

## **TERMS AND CONDITIONS OF SALE (VERSION NO. 9 - 2023)**

These Terms and Conditions apply to all supplies of goods and/or services or any part of either of them provided to the customer unless otherwise agreed in writing by a duly authorised representative of Termate Ltd, Company Registration No. 02160675, Registered in England (Termate Ltd trading as 3 Phase Design hereafter collectively referred to as Termate). When applicable see also 3 Phase Design, Terms and Condition quotation additions.

### **1. QUOTATIONS**

(A) Any quotation given by Termate will only be binding if given in writing by post or by email on Termate notepaper (by a duly authorised representative of Termate) and the quotation has not expired.

A written quotation will be based on samples and materials provided and on the basis of instructions given by the Customer. Termate reserves the right to amend any quotation given to reflect any incomplete, inaccurate or changed instructions or samples or materials given by the Customer. Any verbal quotation is an estimate only and will not be binding unless and until confirmed by Termate in writing.

Any quotation is valid for a period of 30 days only from its date of issue by Termate, (provided that Termate has not previously withdrawn it and subject to the provisions of condition 3 below) and shall be deemed to be an offer by Termate to provide goods and/or services upon these terms and conditions to the Customer.

Any order made in respect of a written quotation shall be deemed to be an acceptance by the Customer of the offer set out in that written quotation.

(B) The Customer must ensure that any quotation it wishes to accept, its order and any applicable specification are complete and accurate. The quantity and description of the goods or services shall be as set out in a Termate written quotation or the Customer's order as accepted.

(C) Subject to condition 5(A) a Business Customer (a Customer who is dealing with Termate in the course of its business) may not cancel an order which Termate has accepted except with the agreement in writing of Termate and any Customer cancelling any order hereby agrees to indemnify Termate in full against all losses (including loss of profits), costs (including the costs of all labour and material used until the date of cancellation), damages, charges and expenses incurred by an Termate as a result of the cancellation.

Termate may cancel an order at any time prior to delivery upon notice to the Customer whereupon a refund of any monies paid for the relevant goods and/or services will be promptly made.

(D) All quotations are given and all orders accepted subject to Termate Terms and Conditions of Sale and no others. These conditions, which supersede any earlier sets of conditions appearing in Termate catalogues, website or elsewhere, shall override any other terms or conditions stipulated or incorporated or referred to by the Customer, whether in the order or in any negotiations.

(E) The Customer acknowledges that there are no representations outside these conditions which have induced the Customer into this contract and these conditions and the terms of the quotation constitute the entire understanding between the parties, and supersede all previous agreements between the parties.

(F) Any modification of these conditions is ineffective unless made by an express written agreement between the parties. The signing by Termate of any of the Customer's documentation does not imply a modification of these conditions.

(G) In case of any conflict between these conditions and additional conditions within the Termate quotation or order confirmation, the conditions within the quotation or order confirmation will take precedence.

## 2. DRAWINGS

All specifications, drawings and particulars of weights and dimensions submitted with the quotation are approximate only, and the descriptions and illustrations contained in Termate catalogues, price lists, website and other advertising material are intended merely to present a general idea of the goods described therein, and none of these shall form part of the contract.

## 3. PRICE

The price payable will be as stated in Termate written quotation and/or the order as accepted subject to a minimum order value which will be advised at time of quotation or order acceptance.

The price payable (unless specifically stated otherwise) is exclusive of:

- (i) Any costs of packaging and carriage of goods; and
- (ii) Any value added tax or other applicable sales tax or duty; which shall be added to the sum in question.

## 4. PRICE VARIATIONS

(A) If there is any increase or decrease in the cost to Termate in providing/fulfilling the order due to: -

- (i) Any factor beyond the reasonable control of Termate, this includes (without limitation) increase in the cost of materials and other production cost;
- (ii) Any change in delivery, dates, quantities or specifications for the Order requested by the Customer;
- (iii) Any delay caused by any instructions of the customer or failure of the customer to give Termate adequate information or instructions;
- (iv) Any corrections, amendments and alteration in style or content to material provided by the Customer, other than typographical errors of Termate, and for additional proofs necessitated thereby;

(v) Additional costs incurred as a result of materials provided by the Customer proving unsuitable; the price/quotation shall be recalculated to take account of the resulting increased or decreased cost of meeting/fulfilling the order.

