IMI Webber Limited, City Business Park, Easton Road
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www.imiwebber.co.uk, www.norgren.com
Registered in England : No.1416237

IMI Webber Terms and Conditions of Sale

1.1 In these conditions:-
"the **Buyer**" means any customer of the Seller to whom Products are supplied under these terms and conditions
"the **Contract**" means any contract between the Seller and the Buyer for the sale and purchase of the Products
"the **Ex Works"** means "ex works" as defined in the edition of the rules for interpretation of trade terms known as INCOTERMS current as at the date of the Buyer's order.
"**Intellectual Property Rights**" means any and all rights in patents copyright moral rights business and trade names design rights know how and all other intellectual property rights and any applications for any of the foregoing which may subsist anywhere in the world
"the **Products**" means all products and associated documentation to be supplied under this Contract
"the **Seller**" means IMI Webber Limited
"**Writing**" includes cable, facsimile transmission, electronic data transfer, e-mail and comparable means of communication.

1.2 All quotations are made and all orders are accepted subject to these conditions. All other terms, conditions or warranties whatsoever are excluded from the Contract or any variation thereof unless expressly accepted by the Seller in Writing (order acknowledgements do not constitute such acceptance). In particular, in no circumstances will any conditions of purchase submitted at any time by the Buyer be applied to this Contract and any failure by the Seller to challenge any such conditions of purchase does not imply acceptance.

1.3 In the event of a conflict between these conditions and the specific terms and conditions of quotation then the latter shall prevail. Acceptance by the Buyer of delivery of the Products shall be deemed to constitute unqualified acceptance of these conditions.

1.4 Unless otherwise stated therein quotations shall be available for acceptance for a maximum period of 30 days from issue and may be withdrawn at any time by written or oral notice.

1.5 If any statement or representation has been made to the Buyer by the Seller or its officers, employees or agents (other than in the document(s) enclosed with the Seller's quotation), upon which the Buyer wishes to rely it shall only be entitled to do so if that statement or representation is attached to, or endorsed on, the Buyer's order and then only if the Seller subsequently confirms in writing to the Buyer that the Buyer is entitled to rely on such statement or representation.

1.6 The Contract is between the Seller and the Buyer as principals and neither the benefit nor the burden is assignable by the Buyer without the Seller's written consent. The Contract may be assigned, sub-contracted or otherwise disposed of by the Seller.

1.7 Unless specifically agreed to the contrary all trade terms shall be interpreted in accordance with the version of INCOTERMS current at the date of order.

1.8 The Seller shall be entitled to cancel an order at any time by serving notice in writing on the Buyer if it does not receive, on request, satisfactory (in the Seller's sole opinion) credit references in relation to the Buyer. If the Seller cancels an order pursuant to this Clause 1.8, it shall have no liability whatsoever for any liabilities, losses, damages, costs or expenses whatsoever incurred, suffered or paid by the Buyer as a result of or in connection with such cancellation.

2. **ELECTRONIC TRADING**

2.1 Electronic orders shall be valid if all the information agreed between the Buyer and the Seller as being required is properly set out in the agreed format and the order is transmitted by the Buyer to the Seller by reference to the correct identification code and is received by the Seller when collecting its electronic mail from the relevant system.

2.2 Subject to Clause 2.1, each valid electronic order will be deemed accepted by the Seller unless the Seller communicates rejection of the order to the Buyer by electronic or other means (including telephone) within two working days of receipt. Acceptance of an order shall constitute a contract for sale and purchase to which these conditions shall apply.

3. **PRICES**

3.1 Unless otherwise agreed in writing all prices are Ex Works. Unless otherwise agreed in Writing prices are payable in Sterling. If the Seller agrees to deliver the Products otherwise than at its premises the Buyer shall pay all packaging, transportation and insurance costs and other costs incurred by the Seller in making or arranging such delivery.

3.2 The Seller shall be entitled at any time on written notice to make a reasonable adjustment to the price in the event of any alteration in quantity, design or specification requested by the Buyer.

3.3 The Seller reserves the right at any time prior to delivery and on written notice to increase the price if there is any increase in the cost of materials, labour, transport, utilities, foreign currency fluctuation, currency regulation or alteration of duties or if the costs of the Seller are increased by any other factor beyond the reasonable control of the Seller.

