

CONDITIONS OF SALE



ALLWAY ACOUSTICS
LIMITED

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

'GOODS' means the goods (including any instalment of the goods or any parts for them) and services which the Seller is to supply in accordance with these Conditions

'SELLER' means Allway Acoustics Limited (registered in England under number 958950)

'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, e-mail and comparable means of communication, present or future.

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; Entire Agreement

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, and any special conditions subject to which the Seller acknowledges any order of the Buyer. These Conditions and any such special conditions shall govern the Contract and represent the entire agreement between the Seller and the Buyer. Such Conditions and special conditions shall supersede, override and exclude any and all other terms, conditions and warranties relating in any way to the Goods or the Contract, including terms, conditions and warranties contained in any acceptance or purported acceptance by the Buyer of a quotation or in any order from the Buyer. The signing by the Seller of any of the Buyer's documentation shall not imply any modification of these terms.

2.2 No variation to these Conditions or any special conditions of the Seller shall be binding unless agreed in Writing between a duly authorised representative of the Buyer and a director of the Seller.

2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed in Writing by a director of the Seller. In entering into the Contract the Buyer acknowledges that it has not in any way whatsoever relied on any such representations which are not so confirmed.

2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 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 a director of the Seller.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable 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 or acknowledgement of order.

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 any and all losses, 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, trade mark or other industrial or intellectual property rights of any other person resulting 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 statutory or EU requirements 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 a director of the Seller and on terms that the Buyer shall indemnify the Seller in full against any and all losses (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of the cancellation.

3.7 Where there is design input into the Goods by the Buyer or the Buyer modifies the Goods or the Goods are modified by the Seller on the Buyer's instructions, the Buyer shall be responsible for compliance by the Goods with all relevant statutory and EU requirements.

4 Price of the goods

4.1 The price of the 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 acceptance of the order and where the Goods are supplied for export from the United Kingdom, the Seller's published export price list shall apply. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, 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 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between a duly authorised representative of the Buyer and a director of the Seller, all prices are given by the Seller on an ex works basis. 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.

4.5 The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.

5 Terms of payment

5.1 Subject to any special terms agreed in Writing between a director of the Buyer and a director of 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. If, however, the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, 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 has tendered delivery of the Goods.

5.2 The Buyer shall pay the price of the Goods within 30 days of the date of the Seller's invoice, and the Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract.

5.3 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:

5.3.1 cancel the contract or suspend any further deliveries to the Buyer;

5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

5.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 4 per cent per annum above Barclay's Bank base rate from time to time on a daily basis until payment in full is made.

6 Delivery

6.1 Unless otherwise agreed, 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 some other place for 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 only estimates and are given for guidance only. The Seller shall not be liable for any delay in delivery of the Goods however caused, whether the estimated delivery date is deemed part of this Contract or any collateral contract or any representation or arrangement. Time for delivery shall not be of the essence of the Contract unless previously agreed by a director of 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 (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is liable to the Buyer under these Conditions, the Seller's liability shall be limited to the difference (if any) between the price of the Goods under the Contract and the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered.

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:

6.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of 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 (including the premises of a group company or subcontractor), at the time when the Seller notifies the Buyer that the Goods are available for collection; or
- 7.1.2 in the case of 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 payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due in cash or cleared funds.
- 7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer and the individual(s) who signed the order or the acceptance of the Seller's quotation on behalf of the Buyer shall hold the Goods as the Seller's fiduciary agents and bailees, 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. Neither the Buyer nor the said individuals shall be entitled to resell or use the Goods in the ordinary course of its business unless and until property in the Goods passes to the Buyer.
- 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 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 moneys 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 the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from delivery.
- 8.2 The above warranty and any liability of the Seller whatsoever relating to the Goods shall be subject to the following conditions:
- 8.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
- 8.2.2 the Seller shall be under no liability in respect of any defect in the Goods arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the prior agreement in Writing of a director of the Seller;
- 8.2.3 the Seller shall be under no liability under if the total price for the Goods has not been paid by the due date for payment;
- 8.2.4 the Seller shall be under no liability in respect of any defects in parts, materials or equipment not manufactured by the Seller. In respect of such defects, the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.
- 8.3 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.4 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 14 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within 7 days after discovery of the defect or failure. If the Buyer fails to reject the Goods (if the Buyer is entitled to reject) or notify the Seller within the time limit set out in this clause: (i) the Buyer shall be deemed to have waived any defect in the quality or condition of the Goods and any failure of the Goods to correspond with specification; (ii) the Buyer shall not be entitled to reject the Goods; (iii) the Seller shall have no liability whatsoever for such defect or failure; and (iv) the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.5 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 Seller shall be entitled to replace or repair the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer. The Buyer shall not be entitled to repair the Goods (with a view to passing on the cost to the Seller) without giving the Seller a reasonable opportunity so to do in Writing.
- 8.6 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation (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), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer.
- 8.7 The entire liability of the Seller under or in connection with the Contract or the Goods shall not in any event exceed the price of the Goods, except as expressly provided in these Conditions.
- 8.8 Without prejudice to clause 6.2 above, the Seller shall not in any event be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, 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:
- 8.8.1 Act of God, explosion, flood, tempest, fire or accident;
- 8.8.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 8.8.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 8.8.4 import or export regulations or embargoes;
- 8.8.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
- 8.8.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 8.8.7 power failure or breakdown in machinery.
- 8.9 The Buyer acknowledges that the Seller's prices for the Goods have been determined on the basis that the exclusions of, and limitations on, the Seller's liability set out in this Contract are effective and enforceable. The Buyer further acknowledges that it has read this Contract, is fully aware of and agrees to those exclusions and limitations, and is able to and will obtain insurance coverage for itself in the light of those exclusions and limitations if it deems it appropriate. The Buyer acknowledges that the said exclusions and limitations are reasonable and represent the agreed commercial allocation of risks between the Buyer and Seller. The Buyer also acknowledges that it had the option of negotiating a change to the said exclusions and limitations by paying a higher price for the Goods to compensate the Seller for the additional risk assumed and/or associated insurance costs, but decided not to exercise that option.

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, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of any drawing, design or specification supplied by the Buyer, 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 purposes 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 shall be under a duty to disclose to the Seller any such vitiating (or potentially vitiating act) within 48 hours of the act by facsimile and e-mail 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.

10 Insolvency of Buyer

- 10.1 This clause applies if:
- 10.1.1 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 10.1.2 an encumbrancer takes possession, or a receiver 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 Confidentiality

The Buyer shall treat the details of the Contract and any documents and information available in relation hereto as private and confidential and shall not publish or disclose the same to any person (save insofar as may be necessary for the purposes of the Contract) without the prior written consent of the Seller. Any communication by the Buyer with a third party concerning the Contract must have the Seller's prior approval.

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 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.3 All disputes arising out of or in connection with the Contract or the Goods shall be determined exclusively by the English High Court in London or other competent English Court in accordance with English Law.
- 12.4 The Buyer and Seller agree that if any part of these Conditions is found to be unreasonable, invalid, unenforceable or unlawful under any enactment or rule of law, the Court or other competent tribunal shall strike out or override or declare unenforceable only those parts of these Conditions that are found to be unreasonable, invalid, unenforceable or unlawful and shall enforce all other parts of these Conditions as if the aforesaid parts had not been included.