

TERMS AND CONDITIONS OF PURCHASE

1. INTERPRETATION

1.1 In these Conditions:-

“Malosa”	means Malosa Limited (company number 4206780);
“Conditions”	means these standard terms and conditions of purchase and includes any special terms agreed in writing between Malosa and the Seller;
“Contract”	means each contract for the sale and purchase of the Goods and the supply and acquisition of the Services on these Conditions;
“Goods”	means the goods (including any instalment, component, part of or raw materials used in such goods) described in the Order;
“Order”	means Malosa’s purchase order to which these Conditions are annexed;
“Price”	means the price of the Goods and/or the Services;
“Seller”	means the person, firm or company so described in the Order;
“Services”	means the services (if any) described in the Order;
“Specification”	includes any plans, drawings, data, description or other information relating to the Goods and/or Services; and
“writing”	includes facsimile transmission and “written” shall be construed accordingly.

1.2 Any reference to a statutory provision includes a reference to any modification or re-enactment of the provision from time to time in force and all subordinate instruments, orders or regulations made under it.

2. BASIS OF PURCHASE

2.1 The Order constitutes an offer by Malosa to purchase the Goods and/or acquire the Services subject to these Conditions.

2.2 Any of the following are deemed to constitute the Seller’s agreement to comply with these Conditions:-

2.2.1 any offer and/or acceptance of an Order by the Seller (notwithstanding any conditions attached to such offer or acceptance or any purported incorporation of terms other than these Conditions);

2.2.2 the commencement of any work by the Seller; or

2.2.3 the delivery of any Goods or the performance of any Services by or on behalf of the Seller.

2.3 These Conditions shall apply to each Contract to the exclusion of any other terms and conditions on which any quotation has been given to Malosa or subject to which the Order is accepted or purported to be accepted by the Seller. If any future contract is made with the Seller without reference to these Conditions, such contract shall be deemed to be subject to these Conditions.

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

3. **SPECIFICATIONS, INSPECTION AND EQUIPMENT**

3.1 The quantity, quality and description of the Goods and the Services shall be as specified in the Order and/or in any applicable Specification supplied by Malosa to the Seller or agreed in writing by Malosa.

3.2 Any Specification supplied by Malosa to the Seller or specifically produced by the Seller for Malosa in connection with a Contract, together with the copyright, design rights or any intellectual property rights (registered or unregistered) in a Specification, shall be the exclusive property of Malosa and delivered to Malosa with the Goods or supply of the Services.

3.3 Goods made to Malosa's Specification shall not be manufactured for or supplied to any other party.

3.4 Prior to despatch the Seller shall inspect and test the Goods for compliance with the Order and shall at Malosa's request and at no extra cost supply Malosa with certified copies of all test/inspection sheets.

3.5 If as a result of inspection or testing Malosa is not satisfied that the Goods and/or Services will comply in all respects with the Contract, and Malosa so informs the Seller within [seven] days of inspection or testing, the Seller shall take such steps as are necessary to ensure compliance.

3.6 The Goods shall be marked in accordance with Malosa's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition.

3.7 All equipment paid for or provided by Malosa shall be and remain Malosa's property and must be returned to Malosa in good condition upon request and shall not be copied or used for any purpose other than completion of the Order. The Seller shall correctly maintain and store such equipment and shall be liable for any loss or damage to it whilst in the possession or under the control of the Seller. The Seller shall keep such equipment at such location agreed with Malosa and shall keep such equipment clearly identified at all times as the property of Malosa.

4. **PRICE**

4.1 The Price of the Goods and the Services shall be as stated in the Order and, unless otherwise so stated, shall be:-

4.1.1 fixed;

- 4.1.2 exclusive of any applicable VAT (which shall be payable by Malosa subject to receipt of a VAT invoice); and
- 4.1.3 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to Malosa's specified delivery address and any duties, imposts or levies other than VAT.
- 4.2 If the Price is not stated in the Order, the Price shall be the lowest price currently quoted or charged at the time of the Order by the Seller for the Goods and the Services but shall in no event be higher than the price most recently charged to Malosa by the Seller for such Goods or Services.
- 4.3 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior written consent of Malosa.
- 4.4 Malosa shall be entitled to any discount for prompt payment, bulk purchase, volume or purchase customarily granted by the Seller.