(B) Notwithstanding the provisions of condition 3 above: the relevant price/quotation shall only be adjusted upwards if, before Termate has incurred the additional cost, it has notified the Customer in writing of such increase and the Customer has agreed to the increase in writing. If the parties are then unable to agree any such increase to the price then the order shall be cancelled and Termate shall be entitled to invoice the Customer for all works services or supplies carried out and/or made before the date of such cancellation.

## 5. PROOFS AND ERRORS

Proofs are available for the Customer's approval on request. No responsibility or liability will be accepted by Termate for:

(i) Any errors not corrected by the Customer after inspecting the specifications, drawings, proofs or where the Customer declines to make such request;

or

(ii) Any work for which the Customer has given instructions which requires or allows Termate to exercise a choice in design or technique; and the Customer shall not be entitled to reject such work although Termate shall rectify any such error at the Customer's cost.

## 6. DELIVERY, PAYMENT AND RISK

(A) Any dates specified by Termate for delivery of the goods or performance of the services are approximate only and may not be made of the essence unless specifically agreed by Termate as such in writing. If no dates are specified, delivery will be within a reasonable time.

(B) Exchange Rates – Where the price for the goods/services are quoted as payable in a currency other than GB Pound Sterling that price is only valid for 14 (Fourteen) Working Days unless otherwise stated on the quote. Termate will quote in and accept only US Dollars and Euros other than GB Pound Sterling, unless agreed in writing in advance stating currency, exact amounts and latest date of payment.

(C) Unless otherwise stated in the Termate quotation, goods are sold EXW (Termate Loading Bay, John Street, Nottingham) Incoterms 2020.

## 7. NON-DELIVERY

In the event that Termate is prevented from delivery any of the goods by reason of the Customer's instructions or lack of instructions, or by strikes, lock-outs, industrial disputes, fires, accident, adverse weather conditions, defective materials or non- delivery by a third party, shortage of fuel, default by any sub-contractor, inability to obtain materials, embargo or any cause whatsoever beyond Termate control, whether existing at Termate works or elsewhere, then the delivery period shall be extended by such period as is reasonable in all the circumstances of the case and the estimated delivery date for such goods shall be recalculated accordingly. In no circumstances shall Termate be liable to compensate the Customer in

damages or otherwise, for non-delivery or late delivery of the goods or any part of them or any loss, consequential or economic, arising thereof.

## 8. WARRANTY

- (A) Where Termate is not the manufacturer of the goods ordered or provider of the ordered services Termate will endeavour to transfer to the Customer the benefit of any warranty or guarantee to Termate.
- (B) Termate warrants that (subject to the other provisions of these terms and conditions) upon delivery:
- (i) Any goods will be of satisfactory quality within the meaning of the Sale and Supply of Goods Act 1994;
- and
- (ii) Any services will be performed by appropriately qualified and trained personnel, with reasonable care and diligence.
- (C) Upon delivery the Customer is required to check the goods and/or services immediately for any immediately apparent defects. Termate shall not be liable for a breach of the warranty in condition 8(B) unless the Customer gives written notice of any apparent defect to Termate within 7 days of the date of delivery and Termate is given a reasonable opportunity, after receiving the notice, to examine such goods and the Customer (if asked to do so by Termate) returns such goods to Termate place of business for the examination to take place there.
- (D) If the Customer makes a valid claim against Termate based on a defect in the quality of goods, Termate shall at its option repair or replace such goods (or the defective part), or refund the price of such goods at the relevant proportion of the price paid or payable. If Termate complies with this condition it shall have no further liability for a breach of warranty in condition 8(B) in respect of the quality of such goods.
- (E) To the maximum extent permissible in law, all conditions and warranties which are implied by statute or otherwise by general law into this contract in relation to goods or services or supplies are hereby excluded;  
Termate shall not be liable to the Customer by reason of any representations (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), cost, expenses or other claim for compensation whatsoever (whether caused by Termate negligence or otherwise) which arise out of or in connection with the supply of goods or services or supplies.
- (F) Nothing in condition 8(E) excludes, or attempts to exclude, Termate liability in respect of death or personal injury caused by Termate negligence.
- (G) The total liability of Termate to the Customer in contract, tort (including negligence or breach of statutory duty), statute or otherwise (other than for death or personal injury arising due to the negligence of Termate, its employees or agents), in connection with the performance or contemplated performance of the order shall be limited to the order value.
- (H). The warranty is void if any modifications are made to the warranted product.

