

CONDITIONS OF SALE - NOTE: THESE CONDITIONS CONTAIN EXCLUSION CLAUSES

1. DEFINITIONS

In these Conditions, "the Seller" means ASSA ABLOY Limited whose registered office is at School Street, Willenhall, West Midlands, WV13 3PW; "Order Acknowledgement" means the Seller's order acknowledgement to which a copy of these Conditions is annexed; "the Purchaser" means the person, firm or company from whom an order is accepted by the Seller; and "Goods" means any goods or replacements therefore and any services supplied by the Seller to the Purchaser under the Agreement for Sale. "Minimum Carriage Paid Order Value" means the minimum carriage paid order value as set out in the Seller's price list in force from time to time; "Minimum Invoice Charge" means the minimum invoice charge for the Goods as set out in the Seller's price list in force from time to time.

2. FORMATION AND PARTIES

The Purchaser's order to the Seller is an offer to enter into a contract on these Conditions. Acceptance occurs and the contract is formed only upon the Seller despatching to the Purchaser its Order Acknowledgement. Any terms or conditions proffered at any time by the Purchaser are hereby excluded. These Conditions exceed as varied by express agreement in writing signed by a director or authorised person on behalf of the Seller shall be deemed to be incorporated in all contracts from time to time entered into between the Seller and the Purchaser which provide for the sale of any goods (including without limitation the Goods) by the Seller to the Purchaser. The agreements, warranties, conditions, representations and other terms set out in the Order Acknowledgement and in these Conditions are together referred to in these Conditions as "the Agreement for Sale" and represent the complete agreement between the Seller and Purchaser with regard to the Goods and contain all agreements, warranties, conditions, representations and other terms agreed; made or relied upon by either party in connection with the Goods. A quotation by the Seller shall not constitute an offer.

3. PRICE

- The price for the Goods shall be as set out in the Seller's price list in force from time to time except as otherwise provided for herein. The Seller reserves the right by written notice given to the Purchaser before delivery of the Goods to vary the price of Goods if, after the date of the Order Acknowledgement there is any increase in the Seller's price list in respect of the same or similar description of Goods or by any amount attributable to a change in or insufficiency of the Purchaser's instructions.
- The Purchaser shall not be entitled to make any deduction from the price of the Goods in respect of any alleged rights to set off or counter-claims unless both the validity and the amounts thereof have been expressly acknowledged and admitted by a director or authorised person on behalf of
- c) the Seller in writing.
- d) The price for the Goods will be inclusive of the costs of packaging and delivery charges within the United Kingdom, subject to the Minimum Carriage paid Order Value at the relevant time. Where the net value of the Goods is less than the Minimum Carriage Paid Order Value, a surcharge of 100 per cent of such carriage costs will be imposed.
- e) Subject to 3 (d) above, unless otherwise stated, the price for the Goods is exclusive of the costs of packaging, freight, insurance, delivery charges and all applicable taxes, duties, tariffs and charges of any nature whatsoever imposed in any country or territory, either directly or indirectly, in respect of the sale or supply of the Goods, or payments for them. In particular, the price for the Goods is exclusive of Value Added Tax.
- f) Where the value of the order is less than the Minimum Invoice Charge at the relevant time, the Minimum Invoice Charge will be imposed on all orders (except in the case of cut keys).

4. PAYMENT TERMS

- Subject to satisfactory trade, bankers and other references which may be required by the Seller, and where no other terms of payment have expressly been agreed in the Order Acknowledgement or in this Condition, payment for the Goods shall be due in pounds sterling by the 25th of the calendar month following the month of issue of the Seller's invoice, which may be issued at any time after the Goods are ready for despatch or collection from the Seller's works. In the case of export orders only, unless otherwise specifically agreed in writing payment for export orders shall be irrevocable letter of credit confirmed by a London Clearing Bank and issued under the Incoterms then in force.
- b) Time for payment of the price shall be of the essence of the Agreement for Sale and in the event of any payment becoming overdue, the Seller shall be entitled to charge interest at the rate of two per cent per month above the then current base rate of Lloyds TSB Bank plc which shall be calculated and accrue on a day to day basis from the date on which payment fell due until payment (whether made before or after judgement has been obtained by the Seller against the Purchaser). The Seller reserves the right to suspend further deliveries and/or to cancel any allowance of further credit in the event of any payments not being made when due, or if the Seller in its sole discretion at any time considers the financial condition of the Purchaser has ceased to justify any such terms being permitted.
- c) The Seller may at any time in its absolute discretion appropriate any payment made by the Purchaser in respect of Goods to such outstanding debt as the Seller thinks fit, notwithstanding any purported appropriation to the contrary by the Purchaser or the Seller. The Seller shall be entitled at any time and notwithstanding its acceptance of any order to cancel the Agreement for Sale or to postpone any delivery until payment has been received in the event that the Seller has reasonable doubts about the Purchaser's ability or willingness to pay on the due date. The Seller reserves the right at any time at its discretion and notwithstanding its acceptance of any order to demand security for payment before continuing with an order or delivering Goods or any instalment.