5. **INFORMATION**

- 5.1 The Seller shall provide to Malosa on request evidence of the place of origin of the Goods and information relating to components, parts or raw materials used in manufacturing the Goods.
- 5.2 The Seller shall provide to Malosa:-
 - 5.2.1 all information as Malosa requires to ensure that the Goods and Services comply with and that Malosa fulfils its obligations under all applicable legislation and industry codes of practice;
 - 5.2.2 all information relating to any possible risks to health and safety presented by the Goods;
 - 5.2.3 all information specifically regarding hazardous substances and any dangerous properties the Goods may have; and
 - 5.2.4 full instructions for use and clear and conspicuous warnings relating to any conditions which are necessary to ensure safety in use or onward sale in each case with sufficient detail to enable Malosa and any end user to understand any possible risks to health and safety.

6. **PAYMENT**

- 6.1 Unless otherwise stated in the Order, the Seller may only invoice Malosa on or after delivery of the Goods or supply of the Services with a separate invoice for each individual delivery or supply. Invoices will not be accepted unless they quote the number of the relevant Order. Invoices shall be sent to the address specified on the Order as the invoicing address.
- 6.2 Unless otherwise stated in the Order, Malosa shall pay the Price of the Goods and the Services within 30 days after the end of the month of receipt by Malosa of a proper invoice or, if later, after acceptance of the Goods or Services in question by Malosa.
- 6.3 Time of payment shall not be of the essence of the Contract.

- 6.4 Malosa shall be entitled to deduct from the Price any sums owing by the Seller to Malosa or any other company within the Seller's group on any contract.

7. **DELIVERY**

- 7.1 The Goods shall be delivered to, and the Services shall be performed at, the address specified by Malosa on the date or within the period stated in the Order, in either case during Malosa's usual business hours. Malosa reserves the right to amend any delivery instructions. Delivery shall be deemed to be made on receipt of the Goods and/or the Services by Malosa in accordance with all terms of the Contract.
- 7.2 Where the date of delivery of the Goods or of performance of the Services is to be specified after the placing of the Order, the Seller shall give Malosa reasonable notice of the specified date.
- 7.3 Time of delivery of the Goods and of performance of the Services is of the essence of the Contract. Notwithstanding this, if for any reason Malosa requests delivery or performance to be delayed, the Seller shall agree to such request at no extra cost to Malosa and the provisions of this Condition 7 shall apply to any such revised date for delivery or performance.
- 7.4 A delivery note stating the number of the Order and the description and quantity of Goods supplied must accompany each consignment of the Goods and must be displayed prominently.
- 7.5 Delivery or performance by instalments shall not be accepted by Malosa unless previously agreed in writing. If Goods are to be delivered or Services are to be performed by instalments, the Contract will be treated as a single contract and not severable.

8. **ACCEPTANCE**

- 8.1 The Seller shall supply Malosa in good time with any instructions or other information required to enable Malosa to accept delivery of the Goods.
- 8.2 Malosa shall be entitled to reject all or any part of the Goods delivered performed which are not in accordance with the Contract, including a right to reject defective Goods even if the defect is minor.
- 8.3 Malosa shall not be deemed to have accepted any Goods until Malosa has had a reasonable time to inspect or test them following delivery or, if later, within a reasonable time after any latent defect has become apparent.
- 8.4 Malosa shall not be deemed to have accepted the Goods merely by virtue of its having sold the Goods to a third party upon or after delivery or its having incorporated or converted them into other products or works.
- 8.5 Malosa shall not be deemed to have accepted the Goods or Services by virtue of having required the Seller to repair or replace Goods or Services under these Conditions.

9. **RISK AND PROPERTY**

- 9.1 Risk of damage to or loss of the Goods shall pass to Malosa upon delivery to Malosa in accordance with the Contract.

- 9.2 The property in the Goods shall pass to Malosa upon delivery, unless payment for the Goods is made prior to delivery, when it shall pass to Malosa once payment has been made and the Goods have been appropriated to the Contract.