3.4 The Buyer shall be liable to the Seller for any demurrage costs incurred in the event of vehicles being unduly delayed at the point of delivery.

4. **DELIVERY**

4.1 Unless otherwise agreed in Writing by the Seller delivery shall be Ex-Works and delivery shall be deemed to take place when the Products are made available by the Seller for collection by the Buyer or its carrier at the Seller's premises.

4.2 All dates and periods for delivery are estimated and do not constitute fixed times for delivery by the Seller and time of delivery shall not be of the essence of the Contract nor shall the Buyer be entitled to make, or to purport to make, time for delivery of the essence of the Contract.

4.3 The date for delivery shall in every case be dependant upon prompt receipt of all necessary information, final instructions or approvals from the Buyer.

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4.4 Notwithstanding Clause 4.2 the Buyer shall be obliged to take delivery of the Products within 30 days of the Seller giving it notice that the Products are ready for delivery. Failure by the Buyer either to take delivery or to make payment in respect of any one or more instalments of Products shall entitle the Seller to terminate the Contract, (such right is without prejudice to any other rights and remedies available to the Seller).

4.5 Where the Buyer requests and the Seller agrees to postpone delivery, or where delivery is otherwise postponed without default by the Seller, the Buyer shall pay upon demand all reasonable costs and expenses including reasonable storage and transport costs. The Buyer shall pay for the Products in accordance with these conditions as if the same had been delivered on the due date but for any postponement at the request of or due to the default of the Buyer. The Seller shall be entitled to claim interest pursuant to Clause 7.3.2 from the date on which payment would otherwise have fallen due if no such postponement had occurred.

4.6 Unless otherwise expressly agreed in Writing the Seller may deliver in instalments in which case each instalment shall be treated as a separate Contract governed by these conditions. No delay in the delivery of any instalment of Products or any defect therein shall entitle the Buyer to terminate remaining Contracts.

5. **RISK AND TITLE**

5.1 Risk of damage to or loss of the Products shall pass to the Buyer upon delivery and the Buyer is then solely responsible for all loss damage or deterioration to the Products.

5.2 Title to the Products shall not pass to the Buyer until either:-

5.2.1 the Seller has received in cash or cleared funds all monies payable (whether or not due) to the Seller under all Contracts between the Buyer and the Seller; or

5.2.2 when the Seller serves on the Buyer notice in Writing specifying that title in the Products or any part thereof has passed to the Buyer.

5.3 Until title has passed to the Buyer the Seller under these conditions, may recover the Products and the Seller's officers, employees, representatives or agents shall be entitled to enter upon any premises where such Products are kept, with or without vehicles, for the purpose either of recovering the same or satisfying itself that Clause 5.4 is being complied with.

5.4 Until title to the Products has passed to the Buyer it shall possess the Products as fiduciary agent and bailee of the Seller and shall store the Products separately from other goods and shall ensure that they are fully insured on an all risks basis and clearly identifiable as belonging to the Seller. The Buyer shall also not sell, offer to sell, assign, underlet, pledge, mortgage, charge, encumber or part with possession of the Products or any interest in the Products nor create or allow to be created over the Products any lien.

5.5 The Seller shall be entitled at any time to require the Buyer to deliver up the Products to the Seller, and if the Buyer fails to do so within a reasonable period of time, the Seller shall be entitled to enter upon the Buyer's premises or any third party's premises and recover and/or dispose of the Products. For the avoidance of doubt, the Buyer shall make no claim against the Seller in respect of any such entry or disposal.

6. **CANCELLATION AND AMENDMENT**

6.1 Cancellation or amendment of any Contract requires the prior approval in Writing of the Seller and shall be conditional upon the Buyer indemnifying the Seller against all reasonable costs and expenses incurred by the Seller as a result of such cancellation and amendment.

6.2 Products returned to the Seller without the Seller's written consent will not be accepted for credit.

7. **TERMS OF PAYMENT**

7.1 Unless otherwise agreed by the Seller in Writing payment shall be made by the last day of the month following the month of invoice and the Seller shall be entitled to issue invoices in the month in which the Products are delivered or would have been delivered save for postponement otherwise than due to default on the part of the Seller. Time for payment of the price is of the essence of the Contract. No payment shall be deemed to have been received until the Seller has received cleared funds.