5. DELIVERY AND RISK

- Unless otherwise expressly provided for in the Order Acknowledgement, delivery shall take place and risk shall pass on the earliest of the following:-
- i) the Seller handing the Goods to the Purchaser or its agent at the Seller's premises; or
 - ii) the Goods leaving the Seller's premises; or
 - iii) on the eighth day following notification that the Goods are ready for despatch provided that the Seller has not exercised its right to repudiation of the Agreement for Sale pursuant to the provision of the following paragraph. If the Purchaser has failed to collect the Goods on the seventh day following notification of readiness for despatch, the Seller shall be entitled to treat the Agreement for Sale as repudiated by the Purchaser. Until the Agreement for Sale is so repudiated the Seller may, at its option either store the Goods itself or have them stored by third parties on such terms as it in its absolute discretion thinks fit. The cost of storage and any additional transportation will be added to and shall form part of the price. If the Seller elects to treat the Agreement for Sale as repudiated in accordance with this Condition it shall (without prejudice to its rights and remedies in respect of such repudiation) be entitled to sell the Goods and retain the proceeds of the sale.
- a) Any claim for shortage, damage or for transport surcharges should be directed by the Purchaser to the carrier within seven days of such delivery and notification of any such claim should be made to the Seller. Any period or date for delivery stated in the Agreement for Sale or elsewhere is the Seller's best estimate and is not to be deemed to be a contractual commitment. The Purchaser shall not be entitled to refuse to accept late delivery or to treat late delivery as a breach of the Agreement for Sale.
 - c) Unless otherwise agreed in writing, Goods included in each delivery (or part delivery) shall be deemed to be sold under a separate contract. Neither failure of the Seller's part to make any delivery (or part delivery) in accordance with the Agreement for Sale, nor any claim by the Purchaser in respect of such delivery (or part delivery) shall entitle the Purchaser to reject the balance of the Goods agreed to be purchased by the Purchaser. The Seller may at its option deliver by instalments and each instalment shall constitute a separate contract on these Conditions.
 - d) Unless otherwise agreed in writing all export orders will be delivered (a) at a British port to be notified by the Seller.
 - e) The Seller shall not be liable for loss or damage to Goods in transit unless:-
 - i) the Seller has agreed to effect delivery to a place other than the Seller's premises; and
 - ii) the loss or damage occurs prior to arrival at the delivery point; and either
 - iii) damage or shortage is reported by the Purchaser within 7 days of arrival at the delivery point; or
 - iv) in the case of total loss, non-arrival is notified to the Seller within 14 days after despatch of advice note.
 - f) The Purchaser shall inspect the Goods immediately upon receipt and shall (unless such inspection cannot be carried out and the delivery note is marked "not examined") subject to paragraph (g) below be deemed to have accepted the Goods as delivered.
 - g) The Seller shall not be liable for defects or shortages discoverable on reasonable inspection unless the Purchaser notifies the Seller before the expiry of 7 days after receipt of any alleged defect or lack of conformity with the Agreement for Sale.
 - h) The Seller shall make good shortages notified to it under paragraph (f) above as soon as reasonably practicable but shall not be liable for any other loss whatsoever arising from such shortage.
 - i) The Seller's liability for Goods lost or damaged in transit shall in all circumstances be limited to (at the Seller's option) the repair or replacement or credit to the Purchaser of the invoice value of the Goods in question.

