

Sanha UK Ltd: Terms and Conditions of Sale

1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

- "Business Day": a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
- "Conditions": the terms and conditions set out in this document as amended from time to time in accordance with clause 11.6.
- "Contract": the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.
- "Customer": the company, partnership, person or firm who purchases the Goods from the Supplier.
- "Force Majeure Event": has the meaning given in clause 10.
- "Goods": the goods (or any part of them) set out in the Order.
- "Instructions": the installation and fitting instructions and guidance published (on the Supplier's website or otherwise) or otherwise made available by the Supplier from time to time.
- "Order": the Customer's order for the Goods, as set out in the Customer's purchase order form or in the Customer's written acceptance of the Supplier's quotation, as the case may be.
- "Specification": any specifications for the Goods, including any related plans and drawings, that are published or made available in writing by the Supplier.
- "Supplier": Sanha UK Limited (registered in England and Wales with company number 05036828), with its registered office at Mercury House, 19-21 Chapel Street, Marlow, Bucks, SL7 3HN.

1.2 **Construction.** In these Conditions, the following rules apply: headings are for convenience and shall not affect interpretation; the singular includes the plural and the opposite applies; a "person" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); a reference to a party includes its personal representatives, successors or permitted assigns; a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted and a reference to writing or written includes faxes and e-mails.

2. BASIS OF CONTRACT

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate and the Supplier's Goods and Specification are appropriate for the proposed application.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures or on its website are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 The Supplier's price list is subject to correction without notice. Subject to clause 7.2, the Supplier's price list can be changed for any reason with a notice period of 30 days.

3. GOODS

- 3.1 The Goods are described in the applicable Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of that specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend any Specification if required by any applicable statutory or regulatory requirements and to change Goods and descriptions, in particular to reflect technical progress and changed method of production or industry standards.

4. DELIVERY

- 4.1 The Supplier shall ensure that:
- (a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered (any special storage instructions will be set out in the Supplier's technical product and installation information booklet, available from the supplier);
 - (b) subject the following, if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. In all cases, grid box pallets and euro flat pallets shall remain the property of the Supplier and shall be returned at the Customer's cost and risk; and
 - (c) The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("Delivery Location") at the time indicated by the Supplier (but time shall not be of the essence regarding delivery). Where a single Order for Goods other than tubes has an invoice value (net of VAT) of £1,000 or more for standard delivery, it shall be delivered free of charge to a UK mainland address. Where a single Order is for a Supplier's standard bundle quantity of tube with an invoice value (net of VAT) of £2,000 or more for standard delivery, it shall be delivered free of charge to a UK mainland address. For a single tube Order less than this, and for other deliveries of Goods not referred to expressly, the delivery charges shall be as advised by the Supplier from time to time. Any express delivery charges shall be paid by the Customer.
- 4.2 Delivery of the Goods shall be completed on the arrival of the Goods at the Delivery Location.
- 4.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.4 Any complaints regarding the quantity or weight delivered must be notified to the Supplier and the carrier in writing within 14 calendar days of delivery, otherwise they cannot be taken into account.
- 4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Before proceeding with sourcing replacement goods, the customer must seek written approval from the supplier. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6 If the Customer fails to accept delivery of the Goods then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready; and
 - (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If [five] Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.8 The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 25% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer and acceptance by the Supplier that the wrong quantity of Goods was delivered.
- 4.9 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. QUALITY

- 5.1 The Supplier warrants that on delivery and for a minimum period of 12 months from the date of delivery ("warranty period"), the Goods shall:
- (a) conform in all material respects with their applicable Specification;
 - (b) be free from material defects in design, material and workmanship; and
 - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.2 Subject to clause 5.3, if:
- (a) the Customer gives notice in writing to the Supplier (a) in respect of apparent defects in all or any of the Goods, immediately on delivery and (b) in the event of latent or hidden defects in all or any of the Goods, within a maximum of 14 days after delivery and within 2 days of discovering the defect (together with a description) that some or all of the Goods do not comply with the warranty set out in clause 5.1;
 - (b) the Supplier is given a reasonable opportunity of examining such Goods (both as supplied and as installed); and
 - (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,
- the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.3 The Supplier shall not be liable for Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:
- (a) the Customer fails to give notice as required by clause 5.2 or makes any further use of such Goods after giving notice in accordance with clause 5.2;
 - (b) the defect arises because the Customer failed to follow the Instructions or the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - (c) the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
 - (d) the Customer alters or repairs such Goods or uses them for a purpose for which they were not designed, without the prior written consent of the Supplier;
 - (e) the defect arises as a result of or relating to corrosion or weathering;
 - (f) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - (g) the Goods differ from their Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the failure of the Goods to comply with the warranty set out in clause 5.1.
- 5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6. TITLE AND RISK