7.2 All payments made by the Buyer to the Seller under any Contract subject to these conditions shall be made free of any restriction or condition and without deduction or withholding on account of any other amount and/or claim, whether by way of set-off or otherwise and whether such amount and/or claim is connected to any Contract subject to these conditions or otherwise.

7.3 In the event of default in payment by the Buyer the Seller shall be entitled (without prejudice to any other right or remedy):-

7.3.1 to suspend without notice all further deliveries on any Contracts between the Seller and the Buyer;

7.3.2 to charge interest on a daily basis (after as well as before judgment) on any amount outstanding at the rate of 4% per annum above the base rate of the Bank of England from time to time together with any debt recovery costs.

8. **MINIMUM CHARGE**

A minimum order charge is applicable to all orders. Regular issues against blanket or scheduled orders will incur a minimum charge per release.

9. **SPECIFICATIONS**

9.1 Subject to Clause 9.2 the Products shall in all material respects be in accordance with any agreed specification or if there is no agreed specification shall be generally in all material respects in accordance with any published specification issued by the Seller.

9.2 The Seller reserves the right to make changes in dimensions or other specifications of the Products to conform to applicable standards or laws or are otherwise reasonable having regard to the nature of the Products.

9.3 The information contained in the technical literature issued by the Seller may be relied upon to be accurate in the exact circumstances in which it is expressed. Otherwise, any illustrations, performance details, examples of installations and methods of assembly and all other technical data in such literature are based on experience and upon trials under test conditions and are provided for general guidance only. No such information or data shall form

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part of the Contract unless the Buyer shall have complied with Clause 1.5 relating to statements and representations and the Seller shall have given the confirmation referred to in that Clause.

10. **LOSS SHORTAGES AND DAMAGE APPARENT ON DELIVERY INSPECTIONS**

10.1 The Buyer shall only be entitled to claim (and subject to Clauses 11 and 12) for shortages or defects in the Products which are apparent on visual inspection if the Buyer:-

- 10.1.1 inspects the Products within 3 days following receipt;
- 10.1.2 notifies the Seller of any loss, shortages or damage (otherwise than by a qualified signature on the delivery note) within ten working days of receipt; and
- 10.1.3 demonstrates to the satisfaction of the Seller that such loss, shortages or damage occurred prior to delivery.

10.2 The Buyer shall have no rights in respect of loss shortages or damage unless the Seller is given a reasonable opportunity to inspect the Products and investigate any complaint before any use of or alteration to or interference with the Products.

10.3 On a valid complaint made in accordance with this Clause 10 the Buyer shall be entitled (in the case of notified shortages) to receive within a reasonable time a delivery of Products equivalent to the shortfall and (in the case of defects) to repairs to or replacements for the affected Products or at the Seller's option a credit for the price thereof but the Seller shall have no further liability whatsoever. If a complaint of loss shortages or damage on delivery is not made to the Seller in accordance with this Clause 10 then the Products shall be deemed to be delivered complete and undamaged in accordance with the Contract and the Buyer shall be bound to pay for the same accordingly.

10.4 Loss shortages or damage in a delivery or any instalment delivery shall not be a ground for termination of the Contract or the remainder of the Contract (as the case may be).

11. **WARRANTY**

11.1 Insofar as is permitted by law, the Seller excludes all terms and conditions that may otherwise be implied by statute, common law or otherwise. Notwithstanding this, nothing in this Clause 11 is intended to restrict the Buyer's statutory rights.

11.2 Subject to the following terms of this condition the Seller guarantees that the Products will be free from defects as a result of faulty design, workmanship or materials (other than free issue materials). This guarantee shall be for a period of twelve (12) months from the date of delivery of the Products or the Product achieving the recommended maximum life usage for the Product whichever is the earlier. This guarantee is subject to:-

- 11.2.1 the Seller receiving written notification of the defect within the period of this guarantee;
- 11.2.2 the Product being made available to the Seller for inspection without any further use of, or alteration to, or interference with the Product;
- 11.2.3 the defect is not a loss, shortage, or damage that the Buyer should have notified to the Seller under condition 10;
- 11.2.4 the defect is not a result of any design specification or instruction given by the Buyer;
- 11.2.5 that the Buyer has fully complied with any instructions of the Seller concerning the use and storage of the Product.