6. RETENTION OF TITLE

- a) Until the Seller has received payment in full of all sums owed to it on any account by the Purchaser, whether arising out of this or any other contract, legal and beneficial title to the Goods shall remain in the Seller; such goods are referred to in this condition as "retained goods".
- b) Retained goods:-
 - i) shall be at the Purchaser's risk, insured by the Purchaser from the date of delivery at its own expense for their full replacement value against all usual risks; and kept safe in good condition and stored separately and clearly identifiable as the Seller's property and with all identifying marks intact and legible; and
 - ii) may, subject to Condition (c) below be used or sold by the Purchaser in the ordinary course of its business on the basis that the proceeds of sale shall be held in trust by the Purchaser for the Seller absolutely.
- c) The Purchaser's powers of use and sale of retained goods shall terminate:-
 - i) forthwith on notice from the Seller if the Purchaser is in default of any of its obligations under this or any other contract with the Seller or if the Seller has reasonable doubts as to the ability or willingness of the Purchaser to pay any sum to it on the due date;
 - ii) automatically upon the occurrence of any of the following:
 - a) if the Purchaser causes a meeting of or makes any arrangement or composition with its creditors; or
 - b) if the Purchaser, being an individual, becomes insolvent or appears to be unable to pay a debt or to have no reasonable prospect of paying a debt (within the meaning of Section 268 of the Insolvency Act 1986); or, being a company, appears unable to pay its debts (within the meaning of Section 123 of Insolvency Act 1986);
 - c) if there is presented a petition for the winding up of the Purchaser or for the appointment of an Administrator of its undertaking (whether it be a company or a partnership) or if the Purchaser is an individual on the presentation of a bankruptcy petition or an application for an interim order under Part VIII of the Insolvency Act 1986; or
 - d) if the Purchaser has a Receiver, an Administrator or Administrative Receiver appointed over any of its assets or undertaking or a winding up order made against it or it goes into voluntary liquidation (otherwise than for the purposes of bona fide reconstruction or amalgamation of a solvent company).
- d) The Seller may, at any time on giving prior notice, enter the Purchaser's premises for the purpose of inspecting retained goods and identifying them as the Seller's property and the Purchaser irrevocably authorises the Seller to enter upon its premises for that purpose.
- e) Upon suspension and revocation or determination of the Purchaser's power of sale and use under this Condition the Purchaser shall place all the retained goods in its possession or under its control at the Seller's disposal and shall be deemed to have irrevocably authorised the Seller to enter upon any of the Purchaser's premises, with or without vehicles, for the purpose of removing such goods.
- f) The repossession of retained goods by the Seller in accordance with this Condition shall be without prejudice to all or any of the Seller's other rights against the Purchaser under the Agreement for Sale.

7. LIABILITY

- a) Nothing in these Conditions shall be interpreted as excluding or restricting any legal liability of the Seller under Part 1 of the Consumer Protection Act 1987 or for death or personal injury resulting from the negligence (as defined in Section 1 of the Unfair Contract Terms Act 1987) of the Seller, its employees, agents or sub-contractors or as excluding or restricting any of the Seller's legal obligations arising under Section 12 of the Sale of Goods Act 1979 (as amended).
- b) Subject to the provisions of sub-clause (a) above, the Seller's liability to the Purchaser in respect of the Goods shall not in any manner whatsoever (whether under law of contract, tort or otherwise) exceed either double the price actually paid by the Purchaser for that part of the Goods in question or £10 (whichever figure is greater).
- c) The Seller shall, in no circumstances, be liable for loss of profit, income, goodwill, or any other economic loss, or any loss arising from any claim against the Purchaser by any third party, or any consequential or indirect loss, damage or expense of any kind howsoever caused or arising.
- d) Save as provided in these Conditions, the Seller shall not be under any liability to the Purchaser (whether in contract tort or otherwise) for any defects in the Goods, materials supplied or workmanship performed by the Seller or for any damage, loss, death or injury resulting from such defects and the Purchaser shall indemnify the Seller against any claims in respect thereof.

8. WARRANTY

- a) The Seller warrants the Goods against defects in design, materials and workmanship which become apparent within the warranty period applicable to the Goods (hereinafter called "the Warranty Period") which shall be a period of twelve months (or such period as may be stipulated in the Order Acknowledgement) stipulated from the date of issue of the Seller's invoice.

