

TERMS AND CONDITIONS OF SALE AND SUPPLY BY QUARTZELEC LIMITED

These terms and conditions ("Conditions") apply to all transactions for the sale of any products and/or the performance of any services ordered from or to be supplied or performed by Quartzelec Limited (Company number: 02364716) whose registered office is Castle Mound Way, Central Park, Rugby, Warwickshire, England CV23 0WB ("Quartzelec").

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions unless the context requires otherwise the following words have the following meanings:

"Contract" any contract between the Customer and Quartzelec for the purchase of Goods and/or Services incorporating these Conditions, any applicable Specification and the Order.

"Contract Price" the price payable by the Customer for the Goods and/or Services as specified in the Order.

"Customer" the person or organisation who purchases Goods and/or Services from Quartzelec as identified in the Order.

"Customer Default" has the meaning given to it in Clause 3.7.

"Delivery Location" the location set out in the Order or such other location as the parties may agree subsequently for the purposes of delivery of the Goods and/or performance of the Services.

"Force Majeure Event" any occurrence which hinders, delays or prevents a party in performing any of its obligations under this Contract which is beyond its reasonable control including but not limited to acts of God, war, explosion, flood, fire, governmental actions, strike, lock-out, or other form of industrial action (other than a strike, lock-out or other form of industrial action induced by the party so incapacitated), power breakdown or machinery breakdown.

"Goods" any products ordered by the Customer from Quartzelec or to be supplied by Quartzelec to the Customer and any products and/or materials which are to be utilised in the performance of the Services in which ownership is intended to pass to the Customer once the Services have been performed.

"Liquidated Damages Sum" the sum specified in the Order being the amount of the liquidated damages applicable to the Contract in accordance with Clause 6.3.

"Losses" any and all liability or losses arising from actions, awards, costs, claims, damages, losses (including without limitation any direct or indirect consequential losses), expenses, loss of profits, loss of reputation, judgments, penalties and proceedings and any other losses and/or liabilities.

"Order" an order placed in writing by the Customer with Quartzelec for the supply of the Goods and/or provision of the Services whether made by fax or e-mail or as may be set out in the Customer's purchase order form or the Customer's written acceptance of Quartzelec's quotation, as the case may be, being identified as such in the order acceptance which is issued by Quartzelec.

"Services" the services and/or work to be performed by Quartzelec for the Customer as identified in the Order.

"Specification" any specification for, or the quality and/or description of, the Goods and/or Services, including any relevant plans or drawings, that is agreed in writing by the Customer and Quartzelec and as may be set out in the Order or as may be subsequently agreed between the parties following confirmation of the Order.

"VAT" value added tax and any such tax amending or replacing the same or the equivalent taxation in the relevant jurisdiction.

"Warranty Period" the period specified in the Order for the duration of the warranties provided under Clause 16.1.

1.2 In these Conditions:

- reference to any gender includes all genders;
- reference to the singular shall include the plural and vice versa;
- words indicating a person shall include bodies of persons whether corporate or incorporate;
- reference to a Clause is to the relevant Clause in these Conditions;
- the headings are for convenience only and shall not affect their interpretation;
- reference to any statute or statutory provision includes a reference to the same as from time to time amended, extended, re-enacted or consolidated and all subordinate legislation from time to time made under it.

2. FORMATION OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase the Goods and/or the Services on these Conditions.

2.2 Any quotation given by Quartzelec shall not constitute an offer, and unless specified otherwise by Quartzelec in writing, is only valid for a period of 30 calendar days from its date of issue.

2.3 A legally binding contract will only be formed between Quartzelec and the Customer when either:

- Quartzelec has notified the Customer of its acceptance of the Customer's Order in writing; or
- (if earlier) by its actions has commenced performance of the Customer's Order.

2.4 A read receipt or delivery receipt of an email will not amount to written confirmation of Quartzelec's acceptance of the Customer's Order.

2.5 Quartzelec may refuse to accept any Order placed by the Customer and will have no liability to anyone else in such circumstances.

2.6 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.

3. SPECIFICATION

3.1 The quantity, quality and description of the Goods and/or Services shall be as specified in the Order and/or in any Specification provided to Quartzelec by the Customer or produced for the Customer by Quartzelec and/or as otherwise agreed in writing between the parties. Details in brochures and price lists produced by Quartzelec and/or the Specification are intended as guidance only and are only intended to give a general approximation of the Goods and/or Services unless stated in the Order or otherwise agreed in writing.