On receipt of notification of a claim by the Buyer under this condition 11.2 the Seller may at its discretion repair or supply satisfactory substitute Products free of cost or repay the price of the Product(s) in whole or in part (as appropriate) within a reasonable time of the complaint being made. For the avoidance of doubt the guarantee under this condition shall not cover any deficiencies in the Products associated with normal wear and tear.

11.3 If the Seller does repair the Products or supply satisfactory substitute Products or effect repayment under Clause 11.2, the Buyer shall be bound to accept such repaired or substituted Products, or repayment and the Seller shall be under no liability in respect of any loss or damage of whatever nature arising from the initial delivery of the defective Products or from the delay before the defective Products are repaired or the substitute Products are delivered or the repayment is effected.

11.4 In the case of Products not manufactured by the Seller:-

- 11.4.1 the Seller gives no assurance or guarantee that the sale or use of the Products will not infringe any third party Intellectual Property Rights; and
- 11.4.2 the obligations of the Seller relating to defects in such Products are limited to the guarantee (if any) which the Seller receives from any manufacturer or supplier of such products.

11.5 The Seller shall not be liable for and the Buyer shall indemnify the Seller against all costs, claims, damages, liabilities and expenses incurred by the Seller arising from any use by the Buyer of Products after the Buyer became or ought reasonably to have been aware of a defect.

12. **LIMITATION OF LIABILITY**

12.1 The Seller does not exclude liability arising under Section 12 of the Sale of Goods Act 1979 (as amended) or for death or personal injury caused by its negligence or for fraudulent misrepresentation.

12.2 Under no circumstances whatsoever shall the Seller be liable in contract, tort or otherwise howsoever arising for any claim, damage, loss or costs in respect of:-

(a) any loss of profit; (b) loss of use of money; (c) loss of anticipated savings;
(d) loss of business; (e) loss of opportunity; (f) loss of goodwill;
(g) loss of reputation; (h) loss of data; (i) any wasted expenditure; or
(j) any indirect or consequential loss or damage howsoever caused.

For the avoidance of doubt, the Sub-clauses in this Clause 12.2 are intended by the parties to be severable.

12.3 Without prejudice to Clause 12.2, the Seller's maximum aggregate liability for all claims made by the Buyer in relation to any Contract shall not exceed the contract price for the Products, and the Buyer agrees to insure adequately to cover claims in excess of such amount.

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12.4 Prices are quoted by the Seller on the basis of the limitations of liability set out in these conditions. The Buyer shall be entitled to request the Seller to agree a higher limit of liability and the Seller may (at its discretion) then quote a revised price taking account of any increased insurance premium to be borne by the Seller.

12.5 The Buyer shall indemnify the Seller against all losses, costs, claims, damages, expenses and liabilities in respect of or arising out of any injury, loss or damage whatsoever suffered by or occasioned to any person arising out of or in connection with the supply by the Seller of the Products or any act or omission of the Buyer in its performance of its obligations under the Contract, except where any such claim or loss is a direct result of any negligent act or default of the Seller.

13. **CONFIDENTIAL INFORMATION ETC**

All drawings documents records computer software and other information supplied by the Seller whether produced by itself or a third party, are supplied on the express understanding that copyright is reserved to the Seller (or the third party) and that the Buyer will not without written consent of the Seller either give away loan exhibit or sell the same or extracts therefrom or copies thereof or use the same in any way except in connection with the Products in respect of which they are issued.

14. **INTELLECTUAL PROPERTY**

14.1 Subject to Clause 14.2 if the Buyer is subject to a claim or threatened with any action alleging that the Products in the form supplied infringe any third party Intellectual Property Rights then provided that the Buyer promptly informs and fully co-operates with the Seller and if requested allows the Seller the conduct and defence thereof the Seller will indemnify the Buyer against any costs claims damages liabilities and expenses incurred by the Buyer as a result of such proceedings.