- b) The Seller's liability for defective Goods under this warranty is limited to repairing or, at its option, replacing on an exchange basis, such Goods (or parts thereof) or crediting the Purchaser's account to the invoice value and the Purchaser shall accept such of the aforementioned remedies as the Seller shall proffer as being fulfilment of the Seller's obligation under the Agreement for Sale.
- c) In the event of the Purchaser becoming aware of a defect in the Goods during the Warranty Period, the Purchaser shall within 14 days of discovering such defect supply the Seller with written particulars of such defect and at the Seller's sole option either return the Goods to the Seller at the Purchaser's expense and risk or permit the Seller to inspect the same at the Purchaser's premises and use its best endeavours to provide to the Seller all necessary access and other reasonable facilities and all information, particulars and assistance required to enable the Seller to ascertain or verify the nature and cause of the defect claimed and to carry out its warranty obligations.
- d) The above warranty shall not apply to any defect discoverable on inspection at time of receipt or caused in whole (or in part) by any alteration or addition to the Goods (other than by the Seller) or by use or storage of the Goods in a manner contrary to any written instructions of the Seller, or for purposes for which the Goods were not designed, or by faulty installation, maintenance or repair by the Purchaser or any third party.
- e) The Seller shall be under no liability whatsoever to repair, replace or make good any loss, damage or defect which results from wear and tear, accident, neglect, misuse or events referred to in Condition 11 occurring after the physical delivery of the Goods to the Purchaser (or its agent).
- f) When any defective Goods are replaced, the provisions of this Condition shall apply to the replacement Goods for the unexpired balance of the Warranty Period, or one-half of the applicable Warranty Period referred to in sub-clause (a) above, calculated from the date of replacement whichever is the longer.
- g) The Purchaser shall accept the Seller's liability under Conditions 5 and 8 above in lieu of all and every condition, warranty or representation whatsoever whether express or implied by statute, common law, trade usage, custom or otherwise as to the quality or fitness for any particular purpose of the Goods. The Purchaser acknowledges that all specifications and details in catalogues, quotations and the Order Acknowledgement or any similar documents or by word of mouth and all forecasts of performances, however given, are approximate only and do not form part of the Agreement for Sale and that in respect of such specifications details and forecasts the Seller shall be under no liability nor shall the Purchaser be entitled to any remedy under the provisions of the Misrepresentation Act 1967.

9. INSURANCE

The Purchaser agrees that it is best able to estimate the extent and nature of the insurance cover suitable for its business and property from time to time and can effect at more economic rates than the Seller such appropriate insurance cover (including cover against losses, damage, costs, claims and expenses referred to in Conditions 7, 8 or 10) and the Purchaser therefore acknowledges that it is reasonable for the Seller to sell the Goods and fix their purchase price on the basis of the exclusions and limitations of liability and the indemnity set out in these Conditions. The Purchaser agrees that it will be responsible for effecting insurance cover as above mentioned as may be appropriate to its business and property including (but not limited to) any required insurance cover in respect of any loss or damage, of whatsoever kind or howsoever caused, whether by reason of the negligence of the Seller or otherwise to premises, plant or other physical property and the Seller shall have no liability in respect of any such loss or damage.

10. INDEMNITY - THIRD PARTY CLAIMS

The Purchaser shall indemnify and keep indemnified the Seller against all actions, claims, costs, damages, demands and expenses or other loss arising out of a defect in the Goods (including without limitation all liabilities incurred under the Consumer Protection Act 1987) to the extent occasioned or contributed to by any act or omission of the Purchaser its servants, agents, sub-contractors or persons under its control.

11. FORCE MAJEURE AND EVENTS BEYOND THE CONTROL OF THE SELLER

- a) The Seller shall have no liability under the agreement for Sale in respect of any failure or delay in fulfilling any of the Seller's obligations to the extent that fulfilment thereof is prevented, frustrated, impeded and/or delayed as a consequence of any force majeure and or any occurrence whatsoever beyond the control of the Seller including without prejudice to the generality of the foregoing:-
 - i) compliance with any order, regulation request or control of any national or local authority, governmental department or other competent authority of any country whether or not legally enforceable; or
 - ii) any delays in, or cancellations of deliveries, or provision of services by third parties or shortages of Goods, materials or parts; or
 - iii) any strikes, lock-outs, or trade disputes whether involving the Seller's employees or others, fire, explosion, accident, calamity or civil disturbance, action of elements, national calamity, or Act of God; or
 - iv) failure in whole (or in part) of any power or energy supply.
- b) The Seller undertakes however to make every reasonable endeavour within its power to overcome difficulties arising in connection therewith, but in the event of shortages of the Goods, or of available resources for their production, storage or delivery arising from any of the events or circumstances referred to in paragraph (a) of this Condition, the Seller reserves the right to allocate as it may think fit its available goods and resources between customers with whom it has contractual obligations in respect thereof and shall not be obliged to purchase through any goods from third parties to make good such shortages.
- c) Should such contingency continue for more than three (3) months either party may (subject to the Seller repaying to the Purchaser any advance payments for undelivered goods and, where the force majeure situation has been notified by the Purchaser to the Seller, subject to the primary payment by the Purchaser to the Seller in respect of all or any part of the order already performed by the Seller up to and including the date of notification) cancel the contract without further liability to the other.