10. **COMPLIANCE**

- 10.1 The Seller shall comply with the General Product Safety Regulations 1994.
- 10.2 The Seller shall comply with all applicable regulations and other legal requirements concerning the manufacture, packaging, labelling, packing and delivery of the Goods and performance of the Services and concerning hazardous substances.

11. **WARRANTIES**

- 11.1 The Seller warrants to Malosa that it is fully experienced, qualified, equipped, organised and financed to perform its obligations under the Contract, and warrants to Malosa that the Goods:-

- 11.1.1 will be of satisfactory quality and fit for any purpose held out by the Seller or made known to the Seller at the time the Order is placed;
- 11.1.2 where no Specification or sample has been provided, will meet Malosa's performance criteria and conform to best industry practice;
- 11.1.3 will be free from defects in design, material and workmanship;
- 11.1.4 will correspond with any relevant Specification or sample;
- 11.1.5 will comply with all statutory requirements, regulations, bye-laws and EU directives and regulations relating to the manufacture and sale of the Goods, product safety, packaging, labelling (including the appropriate British Standard or equivalent specification unless otherwise agreed); and
- 11.1.6 will comply with the general requirements of safety in terms of risk presented to the health and safety of persons.

- 11.2 The Seller warrants to Malosa that the Services:-

- 11.2.1 will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standards of quality as it is reasonable for Malosa to expect in all the circumstances; and
- 11.2.2 will comply with all statutory requirements, regulations, bye-laws and EU directives and regulations relating to the performance of the Services.

12. **CERTAIN RIGHTS AND REMEDIES ON DEFAULT**

- 12.1 Each right or remedy of Malosa is without prejudice to any other right or remedy of Malosa, whether or not under the Contract.
- 12.2 If Goods are not delivered or Services are not performed on the due date then Malosa shall be entitled to cancel the Order (or any part) without liability to the Seller and purchase substitute items or services elsewhere and recover from the Seller any loss or additional costs incurred.

- 12.3 If Malosa exercises its rights under Condition 12.2, then if any other goods or services have been ordered or delivered and those other goods or services cannot in Malosa's reasonable opinion be used as satisfactorily as intended without the Goods or Services rejected or cancelled, Malosa may also cancel or return (at the Seller's cost and risk) all or any of those other goods or services. In such circumstances Malosa shall be entitled to recover from the Seller any loss thereby incurred including the additional costs of acquiring replacements for those other goods or services from another supplier.
- 12.4 If any Goods or Services are not supplied or performed in accordance with the Contract, then Malosa shall be entitled:-
- 12.4.1 to require the Seller to repair the Goods or (at Malosa's sole option) to supply replacement Goods or Services in accordance with the Contract within seven days (and the provisions of this Condition 12 shall apply to any such repaired or replaced Goods or Services); or
- 12.4.2 whether or not Malosa has previously required the Seller to repair the Goods or to supply any replacement Goods or Services, to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the Price which has been paid.

13. **INDEMNITY**

The Seller shall indemnify Malosa in full against all liabilities, losses (whether direct or indirect and including loss of profits), damages, costs and expenses (including legal expenses) awarded against or incurred or paid by Malosa as a result of or in connection with:-

- 13.1 **breach of any warranty given by the Seller in relation to the Goods or the Services;**
- 13.2 **any claim that the Goods infringe, or their importation, use or resale, infringes the patent, copyright, registered or unregistered design right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by Malosa;**
- 13.3 **any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering and installing the Goods and in performing the Services, including any injury, loss or damage to persons caused or contributed to by any of their negligence or by faulty design, workmanship or materials (except to the extent that the injury, loss or damage is caused by the negligent act or omission of Malosa).**

14. **INSURANCE**

- 14.1 The Seller shall at all times maintain insurance cover with a reputable insurer against its liability under the Contract and shall produce the policy and latest premium receipt to Malosa on demand.
- 14.2 Unless otherwise specified in writing by Malosa the following minimum levels of insurance cover shall be maintained:-
- 14.2.1 employers liability insurance: not less than £10,000,000 for each and every incident inclusive of costs and expenses; and

- 14.2.2 public/product liability insurance written on an occurrence basis: not less than £5,000,000 for each and every claim.

