

TERMS AND CONDITIONS OF SALE

1. GENERAL

The terms and conditions set herein shall apply to any contract between TROX Malaysia Sdn. Bhd (hereinafter called "the Seller") and the Buyer. NO SERVANT OR AGENT OF THE SELLER HAS AUTHORITY TO DISPENSE WITH OR VARY THESE TERMS OR CONDITIONS EXCEPT A DIRECTOR OF THE SELLER IN WHICH CASE SUCH DISPENSATION OR VARIATION MUST BE MADE IN WRITING WHICH OTHERWISE WOULD RENDER IT INVALID.

2. TENDERS AND ORDERS

- i. All products are supplied by the Seller on and to the standard conditions of sale herein.
- ii. No tender/order is valid unless in writing and on the Seller's form.
- iii. A tender/order is an offer by the Seller conditional upon the Seller approving the Buyer's Credit.

3. THE GOODS AND SERVICES

- i. All deliveries and services shall be based on these conditions herein and may include any variation as agreed between the Seller and the Buyer in writing in separate contractual agreement. Divergent purchasing terms and conditions by the Buyer shall not be valid as a term of the contract even upon acceptance of the order, and shall only be valid and enforceable with the Seller's written confirmation.
- ii. All particulars provided by the Seller on the products sold in the catalogue or during contractual negotiations are descriptive in nature only and shall not be deemed to be warranties in legal terms.
- iii. The Seller shall use all reasonable skill and care to ensure that any goods sold by the Seller comply with their description in any current trade literature of the Seller and shall use all reasonable skill and care in advising the Buyer upon the selection of such goods. If the Seller has carried out a performance test and the Buyer has proceeded with the purchase of the goods, the goods shall be deemed to be fit for their purpose.
- iv. The interpretation of trade terms in the event of any doubt shall be governed by Incoterms 2010.

4. INSTALMENTS

Where the Seller agrees to supply the goods by installment it shall be deemed to be separate contracts to which the Seller's terms and conditions shall apply and any failure on the part of the Seller to deliver one or more installments or any delay in such delivery shall not entitle the Buyer to refuse to accept delivery of any other installments.

5. PRICES AND TERMS OF PAYMENT

- i. The contract price is inclusive of Sales Tax for all products except for products in which Sales tax exemptions have been granted. The contract price does not include the cost of fitting or erecting the goods supplied.
- ii. Prices are subject to revision without notice and all acceptances shall be subject to the goods being invoiced at those prices as at the date of dispatch.
- iii. Payments for all transactions shall be on cash terms unless the Seller has approved credit terms wherein the Buyer is allowed to pay within the credit term. When making payment, all cheques, telegraphic-transfers or Letters of Credit are to be made payable to the order of TROX Malaysia Sdn Bhd.
- iv. Interest of 1.5% per month will be charged on all overdue accounts.
- v. The Seller shall be entitled to withhold delivery in the event of the Buyer's non-payment in full. The Seller may apply any monies paid by the Buyer towards any outstanding account howsoever.
- vi. The Buyer's common law right of set-off against counter claims and cross claims in relation to this contract and any other contract is hereby excluded.
- vii. The Seller shall have a lien on any property of the Buyer in its possession for any payment due to the Seller.
- viii. In the event the Buyer reduces the product order in terms of quantity, the Seller shall have the right to quote a different price per product/item for the reduced quantity order.
- ix. All claims by the Seller shall become due and payable immediately, irrespective of the terms granted by the Seller in the event the conditions of payment are not complied with or if the Seller learns of circumstances liable to downgrade the Buyer's creditworthiness. In such circumstances, the Seller shall be entitled with notice to the Purchaser to perform outstanding deliveries only upon payment in advance.
- x. In the event the Buyer cancels the order, or in the event the Buyer declines to accept delivery of the goods ordered, the Seller shall be entitled without any further evidence required to demand for the full payment of the goods provided the goods were custom manufactured for the Buyer.