12. LETTERS PATENT

The Purchaser shall promptly inform the Seller of any threatened claim as to the alleged infringement of letters patent, or other third party rights by or in connection with the Goods and shall, if so required by the Seller at the Seller's expense, take all reasonable steps to enable the Seller to defend any such claim.

13. CONFIDENTIAL INFORMATION

The Purchaser shall treat all drawings, procedures, instructions, documents and other information of any kind whatsoever supplied by the Seller to the Purchaser as strictly confidential (except to the extent that any such information is available in the public domain) and shall not without the prior written consent of the Seller, disclose or part with possession of any such documents or information or extracts therefrom or copies thereof or use any such documents or information otherwise than in connection with the Goods to which they relate.

14. GOODS MANUFACTURED TO PURCHASER'S SPECIFICATION

- a) The Seller accepts no responsibility for the accuracy of information, specifications, instructions and/or drawings supplied by the Purchaser.
- b) The Purchaser shall indemnify the Seller from and against all actions, costs (including without limitation legal costs), proceedings and loss directly or indirectly arising out of any error in or omission from any such information, specifications, drawings and/or instructions, or where it is alleged that they involve an infringement of a patent, copyright, registered design or other exclusive right or the provisions of any statute, statutory instrument or regulation.

15. HEALTH AND SAFETY

The Purchaser agrees to pay the regard to any information or advice relating to the use of the Goods which the Seller may at any time furnish to it and agrees that before the Goods are used it will, if requested by the Seller, furnish the Seller with a written undertaking to take any steps which the Seller may specify with a view to ensuring that the Goods will be safe and without risk to health when used.

16. CANCELLATION AND AMENDMENT

No cancellation or amendment to the Agreement for Sale shall be binding on the Seller unless agreed in writing by a director or other authorised person on behalf of the Seller and on the strict condition that all of any costs and expenses incurred by the Seller up to the time of the cancellation or arising out of the amendment and all loss of profits and other loss and damage resulting to the Seller by reason of such cancellation or amendment will be reimbursed by the Purchaser to the Seller forthwith.

17. ASSIGNMENT

The Purchaser shall not assign, or otherwise transfer all or any of its rights, interests or obligations under the Agreement for Sale without the prior written consent of the Seller.

18. WAIVER

No waiver of any of the Seller's rights under the Agreement for Sale shall be effective unless in writing signed by a Director or other authorised person on behalf of the Seller. A waiver shall apply only to the specific circumstances in which it is given and shall be without prejudice to the enforcement of the Seller's right in relation to different circumstances or the re-occurrence of similar circumstances.

19. DESIGN ALTERATIONS

The Seller shall be entitled at any time to alter or change the design or finish of its products as published in the Seller's catalogues subject to reasonable prior notice of any such alteration or change being given to the Purchaser.

20. ENGLISH LAW AND JURISDICTION

The formation, construction and performance of the Agreement for Sale shall be governed in all respects by English Law and the Purchaser agrees to submit to the non-exclusive jurisdiction of the English Courts.

21. HEADINGS

- a) The headings of these Conditions do not form part of the Conditions and shall not affect the interpretation thereof.
- b) Each of the Conditions and each paragraph hereof shall be construed as a separate condition. Should any provision hereof be found to be invalid or unenforceable or an unreasonable restriction of the Seller's liability then such provision shall apply with such modification as may be necessary to make it valid and effective.

22. NOTICES

Notice under these Conditions shall be properly given if in writing and sent by first class post, telex or facsimile to the address of the intended recipient as stated in the Contract or to such address as the Purchaser and Seller from time to time notified to each other as their respective addresses for service and shall be deemed served in the case of postal notice on the expiry of 48 hours from time of posting, in the case of telex on the recording of the "answer back" code on the senders machine and in the case of facsimile, on completion of transmission by the sender.