

# TERMS & CONDITIONS

## Conditions of Contract

1. Any contract ("Contract") between ARDEX UK Ltd ("ARDEX") and any customer ("Customer") in regard to the sale and purchase of the goods agreed in the Contract ("Goods") will be on these Conditions to the exclusion of all other terms and conditions (including any which the Customer purports to apply under any order, confirmation of order, specification or other document). Variations to these Conditions and representations about the Goods shall have no effect unless agreed in writing by an authorised ARDEX representative. The Contract supersedes all prior agreements, negotiations and discussions between the parties relating to it.

2. An order for Goods by the Customer shall be deemed to be an offer by the Customer to purchase Goods subject to these Conditions. No order placed by the Customer shall be deemed to be accepted by ARDEX until a written acceptance of order is issued by ARDEX or (if earlier) ARDEX commences delivery of the Goods to the Customer.

## Delivery

3. Unless otherwise agreed in writing by ARDEX, delivery of the Goods shall be; when the Goods are off-loaded at the agreed address (where ARDEX undertakes the carriage of Goods) or, when the Goods are loaded on the Customer's transport (where the Customer undertakes carriage of the Goods).

4. Dates specified by ARDEX for delivery of Goods are estimates. Time for delivery shall not be made of the essence by notice. If no dates are specified, delivery will be within a reasonable time. The Customer will provide, at its expense, adequate and appropriate equipment and manual labour for offloading the Goods at the place of delivery.

## Risk/Title

5. The Goods are at the risk of the Customer from the time of delivery but (subject to the remainder of this condition) title in the Goods shall not pass to the Customer until it has paid all amounts due under the Contract and no other sums are due from the Customer to ARDEX on any other account. Until then, the Customer shall at its own expense store the Goods separately from all other Goods in its possession marked in such a way that they are clearly identified as ARDEX's property, but the Customer may resell or use the Goods in the ordinary course of its business. Any such resale shall be by the Customer as principal (not ARDEX's agent) and title to the Goods shall pass from ARDEX to the Customer immediately before title passes from the Customer to its purchaser. The Customer's right to resell the Goods or use them in the ordinary course of its business shall cease immediately if payment for the Goods is not made by the due date for payment or the Customer's financial position deteriorates to such an extent that in ARDEX's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy. Before title has passed to the Customer, ARDEX may at any time require the Customer to deliver up such Goods to ARDEX and enter any premises where the Goods are or may be stored in order to recover them.

## Price

6. Unless otherwise agreed by ARDEX in writing in advance; the price for the Goods shall be the price set out in ARDEX's price list published on the date of delivery and shall be exclusive of any value added tax or other sales tax (and any agreed additional costs or charges in relation to carriage and insurance all of which amounts the Customer will pay in addition).

## Payment

7. Payment for the Goods shall be made no later than the last working day of the calendar month following the calendar month of the date of the invoice for the Goods, unless otherwise agreed. Time for payment shall be of the essence and no payment shall be deemed to have been received until ARDEX has received cleared funds.

8. The Customer shall make all payments due under the Contract without any deduction by way of set-off, counterclaim, abatement or otherwise. If the Customer fails to pay ARDEX any sum due under the Contract the Customer will be liable to pay interest to ARDEX on such sum from the due date for payment at the annual rate of 2% above the base lending rate from time to time of Lloyds Bank plc, accruing on a daily basis until payment is made, whether before or after any judgement. In addition, ARDEX shall be entitled to recover from the Customer its reasonable costs incurred in pursuing payment of such sums.

9. If any payment due from the Customer under any Contract is not made by the due date for payment or the Customer's financial position has deteriorated to such an extent that in ARDEX's opinion the Customer's

capability to adequately fulfil its obligations under the Contract has been placed in jeopardy, then without limiting its other rights or remedies, ARDEX may suspend any further deliveries without any liability to the Customer.

## Quality

10. ARDEX warrants, provided the Customer follows

ARDEX's storage, use and maintenance oral/written instructions/ recommendations, that the Goods will, for the period indicated in the current product data sheet, function in accordance with the relevant specification or as ARDEX advises in writing. This warranty is subject to the Customer giving written notice of the defect to ARDEX within 14 days of when the Customer discovers or ought to have discovered the defect, AND ARDEX being given reasonable opportunity after receiving the notice of examining the Goods, AND if requested, the Customer returning such Goods at ARDEX's cost for examination.

11. ARDEX shall also not be liable for a breach of the warranty in condition 10 if the Customer makes any further use of such Goods after discovering the defect. In such a case, the Customer will indemnify ARDEX against all costs, liabilities and expenses incurred by ARDEX in determining the cause of the defect.

12. Subject to conditions 10 and 11, if the Goods do not conform with the warranty in condition 10 ARDEX shall at its option replace such Goods or refund their price provided that the Customer shall, at ARDEX's expense, return any defective Goods. If ARDEX complies with this, it shall have no further liability for a breach of the warranty in condition 10.

## Limitation Of Liability

13. Save as expressly provided, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract save that nothing in these Conditions excludes or limits the liability of ARDEX for fraud or for death or personal injury caused by ARDEX's negligence.

14. Subject to condition 13, ARDEX's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising out of or in connection with the Contract shall be limited to the price payable for the Goods under the Contract AND ARDEX shall not be liable to the Customer in contract in tort or otherwise, for any loss of profits, business, revenue, goodwill or anticipated savings or for any indirect or consequential or economic loss whatsoever howsoever arising out of or in connection with the Contract.

## Assignment

15. The Customer shall not assign, transfer, charge or deal in any other manner with the Contract or its rights under it or part of it.

## Force Majeure

16. ARDEX reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented or hindered from complying with its obligations under the Contract by any cause beyond its reasonable control. If the cause continues for more than 6 months either party may terminate the Contract by giving the other party 30 days written notice.

## General

17. The Contracts (Rights of Third Parties) Act 1999 does not apply and no third party shall have any right to enforce any of the provisions of the Contract.

## Notices

18. Notices given pursuant to the Contract shall be in writing and delivered by hand or sent by prepaid first class post to the address of the relevant party in which case a notice shall be deemed to have been given, at the time of delivery (if delivered by hand) and when received (if sent by post).

## Governing Law And Disputes

19. The Contract is subject to English law and the parties submit to the jurisdiction of the English courts. Either party may refer any dispute or difference arising under the Contract to adjudication in which case the current edition of the Scheme for Construction Contracts (England and Wales) Regulations 1998 shall apply.