

RHH Franks (New Milton) Ltd

Conditions of Sale

1. Interpretation

1.1 In these Conditions:

“BUYER” means the person who accepts a quotation of the Seller for the sale of the Goods or whose Order the Goods is accepted by the Seller;

“SELLER” means RHH Franks (New Milton) Ltd (a private company registered in England with limited liability under company number 690175) whose registered office is at Ludwell House, 2 Guildford Street, Chertsey, Surrey, KT16 9BQ;

“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 Conditions;

“CONDITIONS” means the standard terms and Conditions of sale set out in this document;

“DELIVERY ADDRESS” means the address stated on the Order;

“SPECIFICATION” includes any plans, drawings, data or other information relating to the goods;

“CONTRACT” means the Contract for the purchase and sale of the Goods which shall comprise these Conditions; and special terms and Conditions agreed in Writing between the Buyer and the Seller; and the Order;

“ORDER” means an Order by the Buyer which is accepted by the Seller; and

“WRITING” includes fax, email and comparable means of communication.

1.2 Any reference in these Conditions to any provision of a statute shall be constructed as a reference to that provision as amended, re-enacted or extended at the relevant time.

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

2 Basis of Sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any Order of the Buyer which is accepted by the Seller in accordance with these Conditions. The Contract shall constitute the entire agreement between the parties to the exclusion of any other terms and Conditions or any other agreement, arrangement or understanding which is made or purported to be made between the Seller and the Buyer whether written or oral, relating to its subject matter.

2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and 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.

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 of use or use of the Goods which is not confirmed in Writing by the

Seller is followed or acted upon entirely at the Buyers 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, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

2.6 A quotation by the Seller does not constitute an offer and the Seller reserves the right to withdraw or revise a quotation at any time prior to the Seller's acceptance of the Buyers Order.

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 Sellers authorised representative. If the Contract price exceeds £100,000 then the Contract must be authorised on behalf of the Seller by a Director. In the event that a Contract which exceeds £100,000 is not authorised by a Director of the Seller, then that Contract shall be voidable at the option of the Seller. Should the Seller exercise this option, then that Contract shall be void and to no effect and neither party shall have any claim of any nature whatsoever against the other.

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, description and any Specification for the Goods shall be those set out in the Buyers Order, if accepted in Writing by the Seller in accordance with clause 3.1.

3.4 If the Goods are to manufactured, designed, built or configured 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 hold the Seller harmless and shall fully and promptly indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred 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 patent, copyright, design, trademark, or other industrial or intellectual property rights of any other person which results from the Sellers use of the Buyers Specification.

3.5 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 off all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

4. Price of Goods

4.1 The price of the Goods shall be the Sellers quoted price subject always to the provisions to clause 2.6. All prices quoted are valid for 60days (unless specified differently on the quote) or until earlier acceptance by the Buyer.

4.2 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

5. Terms of Payment

5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to 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.

5.2 The Buyer shall pay the price of the Goods within 30days of the invoice date, subject to any special terms agreed in Writing between the Buyer and the Seller. Receipts for payment will be issued only upon request.

5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

5.3.1 Cancel the Contract or suspend any further deliveries to the Buyer;

5.3.2 Put the Buyer on a pro-forma basis.

5.4 In the event that the Seller owes money to the Buyer under any Contract or other arrangement entered into between the Seller and the Buyer the Seller shall be entitled to set off such sums owed by the Seller to the Buyer against any sums which the Buyer shall owe to the Seller pursuant to this Contract.

6. Delivery, Inspection and Complaints

6.1 Delivery of the Goods shall be to the Delivery address stated on the Order or a related address previously agreed in writing between the Seller and the Buyer, or delivery 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.

6.2 If the Buyer fails to take delivery of the Goods at the time stated for delivery or fails to give the Seller adequate delivery instructions (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then risk in the Goods shall pass to the Buyer and the Goods shall be deemed to have been delivered on the date of delivery and without prejudice to any other right or remedy available to the Seller and the Seller will store the Goods until actual delivery.

6.3 The Buyer shall examine and sign for the Goods upon delivery and satisfy itself that they conform to Contract. A claim that Goods are not in accordance with the Contract will not be accepted by the Seller unless a reject note in Writing, specifying the alleged default, is given to the Seller within 3 months of delivery of the Goods.

6.4 Failure to notify the Seller of the non-delivery of the Goods, or any of them, within 7 days of the due date for delivery will release the Seller from liability for claims for non-delivery.

6.5 Any Goods considered to be non-conforming, damaged or defective (together with their packaging materials) shall be retained by the Buyer intact as delivered for a period of 30 days from notification of the claim to the Seller, within which time the Seller or its agents shall have the right to investigate the complaint and examine the Goods and, if possible, to remedy any defect. Any breach of this condition will release the Seller from any liability for Goods which are alleged not to conform to Contract.

6.6 If the Seller agrees with the Buyer that the goods are non-conforming, and that it is not possible to remedy any defect then the Seller shall, at its sole option, replace the Goods or credit the Buyer accordingly.

6.7 If the Seller disagrees with the Buyer that the Goods are non-conforming to specifications then a further investigation and negotiation will take place within 60days of the date of the non-conformity being raised.

6.8 The Seller shall have no liability to the Buyer in respect of damaged or defective Goods (and the Buyer shall be required to pay the full Contract price) where:-

(a) any claim made by the Buyer is not in accordance with these Conditions;

(b) damage has been sustained after delivery of the Goods to the Buyer, or its agents;

- (c) defects are caused by installation, operation or maintenance carried out with the Goods or by wear and tear, accident or misuse, improper operation or neglect or if any adjustment, alteration or other work has been performed on the Goods by any person other than the Seller or its employees or agents; or
- (d) a receipt has been obtained by the Seller, duly signed by the Buyer or one of its employees or agents, confirming that the Goods have been delivered in a satisfactory condition unless agreed in writing that the Goods are to be shipped to stock.