3.2 Any Specification, moulds, dies, materials and/or equipment together with the copyright, design rights and/or any other intellectual property rights in all Specifications, data and materials specifically produced and/or used by Quartzelec for the Customer in connection with the Contract, shall be the exclusive property of Quartzelec, unless such data or materials are provided to Quartzelec by the Customer.

3.3 The Customer shall check and ensure that any Order and any Specification is accurate and adequate for the provision of the Goods and/or Services and Quartzelec shall have no liability for any Losses arising from or in connection with any errors in any Specification or details provided by and/or approved by the Customer or in any delay by the Customer in providing and/or approving the same.

3.4 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify Quartzelec against all Losses (including all legal and other professional costs and expenses) suffered or incurred by Quartzelec in connection with any claim made against Quartzelec for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Quartzelec's use of the Specification. This Clause 3.4 shall survive termination of the Contract.

3.5 The Customer shall give Quartzelec any information requested by Quartzelec to perform the Contract.

3.6 The Services shall be performed by appropriately qualified and trained personnel with due care and diligence to such high standard of quality as it is reasonable for the Customer to expect in all the circumstances.

3.7 If Quartzelec's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

(a) Quartzelec shall without limiting its other rights or remedies have the right to suspend delivery of the Goods and/or performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Quartzelec's performance of any of its obligations;

(b) Quartzelec shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Quartzelec's failure or delay to perform any of its obligations as set out in this Clause 3.7; and

(c) the Customer shall reimburse Quartzelec on written demand for any Losses sustained or incurred by Quartzelec arising directly or indirectly from the Customer Default.

3.8 Quartzelec shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the Services under English law, but it shall be the responsibility of the Customer to ensure the Specification and the Order give sufficient details to Quartzelec to ensure the Goods and Services are compliant with all applicable regulations and other legal requirements in the country of destination requested by the Customer.

4. CHANGES TO SPECIFICATION BY QUARTZELEC

4.1 Quartzelec reserves the right to make any changes to the Specification, Order, Goods and/or Services which are required from time to time by law or any applicable safety or manufacturing requirements provided such changes do not materially affect the quality and/or performance of the Goods and/or Services.

5. IMPORT LICENCES

5.1 Unless otherwise agreed in writing by Quartzelec or specified in the Order, the Customer is responsible for:

- obtaining, at its own cost, such import licences and other consents in relation to the Goods as are required from time to time and, if required by Quartzelec, the Customer shall make those licences and consents available to Quartzelec prior to the relevant shipment; and
- ensuring that the delivery of the Goods complies with any other legislation or regulations governing the importation of goods into the country of destination requested by the Customer.

6. DELIVERY AND PERFORMANCE

6.1 Delivery of the Goods will be made in accordance with the Incoterm specified in the Order to the Delivery Location, in the absence of which it shall be made by the Customer collecting the Goods from Quartzelec's premises within 7 calendar days from Quartzelec notifying the Customer that the Goods are ready for collection.

6.2 Quartzelec will use its reasonable endeavours to achieve delivery and/or performance by the Delivery Date specified in the Order but each such date is to be treated as an estimate only and time shall not be of the essence of the Contract.

6.3 If for any reason (other than a Force Majeure Event or a Customer Default) Quartzelec fails to provide the Goods and/or Services in accordance with the desired Delivery Date specified in the Order, the Customer may, by way of liquidated damages, deduct from the price the Liquidated Damages Sum for each day or week (being the sum and frequency as specified in the Order or in the absence of any specified figure being 0.25% of the Contract Price per week) that the Delivery Date is delayed up to a maximum of the percentage specified in the Order (or in the absence of such maximum figure being no more than 5% of the total Contract Price). The Customer and Quartzelec both acknowledge and confirm that any such deduction is a genuine pre-estimate of the damage and loss likely to be suffered by the Customer as a result of the failure to meet the desired Delivery Date. Such deduction shall be the Customer's sole and exclusive remedy for Quartzelec's failure to provide the Goods and/or Services by the desired Delivery Date.

6.4 The Customer will have no right to reject or object to the Goods and/or Services and will have no right to rescind for late performance unless the due date for performance has passed and the Customer has served on Quartzelec a written notice requiring the Contract to be performed giving the Quartzelec no less than 30 calendar days in which to do so and the notice has not been complied with.

6.5 Quartzelec may deliver the Goods by separate instalments and/or perform the Services in stages as set out in the Order and each delivery and/or stage shall constitute a separate and distinct contract which Quartzelec shall be entitled to invoice separately. Failure by Quartzelec to deliver any instalment or perform any stage shall not entitle the Customer to treat the Contract as a whole as repudiated and/or terminated.