- 6.1 The risk in the Goods shall pass to the Customer on despatch by the Supplier.
- 6.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:
- (a) the Goods; and
 - (b) any other goods or services that the Supplier has supplied to the Customer in respect of which payment has become due.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) hold the Goods on a fiduciary basis as the Supplier's bailee;
 - (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (e) notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.2; and
 - (f) give the Supplier such information relating to the Goods as the Supplier may require from time to time,
- but, subject to clause 6.4, the Customer may resell or use the Goods in the ordinary course of its business. The Customer shall pay for the relevant Goods in full before the Goods are combined with or connected to other goods. If it fails to do so, the Customer shall procure that the Supplier has co-ownership of the resulting new item, in proportion to the value of the Goods incorporated and not paid for and shall put its client on notice of this.
- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises or vehicles of or used by the Customer or of any third party where the Goods are stored or loaded in order to recover them.

7. PRICE AND PAYMENT

7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.

7.2 The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

7.3 The price of the Goods is inclusive of the costs and charges of packaging, insurance and transport of the Goods (with insurance and transport being arranged as agent for the Customer, at the Customer's risk), unless the minimum Order value and terms set out in clause 4.1 are not met, in which event, delivery charges will apply and be advised and invoiced to the Customer.

7.4 The price of the Goods is exclusive of amounts in respect of value added tax ("VAT"). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

7.5 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.

7.6 The Customer shall pay the invoice in full, in £ sterling and in cleared funds within 30 days of the end of the month in which the invoice was despatched, unless agreed otherwise in writing. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence. [If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment ("due date"), then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the "Bank of England's+ base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

7.7 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

8. CUSTOMER'S INSOLVENCY OR INCAPACITY

8.1 If the Customer becomes subject to any of the events listed in clause 8.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

8.2 For the purposes of clause 8.1, the relevant events are:

- (a) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer;
- (d) (being an individual) the Customer is the subject of a bankruptcy petition or order;
- (e) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (f) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- (g) (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2(a) to clause 8.2(h) (inclusive); or
- (j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business.

8.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

9. LIABILITY

9.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) defective products under the Consumer Protection Act 1987 (the "Act"); or
- (e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

9.2 Subject to clause 9.1:

- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of contracts or goodwill, compensation or liquidated damages or costs and expenses caused by delay (due to a failure to supply Goods or otherwise), destruction of or damage to or loss of use of buildings, furniture, fittings, plant, facilities or assets (whether foreseeable or not) or any indirect or consequential loss or damage arising under or in connection with the Contract; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the lesser of the invoice value of the Goods supplied to the Customer in the previous 12 months and £400,000.

9.3 The Customer shall be solely responsible for the selection of the appropriate Goods for the intended application, for following the Instructions and for ensuring the appropriate installation, fitting and commissioning of the Goods and, subject to these Conditions, the Supplier shall have no liability in that regard.

9.4 Where the Buyer combines the Goods with or uses them as ancillary to other goods ("Composite Products"), the Buyer shall indemnify the Supplier for all claims, loss, damage, cost and expense which the Supplier may incur or suffer as a result of a claim against the Supplier under the Act in relation to a Composite Product, where the Goods supplied by the Supplier (a) were not the defective part of the Composite Product, (b) only became the defective part due to the acts or omissions of the Customer or (c) only became the defective part due to instructions or warnings given or omitted to be given by the Customer or any third party.

9.5 The Customer acknowledges and accepts that the prices charged by the Supplier for the Goods reflect the assumptions of risk by the parties and the Customer shall be responsible for taking out and maintaining appropriate insurance for any claims which may result from his use, installation, fitting and commissioning of the Goods.

10. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract or for any resulting loss or damage to the extent that such failure or delay is caused by a Force Majeure Event. A "Force Majeure Event" means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

11. GENERAL

11.1 **Assignment and subcontracting.**

- (a) The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.

11.2 **Notices.**

- (a) Any notice given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, special delivery, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2(a); if sent by pre-paid first class post or special delivery, at 9.00 am on the second Business Day after posting (unless proved sooner); if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, on the Business Day of transmission (provided that the sender shall bear the risk of non receipt of a notice sent by fax or e-mail).
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.3 **Severance.**

If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

11.4 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

11.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.

11.6 **Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Supplier.

11.7 **Re-stocking.** The Customer has no right to return ordered and duly delivered Goods. If, in its absolute discretion, the Supplier is prepared to accept the return of Goods, this shall only apply to the quantity of Goods specified by the Supplier, shall be subject to payment of 30% of the original invoice value for the relevant Goods as a re-stocking charge and the return shall be at the cost and risk of the Customer.

11.8 **Governing law and jurisdiction.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, German law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of Essen, Germany.