6. RETENTION OF TITLE CLAUSE

- i. The Seller shall retain title in the delivery of the goods until all payments specified in the delivery contract have been received by the Seller.
- ii. The Buyer shall not sell, pledge, or assign the goods as security to any third party. In the event of attachments, writs of seizure and sale, garnishee orders, confiscations or any other dispositions of the goods by any third party, the Buyer shall immediately notify the Seller of the same.
- iii. Any application by a third party to commence winding up proceedings against the Purchaser shall entitle the Seller to forthwith terminate the contract and demand the immediate return of the delivered goods in the event the delivered goods have not been paid for in full.

7. RISK IN PROPERTY

- i. Unless otherwise agreed, the goods shall be sold to the Buyer ex-works.
- ii. The Buyer shall take the delivery of the goods at the Seller's works unless otherwise agreed in writing.
- iii. The risk in the goods supplied by the Seller to the Buyer shall pass to the Buyer either:-
 - a. at the time when the goods leave the Seller's works; or
 - b. on the date of notification by the Seller to the Buyer that the goods are ready for collection, whichever is the earlier regardless of whether the Seller arranges transportation for the goods or not.
- iv. Prior to the Buyer collecting the goods, the Seller may at its absolute discretion store the goods anywhere at the Buyer's risk and expense.
- v. Until payment of the contract price is paid in full, goods supplied by the Seller whether pursuant to this contract or otherwise shall remain the property of the Seller (regardless of any right or claim of the Buyer) and of the goods whether by mixing or processing or otherwise become a constituent part of any new article whether separable there from or otherwise such new article or articles shall remain the property of the Seller until payment of all monies owed to the Seller by the Buyer. If goods supplied by the Seller whether in their original state or mixed or processed or otherwise are sold by the Buyer prior to any payment of any monies due from the Buyer to the Seller the monies received shall be received by him in trust of the Seller to the extent of the Buyer's indebtedness to the Seller and shall (without prejudice to any other claim or right to the Seller against the Buyer) be paid over the Seller forthwith upon receipt by the Buyer.
- vi. The risk shall pass to the Purchaser when the goods have left the Seller's facility. If a factory acceptance test has to be conducted, the date of the test shall be the determinant date of the passage of risk to the Buyer.
- vii. In the event dispatch or acceptance is delayed or does not occur due to circumstances outside the control of the Buyer, the risk shall pass to the Purchaser from the date on which notification is made of readiness for dispatch or acceptance testing. If so requested by the Buyer, the Seller shall take out an insurance cover on the goods at the Buyer's expense due to the passing of risk to the Buyer.

8. PACKING AND DELIVERY

- i. The Seller shall use its best endeavours to meet the time for delivery but shall not be liable for delay caused by any of the following events:-
 - a. the Seller not having from the Buyer (or if appropriate from any other third party) in due time necessary instructions, information, calculations, drawings, dimensions, specifications or other relevant details;
 - b. the Seller's inability for reasons beyond its control to secure such goods or materials as are essential to meet the requirements of the Buyer;
 - c. force majeure, attributable to events including but not limited to labour disputes or any other events which are beyond the Seller's control.
- ii. The Seller shall not be liable to the Buyer in any event in the following circumstances:
 - a. If the Buyer is entitled to any extension of time for completion of any work pursuant to any contract the Buyer has with the third party.
 - b. if the Buyer would have been delayed in its performance of any other contract in any event due to the act of omission of any other party/person.
- iii. The Buyer shall not return any goods to the Seller without the Seller's prior written authorization and in any event any such return shall be made at the sole risk and expense of the Buyer.
- iv. In the event of the Seller's fault in causing a delay in the delivery and the Buyer suffers loss or damage, the Buyer shall be entitled to claim liquidated ascertained damages for such a default. Any claim for liquidated ascertained damages shall be limited to 0.5% of the contract sum of the goods delayed for each full week of delay to the maximum limit of 5% of the contract value. The Buyer shall not be entitled to any further claims against the Seller for the said delay.
- v. The goods are supplied by the Seller in standard packing and are not protected against corrosion. If requested by the Buyer, the Seller will provide additional packing, protection and/or transportation aids on the basis of the Seller's own experience and at the Buyer's expense.