6.6 If the Customer fails to take delivery of the Goods or fails to allow performance of the Services then without prejudice to any other right or remedy available to Quartzelec, Quartzelec may:

- withhold delivery and/or performance of any other Goods and/or Services;
- store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; and/or
- sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.

6.7 If the Customer fails to take delivery of the ordered Goods or fails to allow performance of the ordered Services the Customer will indemnify and keep indemnified Quartzelec against any and all Losses (including increased administration and legal costs on a full indemnity basis) incurred and/or suffered by Quartzelec as a result.

7. NON-DELIVERY

7.1 The quantity of any consignment of Goods as recorded by Quartzelec on despatch from Quartzelec's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

7.2 Quartzelec shall not be liable for any non-delivery of Goods (even if caused by Quartzelec's negligence) unless the Customer gives written notice to Quartzelec of the non-delivery within 5 calendar days of the date when the Goods would in the ordinary course of events have been received.

7.3 Any liability of Quartzelec for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

8. SITE FOR SERVICES

8.1 To enable Quartzelec to perform the Services the Customer will at its own cost provide the following in respect of the site where the Services are to be performed:

- sufficient and suitable access to the site;
- a safe area which complies with all applicable statutory and other regulations and codes of practice to enable performance of the Services; and
- all necessary health and safety policies applicable to the site and to Quartzelec's personnel whilst performing the Services.

9. CANCELLATION

9.1 No Order which has been accepted by Quartzelec may be cancelled by the Customer except with Quartzelec's prior written agreement and on terms that the Customer shall indemnify and keep indemnified Quartzelec in full against any and all Losses (including the cost of all labour and materials used) incurred and/or suffered by Quartzelec as a result of cancellation.

10. POSTPONEMENT

10.1 Quartzelec will be under no obligation to do so but may comply with a reasonable request by the Customer to postpone delivery of the Goods and/or performance of the Services.

10.2 If delivery of the Goods and/or performance of the Services is postponed at the Customer's request the Customer shall indemnify and keep indemnified Quartzelec in full against any and all Losses (including increased administration and legal costs on a full indemnity basis as well as any storage costs and associated insurance costs) suffered and/or

incurred by Quartzelec as a result and shall also pay for the Goods and/or Services as if delivery and/or performance had not been postponed.

11. PRICE

11.1 Unless otherwise agreed in writing the price of the Goods and/or for performance of the Services shall be the Contract Price as stated in the Order.

11.2 All prices or rates specified are exclusive of any applicable VAT or other applicable sales taxes or duties which shall be payable by the Customer where applicable.

12. PAYMENT

12.1 The Customer will pay the Contract Price for the Goods and/or Services at the frequency, in the installments and in the currency as specified in the Order, in the absence of which payment shall be made in pounds sterling within 30 calendar days of the date of invoice and Quartzelec shall be entitled to issue such invoice on or at any time after delivery of the Goods and performance of the Services or in the event of the Customer failing to accept delivery or permit performance on the due date for such delivery and performance.

12.2 Time for payment shall be of the essence of the Contract.

12.3 All amounts due under this Contract shall be paid by the Customer to Quartzelec in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

12.4 If the Customer fails to make any payment on the due date then without prejudice to any other right or remedy Quartzelec may have Quartzelec shall be entitled to:

- cancel the Order and suspend delivery and/or performance of any other Orders;
- appropriate any payment made by the Customer to such Order as Quartzelec may think fit;
- charge interest from the due date until payment in full is made (both before and after judgment) on the amount unpaid at whichever is the greater rate of 4% (four percent) over the base rate of Quartzelec's bank from time to time, compounded with monthly rests, or the amount prescribed by law.

13. RISK

13.1 Risk in the Goods and of damage to or loss of the Goods shall pass to the Customer:

- in the case of Goods to be delivered at Quartzelec's premises at the time when Quartzelec notifies the Customer that the Goods are available for collection; or
- in the case of Goods to be delivered otherwise than at Quartzelec's premises at the time of delivery or if the Customer wrongfully fails to take delivery of the Goods the time when Quartzelec has tendered delivery of the Goods; or
- in the case of Goods utilised in the performance of Services once utilised in the Services.

14. TITLE

14.1 Despite delivery of the Goods and risk having passed to the Customer, title and ownership in the Goods shall remain with Quartzelec until it has received payment in full and cleared funds for:

- the Goods and the Services; and/or
 - all other goods and services agreed to be provided by Quartzelec to the Customer for which payment is then due under this and any other agreement.
- 14.2 Until such time as title in the Goods passes to the Customer the Customer shall:
- hold the Goods as Quartzelec's fiduciary agent and bailee;
 - keep the Goods stored in a secure and satisfactory condition separate from all other goods of the Customer and/or third parties and clearly marked in such a way as to be readily identifiable as Quartzelec's property;
 - not alter, remove, destroy or obscure any identifying marks, logos or packaging on or relating to the Goods; and
 - keep the Goods insured for the price at which the Goods were sold to the Customer against all insurable risks and the Customer shall hold any proceeds of such policy of insurance in relation to the Goods on trust for Quartzelec.