## 9. COMPONENT REDUNDANCY

Termate may, from time to time, implement its redundancy process for slow moving or obsolete components.

## 10. RETURNS POLICY

Termate, at its sole option and unless otherwise agreed, will accept unused goods for return under the conditions stated in this clause.

The Customer will notify Termate Customer Support for authorisation to return the goods. Goods will not be accepted without a Goods Return number.

For this reason, goods which were manufactured to order specifically on the Customer's behalf will not normally be accepted for return. The issue of a GR number does not mean that Termate will ultimately take the goods back into its stock and issue credit thereon, only that Termate is willing to assess the condition of the goods with a view to doing so.

All transport costs both to and from Termate's premises are at the account of the Customer. Termate will issue credit, at the lower of invoice or current price, against goods which Termate chooses to accept for return. To cover the costs of handling, inspection and administration Termate will levy a minimum handling charge at its discretion which will be advised at the time of agreement to accept goods back for assessment. This handling charge will be deducted from the value of the credit.

Errors which Termate determines are its responsibility will be remedied as determined by Termate.

## 11. CUSTOMER'S OWN MATERIALS

(A) Termate may reject any unsuitable materials (including without limitation any physical or digital media in any form) supplied or specified by the customer and Termate reserves the right to refuse to undertake any works, services or supplies which infringes or appears to infringe the copyright or other intellectual property rights of any third party or which in its opinion contains any material which is in any way unlawful.

(B) Any Customer's other materials supplied to Termate remain at the Customer's risk and Termate accepts no liability for damage, destruction or loss thereof. In the case of Consumer customers, Termate agree to take reasonable care of such materials while the same are in their possession although it is the responsibility of the Customer to ensure that such items are covered by their own insurance.

(C) Termate shall have a lien over any materials supplied to it by the Customer against payment of all monies due to it by the Customer from time to time and shall be entitled (if any sum is not paid on the due date) to dispose of such property as Termate shall in its discretion think appropriate towards settlement of the sums due, subject to reasonable notice having been given to the customer of their intention to dispose of such property.

## 12. PERFORMANCE

(A) Termate shall accept no liability for failure to attain any performance figures quoted by Termate unless Termate has specifically guaranteed them.

(B) The information contained in Termate data sheets, sales catalogues, website and other technical circulars is intended only to give a general indication of products or services described and, unless specifically agreed to the contrary in writing by Termate, no representation particulars or statement contained therein shall form part of the contract. Termate reserves the right to alter, without notice, the specification, design or condition of supply of all its products and services.

### 13. IMPORTANT

(A) Subject to the other provisions of these conditions Termate shall have no liability to the Customer for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the goods and/or provision of the services.

(B) Any delay or failure in delivery or performance will not entitle the Customer to cancel the order unless and until the Customer, has given 7 days written notice to Termate requiring delivery or performance to be made within a reasonable period (and in the case of consumer customers if they have given reasonable notice to Termate requiring delivery or performance to be made within a reasonable period) and Termate has not fulfilled the delivery or performed within that period. If the Customer cancels the order in accordance with this condition then

i. Termate will refund to the Customer any sums which the Customer has paid to Termate in respect of that order (or part of order) which has been cancelled;

and

ii. The Customer will be under no liability to make any further payments under condition 13(B) in respect of the order (or part of order) which has been cancelled.

(C) If the Customer fails to take delivery of goods when they are ready for delivery or to provide any instructions, documents or authorisations required to enable the goods to be delivered on time (except where Termate is at fault) risk in goods will pass to the Customer and the Customer hereby agrees to fully insure the same, the goods will be deemed to be delivered and (without prejudice to its other rights) Termate may store or arrange for the storage of the goods until actual delivery and charge the Customer for all related costs and expenses (including, without limitation, storage and insurance) it incurs.

(D) Termate may invoice the Customer:

(i) For goods provided when or at any time after notifying the Customer that the goods are ready for delivery;

(ii) For services provided on or at any time after performance of the services or their commencement;

(iii) Notwithstanding the provisions in conditions 13(B)(i) and (ii), in the event that an order is suspended or delayed as a result of any act or omission on the part of the Customer for a period in excess of thirty days, for any part of the order which has been processed/delivered and/or performed.

(E) The Termate standard terms of business for an approved credit account customer, is net 30 days end of month and applies to all credit accounts unless otherwise agreed in writing. Payment for non-credit account customers is by pro-forma invoice prior to delivery or provision of service unless otherwise agreed in writing. Time of payment shall be of the essence.