The Seller shall have the option at its own expense either to modify any infringing Products so that they do not infringe or to replace the Products with a non-infringing substitute or to repurchase the Products from the Buyer at the price paid by the Buyer less an allowance for the use made thereof.

14.2 The Seller shall have no liability in respect of claims for infringement of third party Intellectual Property Rights arising from the manufacture or supply of the Products to the Buyer's instructions or in accordance with designs plans or specifications given by the Buyer and the Buyer shall indemnify the Seller against all losses damages expenses costs or other liability arising from such claims.

15. **CUSTOMER'S DRAWINGS**

The Buyer shall be solely responsible for ensuring that all drawings information advice and recommendations specified or given to the Seller by the Buyer or its agents servants consultants or advisers are accurate correct and suitable. Examination or consideration by the Seller of such drawings information advice or recommendations shall not result in any liability on the part of the Seller.

16. **TERMINATION**

16.1 Without prejudice to any other rights or remedies of the Seller it shall be entitled in any of the following circumstances to terminate (in whole or in part) the Contract and/or to suspend deliveries and/or to receive upon demand payment of all monies due and payable by the Buyer:-

- 16.1.1 the Buyer makes or proposes any voluntary arrangement or any other composition or scheme or arrangement with or assignment for the benefit of its creditors;
- 16.1.2 the Buyer becomes subject to an administration order or becomes bankrupt or goes into liquidation;
- 16.1.3 the Buyer has a petition presented for its winding up or has an application made for the appointment of a provisional liquidator or has a creditors meeting convened pursuant to the Insolvency Act 1986;
- 16.1.4 an encumbrancer takes possession or a receiver or administrative receiver is appointed over any of the property or assets of the Buyer;
- 16.1.5 the Buyer becomes unable to satisfy its debts as they fall due or ceases or threatens to cease to carry on business;
- 16.1.6 the Seller reasonably believes that any of the events mentioned above or any equivalent or similar event under any relevant laws to which the Buyer or any connected person is subject has or may occur;
- 16.1.7 the Buyer or any connected person commits or allows to be committed any material breach of this Contract.

17. **FORCE MAJEURE**

17.1 The Seller shall not be liable for any failure to perform any of its obligations under the Contract for any reason whatsoever outside its reasonable control including without limitation, acts of God, strikes, riots, lock-outs or other industrial action including trade disputes (whether such dispute involves its employees or not), shortage of materials or by any other act, matter or thing beyond its reasonable control.

17.2 In the event that the Seller does not perform its obligations by reason of any of the causes referred to in Clause 17.1 within six months after the time for performance either party may by written notice terminate the Contract without liability save that the Buyer shall pay for any Products delivered or completed at the time of termination.

18. **TOOLS**

Any tools (such as jigs. dies, etc) which the Seller may construct or acquire specifically in connection with the Products shall, notwithstanding any charges the Seller may make for them, be and remain the Seller's sole and unencumbranced property and in the Seller's possession and control without restriction.

19. **FREE-ISSUE MATERIALS**

19.1 Free issue material shall be insured by and remain at the risk of the Buyer at all times and the Seller shall not be liable for loss of or damage to any such free issue materials during fabrication by the Seller, or by any sub-contractor employed by the Seller or whilst on the premises of the Seller or of any such sub-contractor or in transit to or from the

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premises of the Seller or of any such sub-contractor provided that the Seller may at its sole discretion make a contribution towards the replacement costs of such materials.
The Buyer shall indemnify the Seller against all losses costs claims damages liabilities and expenses in respect of any injury, loss or damage whatsoever arising out of or in connection with the supply by the Seller of free issue material except where any such loss or damage is a direct result of any negligent act or default of the Seller.

19.2 An allowance for material lost as process scrap is (where applicable) included in the Contract price and no such losses shall be the subject of any claim by the Buyer or contribution by the Seller.

19.3 Where materials used in the manufacture of the Products are supplied by or on behalf of the Buyer to the Seller, the Buyer shall be responsible for ensuring that the material is of satisfactory quality and is fit for its purpose and shall indemnify the Seller against any loss, damage, injury or expenses whatsoever arising directly or indirectly from any fault in or incorrect specification of the said materials.