14.3 The Customer may resell the Goods prior to title and ownership having passed provided such sale is in the ordinary course of the Customer's business at full market value and that such sale is a sale of Quartzelec's property on the Customer's own behalf acting as principal.

14.4 Quartzelec shall be entitled to recover payment for Goods despite ownership not having passed.

14.5 The Customer grants Quartzelec's employees and/or agents the right to enter the Customer's premises or any other premises where the Goods are or may be stored in order to confirm the Customer's compliance with this Clause 14 (Title) and/or, if the Customer's right to possession has ceased, to recover the Goods.

14.6 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Quartzelec and if the Customer does so all moneys owing by the Customer to Quartzelec shall (without prejudice to any other right or remedy of Quartzelec) immediately become due and payable.

15. CONFIDENTIALITY

Neither party shall use and/or disclose any confidential information which is acquired by it about the other party's business and/or given by one party to the other party and/or generated by one party using the other party's confidential information except in the proper performance of this Contract.

16. WARRANTY

16.1 Subject to Clause 16.2 below, Quartzelec warrants to the Customer that the Goods and Services will correspond in all material respects with the Specification at the time of delivery and will be free from material defects in design, materials and/or workmanship for the duration of the Warranty Period (or in the absence of such period being specified in the Order the period of 12 months) running from:

- in the case of Goods, the date of delivery of the Goods to the Customer; and/or
 - in the case of Services, the date of completion of the performance of the Services.
- 16.2 Quartzelec shall have no liability under the warranty in Clause 16.1 above in respect of:
- any defect in the Goods and Services arising from Quartzelec's compliance with any instructions and/or Specification supplied and/or approved by the Customer;
 - any faults and/or defects caused by fair wear and tear, wilful damage, abnormal working conditions, failure to follow Quartzelec's instructions, misuse, alteration and/or repair of the Goods and Services without Quartzelec's prior written approval and/or improper maintenance or negligence on the part of the Customer or a third party;
 - Goods and Services in respect of which the total price has not been paid by the due date for payment; and
 - those parts, materials and/or equipment which are not manufactured by Quartzelec in respect of which the Customer shall only be entitled to the benefit of such warranty or guarantee as is given by the manufacturer to Quartzelec.

16.3 If any of the Goods and Services are defective and are covered by the warranty in Clause 16.1 above Quartzelec shall at its sole option either repair the Goods or supply replacement Goods and Services or refund the price which has been paid by the Customer for the defective Goods and Services. Such repair, replacement or refund shall be the Customer's sole remedy in respect of any claims it has under the warranty given by Quartzelec in Clause 16.1 above.

16.4 At Quartzelec's reasonable request the Customer must return to Quartzelec any alleged defective Goods for inspection and/or procure sufficient access to the premises at which any alleged defective Goods are held or alleged defective Services have been performed to enable inspection. If the returned Goods prove to be defective Quartzelec shall reimburse the Customer's costs of returning the Goods.

16.5 Any work carried out by Quartzelec, including but not limited to a visit to inspect the Goods and Services, which is not covered by the warranty in Clause 16.1 will be charged for at Quartzelec's normal rate on a time and materials basis.

16.6 The Customer shall procure sufficient access to the premises at which any Goods are held and Services have been performed to enable Quartzelec to repair any defective Goods and reperform Services in accordance with Clause 16.3.

16.7 Such repair, replacement or refund shall be provided by Quartzelec within a reasonable period of time of Quartzelec being notified of the defect provided it is notified within 30 calendar days of the defect becoming apparent or when it should reasonably have become apparent to the Customer.

17. LIMITATION OF LIABILITY

17.1 Quartzelec's total liability to the Customer under this Contract shall not exceed the Contract Price.

17.2 Quartzelec shall have no Losses to the Customer for any:

- loss of profits;
- depletion of reputation and goodwill;
- loss and/or corruption of data and systems;
- pure economic losses;
- special damages;
- aggravated, punitive and/or exemplary damages;
- consequential and/or indirect losses; and/or
- interruption of business, loss of business, contracts and/or opportunity.