15. **TERMINATION**

- 15.1 Malosa shall be entitled to cancel the Order in respect of all or part only of the Goods and/or the Services by giving notice to the Seller at any time prior to delivery or performance without incurring any liability to the Seller other than to pay for Goods and/or Services already delivered or performed at the time of such notice.
- 15.2 Malosa shall be entitled to terminate immediately the Contract without liability to the Seller and reserving all rights of Malosa by giving notice to the Seller at any time if:-
- 15.2.1 the Seller is in material breach of any of its obligations under these Conditions and that breach cannot be remedied; or
- 15.2.2 the Seller is in material breach of an obligation under these Conditions which can be remedied, but the Seller fails to do so within 30 days starting on the day after receipt of notice from Malosa; or
- 15.2.3 the Seller makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986, as amended) or any person takes any step to appoint an administrator or administrative receiver or receiver or the Seller goes into liquidation or bankruptcy; or
- 15.2.4 the Seller ceases, or threatens to cease, to carry on business, or substantially changes the nature of its business; or
- 15.2.5 Malosa reasonably believes that any of the events mentioned above is about to occur in relation to the Seller and notifies the Seller accordingly.
- 15.3 For the purposes of Conditions 15.2.1 and 15.2.2:-
- 15.3.1 a breach is capable of remedy if time is not of the essence in performance of the obligation and if the Seller can comply with the obligation within the 30 day period;
- 15.3.2 a breach can be material irrespective of whether any actual loss has been incurred or will be incurred as a consequence of the breach or intended breach;
- 15.4 If delivery is incomplete then, without prejudice to its other rights, Malosa may accept or reject the Goods or Services delivered or performed and cancel or vary the balance of the Order.

16. **CONFIDENTIALITY**

- 16.1 All information supplied to the Seller by Malosa at any time in connection with the Contract and any Specification:-
- 16.1.1 is and remains Malosa's property and must be returned to Malosa on request;
- 16.1.2 shall be regarded as confidential;
- 16.1.3 shall not without the prior written consent of Malosa be published or disclosed to any third party or used by the Seller except for the purpose of implementing the

Order or to the extent that it is or becomes public knowledge through no fault of the Seller.

- 16.2 The Seller shall not advertise or announce the supply of the Goods and/or the Services to Malosa without Malosa's prior written consent.
- 16.3 The obligations under this Condition shall remain in force notwithstanding completion, cancellation or termination of the Contract.

17. **GENERAL**

- 17.1 The Order is personal to the Seller and the Seller shall not transfer, assign, charge, dispose of or deal with in any manner or purport to do the same any of its rights or beneficial interests.
- 17.2 The Seller shall not sub-contract any of its obligations under the Contract.
- 17.3 Any notice to be given by either party to the other under these Conditions must be in writing addressed to that other party at its registered office or principal place of business or such other address as may have been notified for these purposes.
- 17.4 Notices shall be delivered personally or sent by first class post or sent by facsimile transmission.
- 17.5 A notice is deemed to have been received:-
 - 17.5.1 if delivered personally, at the time of delivery;
 - 17.5.2 if sent by prepaid first class post, on the second working day after posting (exclusive of the day of posting);
 - 17.5.3 if sent by facsimile transmission, on a working day prior to 4.00 pm at the time of completed transmission and otherwise on the next working day.
- 17.6 Any waiver by Malosa of any breach is not a waiver of any subsequent breach.
- 17.7 Failure or delay by Malosa in enforcing or partially enforcing any provision of the Contract is not a waiver of any of its rights under the Contract.
- 17.8 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 17.9 The Contract shall be governed by the laws of England, and the parties submit to the exclusive jurisdiction of the English Courts. This Condition is for the benefit of Malosa only and as a result Malosa shall not be prevented from taking proceedings in any other courts with jurisdiction, whether concurrently or not.
- 17.10 The Contract does not create, confer or purport to confer any benefit or right enforceable by any person not a party to it by virtue of the Contracts (Rights of Third Parties) Act 1999.