- (F) Termate may deliver goods in separate instalments and/or perform any services in stages. Each separate instalment or stage shall be invoiced and paid for in accordance with the provisions of these terms and conditions. Each instalment or stage shall be a separate contract and no cancellation or termination under clause 13(B) of any one contract relating to an instalment or stage shall entitle the customer to repudiate or cancel any other contract, instalment or stage.
- (G) All sums payable to Termate under any order shall become due immediately upon termination/cancellation of the order.
- (H) All payments to be made by the Customer under the order shall be made in full without any set-off, restriction or condition and without any deduction for or on account of any counterclaim.
- (I) If the Customer fails to make any payment when payment is due then without prejudice to any other right or remedy available to Termate, Termate shall be entitled to:
- (i) Cancel the order or suspend any performance of the order;
  - (ii) Appropriate any payment made by the Customer as Termate may think fit (notwithstanding any purported appropriation by the Customer);
  - (iii) Charge the Customer with all costs and expenses involved in collecting the overdue payment together with interest (both before and after any judgement) on the amount unpaid at the rate of 8% above Bank of England base rate or such higher rate as provided for by legislation from the due date until payment in full is made (applied monthly with any part month being treated as a full month for the purpose of calculating interest).
- (J) Legal title in the Goods shall not pass to the customer until Termate receives payment in full (in cash or cleared funds) of all sums whether in respect of the goods, services or otherwise due owing or incurred including VAT (if appropriate). Until legal title passes the customer shall hold the goods on a fiduciary basis as Termate bailee and shall store the goods (at no cost to Termate) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as Termate property.

Where the Customer's right to possession has terminated the Customer grants Termate, its agents and employees and irrevocable license at any time to enter any premises where the goods are or may be stored to recover them. On termination of the contract, howsoever caused, Termate (but not Customer's) rights contained in this condition 13 shall remain in effect.

## 14. TERMINATION

If the Customer is in breach of any of its obligations under these terms and conditions then Termate may without prejudice to any of its other rights immediately suspend the performance of any order placed by the Customer and shall be entitled to charge the Customer, and the Customer shall immediately become liable to pay, for any works, services and supplies already carried out (whether completed or not) including the cost of any materials purchased on behalf of the Customer.

## 15. WAIVER

Failure or delay by Termate to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at time or times thereafter.

## 16. INDEMNITY

The Customer shall indemnify Termate in respect of all damage or injury occurring to any person or property and against all actions, suits, claims, demands, charges or expenses in connection therewith for which Termate may become liable in respect of the goods sold under this contract in the event that the damage or injury shall have been occasioned by the negligence of Termate or its servants or agents.

## 17. LIMITATION OF LIABILITY

Termate total liability for damage to the Customer's property, howsoever caused, shall not exceed £1,000,000 or the contract price, whichever is the greater.

## 18. ILLEGALITY AND SEVERANCE

If any provision of these terms and conditions is held by a competent authority to be invalid or unenforceable in whole or in part then that provision shall, to the extent required, be severed from the order and shall be ineffective without as far as possible modifying any other provision or part of the order and this shall not affect any other provisions of the order which shall so far as is reasonably possible remain in force and effect.

## 19. ENTIRE AGREEMENT

These provisions constitute the entire agreement between Termate and the Customer and replace all prior agreements, understandings, statements and communications between Termate and the Customer.

## 20. SUB-CONTRACTING

Termate may assign, license or subcontract all or any part of its rights or obligations under the order.

## 21. FORCE MAJEURE

Termate will make every effort to carry out the Customer's instructions and the order but shall be under no liability if unable to carry out any provision of the order for any reason beyond Termate reasonable control (without limiting the foregoing) including the inability to secure labour, materials or supplies, breakdown of machinery, or as a result of the Act of God, war, labour dispute, fire, flood, drought, legislation, failure of power supply or any other cause beyond Termate reasonable control.

During the continuance of such instance of Force Majeure the Customer may by notice in writing to Termate elect to terminate the order and pay for works, services and/or supplies provided or used up to such notice but subject thereto shall otherwise accept delivery when available.



## 22. GOVERNING LAW

The formation, existence, construction, performance, validity and all aspects whatsoever of the order or of any term of the contract shall be governed by English Law. The English Courts shall have non-exclusive jurisdiction to settle any disputes which may arise out of or in connection with the order.