17.3 Except for the financial cap on liability which shall apply only once in respect of all types of liability, each of the limitations and/or exclusions set out in this Contract shall be deemed to be repeated and apply as a separate provision for each of:

- liability in contract (including fundamental breach);
- liability in tort (including negligence);
- liability for breach of statutory duty; and
- liability for breach of common law and/or any other legal basis.

17.4 Quartzelec shall have no liability to the Customer for defective Goods and Services to the extent the defect is caused or contributed to by the Customer and/or by the Customer's continued use of defective Goods and Services after the defect has become apparent or suspected or should reasonably have been apparent or suspected by the Customer.

17.5 All other warranties or conditions (whether express or implied) as to quality, condition, description, compliance with sample or fitness for purpose (whether statutory or otherwise) other than those expressly set out in these Conditions are excluded from this Contract to the fullest extent permitted by law.

18. TERMINATION

18.1 Either party may immediately terminate the Contract by written notice if the other party:

- breaches the terms of the Contract (and if remediable the breach has not been remedied within 30 calendar days of receiving notice requiring it to be remedied);
- persistently breaches any one or more terms of the Contract;
- fails to make any payment when due;
- is declared or becomes insolvent or bankrupt, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, take or suffer any similar action in any jurisdiction or any step is taken (including without limitation the making of an application on the giving of any notice) by it or by any other person in respect of any of these circumstances (except for the purposes of amalgamation or reconstruction and in such manner that the resulting company effectively agrees to be bound by or assume the obligations imposed on that other party under this Contract);
- ceases or threatens to cease to carry on business; and/or
- appears reasonably to the other party to be about to suffer any of the above events.

18.2 If Quartzelec has the right to terminate the Contract:

- Quartzelec may withhold delivery of any undelivered Goods and stop any Goods in transit;
- Quartzelec may withhold performance of any Services and cease any Services in progress;
- Quartzelec may terminate the Customer's right to re-sell and retain possession of any of the Goods owned by Quartzelec;
- Quartzelec may enter the Customer's premises or any other premises where the Goods are or may be stored and may repossess and sell or dispose of any Goods owned by Quartzelec to discharge any sums owed by the Customer to Quartzelec under the Contract or any other agreement with the Customer; and
- all monies owed by the Customer to Quartzelec shall immediately become due and payable.

19. ENTIRE AGREEMENT

19.1 The Contract constitutes the entire agreement between the parties and supersedes any previous agreement between the parties relating to its subject matter.

19.2 The parties agree that they have not entered into the Contract in reliance on any promise, assurance, representation, warranty, details and/or specification (whether in writing or not) that is not expressly set out in the Contract. Nothing in the Contract shall exclude liability for any fraudulent statement and/or act made prior to the date of the Contract.

19.3 Each of the parties acknowledges and agrees that the only remedy available to it for breach of the Contract shall be for breach of contract under the terms of the Contract and it shall have no right of action against any other party in respect of any promise, assurance, representation, warranty, details and/or specification (whether in writing or not) that is not expressly set out in the Contract.

20. FORCE MAJEURE

20.1 Neither party shall be liable for any delay or failure to perform its obligations under the Contract (save in respect of payment of monies payable for the Goods and Services) as a result of a Force Majeure Event lasting more than 7 calendar days and any other similar events. If the Force Majeure Event causing the delay or failure continues in excess of 1 month the Contract may be terminated at the option of the party not affected by the Force Majeure Event.

21. GENERAL

21.1 No variation to these Conditions or the Order shall be binding unless agreed in writing by an authorised representative of Quartzelec.

21.2 No waiver by either party of any breach of the Contract by the other party shall be considered as a waiver of any subsequent breach of the same or any other provision.

21.3 Any invalidity, illegality or unenforceability of any or any part of a provision of the Contract shall not affect the validity, legality or enforceability of the remaining provisions of the Contract.

21.4 The Customer shall not assign, transfer, dispose of or sub contract (or purport to do any of the above in respect of) any of its rights or obligations under the Contract without the prior written consent of Quartzelec.

21.5 None of the terms and conditions of the Contract shall be enforceable by any person who is not a party to it. This shall not apply to any company within the same group of companies as Quartzelec who Quartzelec consents to being able to enforce the Contract in addition to Quartzelec. The rights of any third party to enforce the Contract may be varied and/or extinguished by agreement between the parties without the consent of any third party.

21.6 The Contract shall be governed by the laws of England and the parties agree to submit to the non-exclusive jurisdiction of the English Courts. For the avoidance of doubt, the United Nations Convention on the International Sale of Goods shall not apply to this Contract. The international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (Incoterms 2010) shall apply but where they conflict with this Contract, this Contract shall prevail.