20. **CONSUMER PROTECTION ACT 1987**

20.1 Where the Buyer purchases the Products for use or incorporation with any composite products to be assembled produced processed packed or supplied by the Buyer or for resale or supply ancillary to any such composite products or other products supplied by the Buyer then:-

20.1.1 the Buyer shall forthwith on demand produce for inspection by the Seller copies of all written instructions information and warnings to be supplied by the Buyer in relation thereto provided that such inspection or right to inspect shall not give rise to any responsibility or liability on the part of the Seller; and

20.1.2 the Buyer shall indemnify the Seller against any losses costs and damages that the Seller may suffer or incur in the event that any claim is made against the Seller in relation thereto if the Products did not comprise the defective element thereof or were rendered defective by reason of actions or omissions of the Buyer (including without limitation the supply of defective free-issue materials) or were rendered defective by reason of instructions or warnings given or omitted by the Buyer or other reseller.

20.1.3 The Seller shall indemnify the Buyer against all losses, costs and damages that the Buyer may incur in the event that any claim is made against the Buyer in relation to the Products in circumstances where the Product is defective due to the acts or omissions of the Seller.

20.2 For the purpose of Clause 20.1 the term "defective" shall be interpreted in accordance with the definition of "defect" contained in Part 1 the Consumer Protection Act 1987.

21. **HEALTH & SAFETY**

The Buyer agrees to comply with any information and instructions supplied by the Seller relating to the Products including but not limited to any conditions necessary to ensure that they will be safe and without risk to health at all times when they are being set, used, cleaned, serviced or maintained by any person. The Buyer shall take such steps as specified by such information or otherwise necessary to ensure that as far as is reasonably practicable the Products will be safe and without risk to health at all times.

22. **COMPLIANCE**

22.1 The Buyer shall comply with all relevant anti-corruption legislation in connection with the Contract and the Seller's business and shall immediately notify the Seller if it discovers or suspects that any of its officers, directors, employees or representatives are acting or have acted in a way which violates such legislation.

22.2 The Buyer acknowledges that the Seller has a code of responsible business (the "IMI Way") which is available at www.imiplc.com and the Buyer shall at all times, conduct, and procure that its officers, directors, employees and/or representatives conduct business ethically and in accordance with the relevant provisions of the IMI Way. This Clause shall apply whether or not the Buyer is acting pursuant to the Contract or its relationship with the Seller or any companies within the Seller's group of companies.

22.3 The Buyer agrees that it must be able to demonstrate its compliance with the requirements referred to in this Clause 22 at the request of and to the satisfaction of the Seller which includes, but is not limited to, the Seller having the right to inspect any site involved in work for the Seller. If the Buyer fails to comply with this Clause 22, the Seller shall be entitled, in its sole discretion, to terminate this Contract and any other agreements between the Buyer and the Seller without penalty to the Seller, but with obligations for the Buyer to remedy any damages suffered by the Seller as a result of such termination or breach of contract.

23. **GENERAL**

23.1 No waiver of or delay or failure by the Seller to exercise any rights or remedies shall prejudice or preclude any future or further exercise thereof.

23.2 If any provision of these conditions shall be held invalid or unenforceable in whole or in part then the unaffected provision (or part of the provision, as the case may be) shall remain in full force and effect. Headings appear for convenience only and shall not affect the construction of these conditions.

23.3 Nothing in these conditions shall create a partnership, agency or relationship of employment between the parties.

23.4 Except as otherwise provided in this Contract, a person who is not a party to this Contract shall have no right pursuant to the Contracts (Rights of Third Parties) Act 1999 (the “Act”) to enforce any terms of the Contract. Any right or remedy which exists or is available apart form the Act is not affected.

23.5 The parties agree that any disputes arising or in any way connected with the subject matter of these conditions and any Contract (whether of a contractual or tortious nature or otherwise) shall be governed by and construed in accordance with English law and the Buyer and the Seller agree to submit to the exclusive jurisdiction of the English courts in relation to any matter or dispute (whether contractual or tortuous) which may arise between them.