

# GENERAL TERMS 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 for the Goods is accepted by the Seller

"Seller" means Lenze Limited, a company incorporated and registered in England with company number 00962777

"Goods" means the goods (including any part delivery of the goods or any parts of 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 and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller

"Contract" means the contract for the purchase and sale of the Goods

"Writing" includes telex, cable, facsimile transmission and comparable means of communication

- 1.2 Any reference in these Conditions to any provision of a statute shall be construed 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 THE SALE

- 2.1 All quotations and offers are made and orders are accepted subject to and shall be deemed to incorporate the Conditions and they shall apply to all Contracts to the exclusion of any other terms and conditions including without limit those which the Buyer purports to apply under any order.
- 2.2 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.
- 2.3 The Seller's employees or agents are not authorised to make any representations or give any advice or recommendation concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on and waives any claim for breach of, any such representatives which are not so confirmed.
- 2.4 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.

## 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 Seller's authorised representative.
- 3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable design measurement, quantities and 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 and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).
- 3.4 If the goods are to be manufactured 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 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 or any other person which results from the Seller's use of the Buyer's specification.
- 3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirement or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
- 3.6 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 of all labour and material used), damages, charges and expenses incurred by the Seller as a result of cancellation.

## 4 PRICE OF GOODS

- 4.1 The price of Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of delivery. All prices quoted are valid for the period stated by the quotation, after which time they may be altered by the Seller without giving notice to the Buyer.
- 4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 4.3 Where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.
- 4.4 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 or (as the case may be) the Seller had tendered delivery of the Goods.
- 5.2 The Buyer shall pay the price of the Goods in cash and pounds sterling within 30 days of the date of the invoice, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment at the price shall be of the essence of the Contract.
- 5.3 The Seller reserves the right at any time to demand full or partial payment before proceeding further with any order.
- 5.4 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:
  - 5.4.1 cancel the Contract or any other contract between the Buyer and the Seller;
  - 5.4.2 suspend any further deliveries to the Buyer in relation to the Contract or any other contract between the Buyer and the Seller;
  - 5.4.3 cancel other orders received from the Buyer;
  - 5.4.4 appropriate any payment (whether partial payment or full payment) made by the Buyer to such of the Goods (or the goods supplied under the other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer);

- 5.4.5 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 1.5 per cent per annum above HSBC base rate from time to time until payment is made in full (a part of a month being treated as a full month for the purpose of calculating interest); and
- 5.4.6 charge the Buyer all costs, charges and expenses incurred by the Seller (including, without limitation, costs incurred in commencing and carrying out legal proceedings) in the collection of the payment (and so that any taxation of the Seller's costs, charges and expenses shall be on a full indemnity basis).

## 6 DELIVERY

- 6.1 Delivery of the Goods shall be 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 or, if the Buyer's address or some other place of delivery is agreed by the Seller, by the Seller delivering the Goods to that place.
- 6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.4 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control, or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 6.5 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may (without limitation):
  - 6.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) for storage; or
  - 6.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

## 7 RISK AND PROPERTY

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
  - 7.1.1 in the case of Goods to be delivered at 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 the Goods to be delivered otherwise than at the Seller's premises at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered 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 and all other sums then due and payable by the Buyer to the Seller in respect of this or any other contract.
- 7.3 Until the property in the Goods passes to the Buyer, the buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time (or, if earlier, up to the time that an event occurs which causes clause 10 of these Conditions to apply) the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up to the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.5 The Buyer 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 the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## 8 WARRANTIES AND LIABILITY

- 8.1 Subject to the conditions set out below and Condition 3.5, the Seller warrants to the Buyer that the Goods, upon delivery and for a period of 24 months thereafter, will correspond with any agreed specification and will be free from material defects in material and workmanship.
- 8.2 The above warranty is given by the Seller subject to the following conditions:
  - 8.2.1 The Buyer carrying out a reasonable inspection of the Goods upon delivery;
  - 8.2.2 The Seller shall be under no liability in respect of any defect arising from any instruction, drawing, design or specification supplied by the Buyer;
  - 8.2.3 The Seller shall be under no liability in respect of any defect arising from any fair wear and tear, wilful damage, negligence, abnormal working conditions or use, failure to follow the Seller's instructions for use, care or maintenance, misuse or alteration or repair of the Goods without the Seller's approval.
  - 8.2.4 Where the Seller supplies eye lifts to the Buyer the Seller shall be under no liability in respect of any defects arising in the Goods and/or damage or consequential loss arising from the Buyer's use of the eye lifts in connection with any purpose other than lifting a motor provided by the Seller. For the avoidance of doubt, the Seller accepts no liability howsoever arising if an eye lift is overloaded, fitted incorrectly, used for any purpose other than for which it has been designed or otherwise misused by the Buyer.
- 8.3 Subject as expressly provided in these Conditions, and except where the Goods are sold under a consumer sale (as defined by the Sale of Goods Act 1979), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.4 Where the Goods are sold under a consumer sale (as defined by the Sale of Goods Act 1979) the statutory rights of the Buyer are not affected by these Conditions.
- 8.5 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods and/or their failure to correspond with specification or the warranties in Condition 8.1 shall (whether or not delivery is refused by the Buyer) be notified to the Seller:
  - 8.5.1 no later than 7 days from the date of delivery, where the defect or failure was, or ought reasonably to have been, apparent upon a reasonable inspection of the Goods by the Buyer upon delivery; or
  - 8.5.2 where the defect or failure was not, and ought not to have been, apparent upon a reasonable inspection of the Goods upon delivery, within 7 days from the date of discovery of the defect or failure; and
  - 8.5.3 in any event, within a period of 24 months from the delivery date.

