed; or (g) the defect is of a type specifically excluded by Bernstein by notice in writing.

12.3 Without limiting any liability of Bernstein for fraudulent misrepresentation, Bernstein shall not be under any liability for any damage, loss or expense resulting from any failure to give advice or information, or for the giving of incorrect advice or information, whether or not due to the negligence of Bernstein or that of its employees.

12.4 Bernstein makes no representation and gives no warranty in respect of the sources or origin of manufacture or production of the Goods or any part thereof.

12.5 The Buyer is relying on its own skill and judgment in relation to the suitability of the Goods for its purposes and Bernstein accepts no liability whatsoever for any knowledge it may possess as to the purpose for which the Goods are supplied. Without limitation, the Buyer shall be solely responsible for determining the inter-operability or compatibility of the Goods with any other goods.

12.6 Except as set out in these Conditions, all warranties, conditions and other terms implied by law as to the quality or fitness for any particular purpose of the Goods are excluded from the Contract to the fullest extent permitted by law. Save as provided in this clause, Bernstein shall not be under any liability, 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 Bernstein's total liability under or in connection with the Contract shall not exceed the price of the Goods.

12.7 Nothing in these Conditions shall exclude or limit Bernstein's liability for death or personal injury caused by its negligence, fraud or fraudulent misrepresentation, defective products under the Consumer Protection Act 1987 or for any other matter in respect of which it would be unlawful to exclude or limit liability.

12.8 The Buyer undertakes to take all steps necessary to ensure that the Goods and their use will be safe and without risk to health. The Buyer shall indemnify Bernstein against any liability, whether civil or criminal, which Bernstein may incur in respect of any injury, loss or damage caused by any failure of the Buyer to meet its obligations under this clause 12.8.

13. Property & Risk

13.1 All Goods supplied by Bernstein shall remain the sole and absolute property of Bernstein as legal and equitable owner until such time as Bernstein has received payment in full (in cash or cleared funds and including any interest or other sums payable) for (a) the Goods and (b) the price for any other goods the subject of any other contract between the Buyer and Bernstein.

13.2 Until such time as the Buyer becomes the owner of the Goods he must (a) store them at his premises separately from any other goods and in a manner which makes them identifiable as Bernstein's property and (b) must keep the Goods in a satisfactory condition and fully insured against all risks and indemnify Bernstein against all loss or damage of whatsoever nature affecting the Goods; (c) notify Bernstein immediately if it becomes subject to any of the events listed in clause 11.2 (c); and (d) give Bernstein such information relating to the Goods as Bernstein may require from time to time.

13.3 Bernstein may enter upon any premises where the Goods are stored and repossess the same if Bernstein (a) knows or has reasonable grounds for suspecting that the Buyer is not complying or may not be able to comply with its obligations under this clause; or (b) the Buyer is late in making any payment for the Goods which has become due for payment.

13.4 Nothing in this clause 13 shall prevent the Buyer from selling or agreeing to sell the Goods in the ordinary course of business.

13.5 The risk in the Goods shall pass to the Buyer on delivery of the Goods.

14. Arbitration

If at any time any question, dispute or difference whatsoever shall arise between the Buyer and Bernstein on, in relation to or in connection with the Contract, either party may give to the other notice in writing of the existence of such question, dispute or difference, and the same shall be referred, on the application of either party, to the arbitration of a person to be mutually agreed upon, or failing agreement within 14 days of receipt of such notice, of some person appointed by the President for the time being of the Institution of Electrical Engineers.

15. Legal construction

Unless otherwise agreed in writing the Contract shall in all respects be construed and operated as an English contract and in conformity with English law.

16. Statutory and other regulations

Bernstein reserves the right without prior approval from or notice to the Buyer to make changes to the Goods in order to meet any statutory or other requirement. If the cost to Bernstein of performing its obligations under the Contract shall be increased or reduced by reason of the making or amendment after the date of its quotation of any law or of any order, regulation, or bye-law having the force of law that shall affect the performance of Bernstein's obligations under the Contract, the amount of such increase or reduction shall be added to or deducted from the contract price as the case may be.

17. Notices

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. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to above; if sent by pre-paid first-class post or recorded delivery 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.

18. General

18.1 No forbearance or indulgence granted by Bernstein to the Buyer shall in any way limit the rights of Bernstein under these Conditions.

18.2 Neither Bernstein nor the Buyer intends 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.

18.3 Bernstein, but not the Buyer, shall be entitled at its discretion to perform any of the obligations assumed by it and to exercise any of its rights granted to it under the Contract through any other company or subsidiary.

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