9. FORCE MAJEURE

In the event that performance of any part of the contract is affected by any unforeseen circumstances whatsoever, the Seller may delay, suspend or terminate performance of the contract or any part thereof.

10. INDEMNITY

The Buyer shall indemnify the Seller and hold the Seller harmless against all liability, claims and demands whatsoever made relating to or arising from goods supplied or work or services performed by the Seller.

11. CANCELLATION

Any cancellation of any order whatever in part or whole where manufacture has been completed will be subject to payment in full. Any such cancellation for goods not commenced or completed in manufacturer shall be subject to a charge in proportion to work completed and costs incurred by the Seller.

12. SUBCONTRACTING

The Seller reserves the right to subcontract any order or part thereof to any third party.

13. LIABILITY

- i. The Seller is not responsible for any loss or damage to the Buyer or any third party caused by ordinary wear and tear of the goods, corrosion or erosion, negligence, carelessness, incompetence, improper use for or faulty erection or installation on the part of the Buyer, its servants or agents or any other third party, mechanical, electrolytic galvanic or other destructive action (unless it is specifically mentioned in the Seller's tender) or any other case where such loss or damage has not been caused by the Seller's negligence.
- ii. The Seller is not responsible for ensuring that the goods are supplied or fitted in accordance to respective local bye-laws or other regulations which shall be the sole responsibility of the Buyer.
- iii. Upon the expiry of the 12 months from the date of dispatch the Seller shall be under no further obligation or liability to the Buyer either in contract or in tort.
- iv. The Seller is not responsible for any loss of profit or other incidental or consequential loss or damage arising from any defect in or failure of the goods which the Seller could not reasonably have foreseen and notwithstanding that the Buyer has specifically drawn it to the Seller's attention to the attention of the Seller prior to submission of the Seller's tender.
- v. Without prejudice to the foregoing, the liability of the Seller whether in contract or tort inclusive of the compensation shall not exceed that as stated in clause 8(iv) above.

14. DEFECTS

Unless otherwise stated and agreed in writing between the parties, the Seller shall extend a warranty against defects in the goods for a period of 12 months from the date of delivery, and the Seller shall not be liable for any period thereafter.

15. COPYRIGHT, PATENTS AND INDUSTRIAL PROPERTY RIGHTS

- i. All designs, drawings, specification and information supplied to the Buyer whether directly or indirectly are confidential and copyright in such drawings, designs, specification and information shall remain vested in the Seller.
- ii. In the event that the use of the goods infringes any third party's patent, industrial property rights or copyrights in the country of sale, the Seller shall at its own expense in all cases either procure for the Buyer the right to continue to use it, or shall modify the goods in the manner acceptable to the Buyer in such a way that the infringement no longer applies.
- iii. The Seller's obligation in clause 15(ii) above shall only apply if :-
 - a. the Buyer informs the Seller immediately of any infringement asserted in regards to any third party's rights;
 - b. the Buyer assists the Seller to a reasonable extent in disputing the claims asserted, or to allow the Seller to perform the modification work as stated in clause 15(ii) above;
 - c. the infringement is not due to the instruction from the Buyer on the goods;
 - d. the infringement was not caused by the Buyer's own modification to the goods .

16. SOFTWARE UTILIZATION

- i. If the scope of delivery includes software, the Buyer shall be granted a non-exclusive license to utilize the software delivered, including the documentation for the intended purpose only. Utilization of the software on more than one system is prohibited.
- ii. The Buyer shall not be allowed to duplicate, revise, translate the software or convert it from the object code into the source code without the Seller's prior written permission.
- iii. All ownership rights to the software and documentation packages, including copies, shall at all times remain with the Seller or the software vendor. The Buyer shall not grant sublicenses to any third party.

17. SERVICE OF DOCUMENTS

Any notice or other documents or correspondence including a Summons or Writ of Summons and Statement of Claim or any documents or cause papers connected therewith in respect of any action in connection with these terms and conditions of sale shall be validly served on the Buyer if served by hand or sent to the Buyer by ordinary prepaid post or left at the Buyer's last known address known to the Seller, and shall be deemed to have been received by the Buyer.

18. GOVERNING LAW

The contract is governed by the laws of Malaysia.