7. Risk and Property

7.1 Risk of damages to or loss of the Goods shall pass to the Buyer:

7.1.1 in the case of Goods to be collected from the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or

7.1.2 in the case of Goods to be delivered to the Delivery Address specified in the order, at the time of delivery or, if the Buyer fails to take delivery of the Goods, the time when the Seller has attempted the delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, 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.

7.3 The Buyer may resell the Goods before ownership has been passed, and payment must still be made within 30 days of the invoice date.

7.4 Until such time as the property in the Goods passes to the Buyer, the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller.

7.5 When applicable, the Seller has a responsibility to protect the Buyers assets when in their possession against loss, theft, abuse and unauthorised use or disposal. The Buyers assets include all property whether tangible, intangible or electronic form, which includes products, equipment, tooling, vehicles, computers, software and telephone systems. The Buyers assets will only be used by the Seller for legitimate business purposes.

7.6 The Seller shall preserve the product and any constituent parts of the product, during internal processing and delivery to the intended destination in order to maintain conformity to requirements, or until the goods have been passed to the Buyer.

8. Warranties and Liability

8.1 Subject to the Conditions set out below the Seller warrants that the Goods will correspond with the Specification stated on the order at the time of delivery and will be free from defects in material and workmanship for a period of 3 months from the date of delivery.

8.2 The above warranty is given by the Seller subject to the following Conditions:

8.2.1 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;

8.2.2 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 by the Buyer to follow the Seller's instructions (whether oral or in Writing), misuse or alteration or repair of the Goods without the Seller's written approval;

- 8.2.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the price due for the Goods has not been paid;
- 8.2.4 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.
- 8.3 If the Seller agrees that it is liable under the provisions of clause 8.2 above, then the Seller's entire liability to the Buyer shall be limited, at the option of the Seller, to repairing or replacing the Goods or refunding the purchase price (or a proportionate part thereof) for them.
- 8.4 The Buyer shall be responsible for ensuring that the Goods are fit for the purpose for which it wishes to use them and the Seller gives no warranty (and none shall be implied) that the Goods are fit for any particular purpose.
- 8.5 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was caused by the Buyer.
- 8.6 These Conditions do not create any right enforceable by any person not a party to it except that a person who is the permitted successor to or assignee of the Seller is deemed to have the benefit of all rights of the Seller.

9. Insolvency of Buyer

- 9.1 This clause applies if:
 - 9.1.1 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration Order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
 - 9.1.2 an encumbrancer takes possession, or a receiver or administrative receiver is appointed, of any of the property or assets of the Buyer; or
 - 9.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
 - 9.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 9.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

10. Export Terms

- 10.1 In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- 10.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this shall (subject to any special terms agreed in Writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.
- 10.3 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 on them.

10.4 The Buyer is responsible for complying with all UK laws regarding UK military items exported from the UK regardless of destination.

11. Anti-Bribery

11.1 The Buyer, (which for the purposes of this clause shall include all of the Buyer's employees, agents, representatives, affiliates and any person employed by or acting on behalf of the Buyer) agrees with the Seller that it will not, in connection with the Goods to be supplied under this Contract or in respect of any other agreement or understanding between the Buyer and the Seller, bribe, or attempt to bribe (which shall include without limitation, any offer of any form of payment, gift or other form of inducement, reward or advantage charitable donations, facilitation payments, and/or political contributions (whether of money or anything of value)) the Seller or any of the Seller's employees, agents, representatives, affiliates or persons employed by or acting on behalf of the Seller, any customers, potential customers, public or government officials or employees, public international organisations, political parties, or private individuals or other entities ("Relevant Party").

11.2 The Buyer represents and warrants to the Seller that it has not, prior to the date of this Contract, bribed or attempted to bribe any Relevant Party in Order to secure and/or retain any business with the Seller whether in connection with this Contract or otherwise.

11.3 The Buyer acknowledges and agrees that it is familiar with and will abide by the anti-bribery and anti-money laundering laws in all the countries in which it is incorporated or established and in which it does business.

11.4 The Buyer agrees that it will not take or knowingly permit any action to be taken that would cause the Seller to be in violation of any applicable anti-bribery or anti-money laundering laws.

11.5 If the Buyer discovers that it has or may have violated any of the provisions in this clause the Buyer shall immediately notify the Seller and cooperate with any investigations by the Seller into such matters.

11.6 Without prejudice to the generality of clauses 11.1 to 11.5 inclusive, the Buyer covenants with the Seller to establish and at all times maintain and implement such anti-bribery policies and procedures as may be required to ensure that it prevents bribery or attempted bribery taking place on the Buyer's behalf.

11.7 The Buyer agrees that in addition to the Seller's termination rights set out elsewhere in this Contract, the Seller may immediately terminate this Contract in the event of a breach of this clause 11 by the Buyer.

12. General

12.1 Any notice required or permitted to be given by either party to the other under these Conditions 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.

12.2 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.

12.3 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.

12.4 Neither the Seller 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.

12.5 Post-delivery support including; collection and analysis of in-service data, actions to be taken (including investigation and reporting, when problems are detected after delivery), control and updating of technical documentation, approval, control and use of repair schemes, and controls required for off-site work (for example work undertaken at the Buyers facility) shall not be carried out by the Seller.