- 8.6 If the Buyer does not notify the Seller of any claim or defect within the relevant time specified above, the Buyer shall not be entitled to any remedy and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price to the Seller as if the Goods had been delivered in accordance with the Contract.
- 8.7 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Buyer shall, at the Seller's election, be entitled to either:
- 8.7.1 a replacement or repair of the Goods (or the part in question) free of charge; or
  - 8.7.2 a refund to the Buyer of the price paid for the Goods (or a proportionate part of the price).
- 8.8 Any Goods that have been replaced will be the property of the Seller and any replacement or repaired Goods issued by the Seller will be subject to and benefit from these Conditions.
- 8.9 Except as provided for in this Condition 8, the Seller shall have no liability to the Buyer howsoever arising in respect of any defect in the Goods and/or the Goods' failure to comply with the warranties set out in Condition 8.1.
- 8.10 Nothing in these Conditions shall limit or exclude the Seller's liability for:
- 8.10.1 death or personal injury caused by its negligence;
  - 8.10.2 fraud or fraudulent misrepresentation;
  - 8.10.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - 8.10.4 any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.
- 8.11 Subject to Condition 8.10, the Seller shall not be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any:
- 8.11.1 indirect or consequential loss or damage;
  - 8.11.2 loss of profits;
  - 8.11.3 product recall costs and expenses;
  - 8.11.4 loss of sales or business;
  - 8.11.5 loss of agreements or contracts;
  - 8.11.6 loss of anticipated savings; and/or
  - 8.11.7 loss of or damage to goodwill;
- whatsoever arising under or in connection with the Contract and/or the Goods.
- 8.12 Subject to Condition 8.10 and 8.11, the Seller's total liability to the Buyer arising under or in connection with each Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price paid or payable for the Goods under the Contract.
- 8.13 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 failure to perform, any of the Seller's obligations in relation to the Goods and/or the Contract, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control: Act of God, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, civil disturbance or requisition, act of terrorism; acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery, and power failure or breakdown in machinery.
- 9 INDEMNITY**
- 9.1 If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trademark or other industrial or intellectual property rights of any other person, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:
- 9.1.1 the Seller is given full control of any proceedings or negotiations in connection with any such claim;
  - 9.1.2 the Buyer shall give the Seller all reasonable assistance for the purpose of any such proceedings or negotiations;
  - 9.1.3 except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);
  - 9.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);
  - 9.1.5 the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim; and
  - 9.1.6 without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.
- 9.2 The Buyer agrees to indemnify and keep indemnified the Seller from and against all costs, claims, demands, liabilities, expenses, damages or losses (including without limitation consequential losses, loss of profit and loss of reputation) and this indemnity shall cover but is not limited to the Seller's liability for third parties arising out of the Goods including (without limitation) liability to enforcement agencies and consumers for unsafe and defective goods. This indemnity shall apply whether or not the Seller may have been negligent or at fault.
- 10 INSOLVENCY OF BUYER**
- 10.1 This clause applies if:
- 10.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
  - 10.1.2 an encumbrancer takes possession or a receiver, administrative receiver or administrator is appointed of any of the property or assets of the Buyer; or
  - 10.1.3 the Buyer ceases or threatens to cease to carry on business; or
  - 10.1.4 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.
- 10.2 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.
- 11 STATUS OF BUYER**
- The Buyer warrants to the Seller that it has experience of dealing with goods of the same kind as the Goods and warrants to use the Goods only in the manner and for the purposes for which they are designed.
- 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 The Buyer shall not assign any benefit or obligations under the Contract.
- 12.3 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach.
- 12.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected thereby.
- 12.5 The Contract shall be governed by and construed in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the English courts.
- 12.6 No term contained in these Conditions shall be enforceable by a third party and no terms contained in these Conditions shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party.