

## Terms and Conditions for the Supply of Goods dated 1<sup>st</sup> January 2018

### 1. Definitions and Interpretation

#### 1.1 In these Conditions, the following words have the following meanings:

<b>Bender UK</b>	Bender UK Limited (a company registered in England and Wales with company number 03294339 and having its registered office at J L Winder and Co, 125 Ramsden Square, Barrow in Furness, Cumbria, LA14 1XA);
<b>Bender UK Engineer</b>	an employee, agent, consultant or subcontractor of Bender UK;
<b>Business Day</b>	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
<b>Conditions</b>	the terms and conditions set out in this document together with any special terms agreed in writing between the Customer and Bender UK;
<b>Contract</b>	the contract between Bender UK and the Customer for the sale and purchase of the Goods in accordance with these Conditions;
<b>Customer</b>	the person or firm who purchases the Goods from Bender UK;
<b>Goods</b>	the goods (or any part of them) set out in the Order;
<b>Month</b>	a calendar month;
<b>Order</b>	the Customer's order for the Goods, as set out in the Customer's purchase order form referring to, or the Customer's written acceptance of, the Quotation, as the case may be;
<b>Quotation</b>	a quotation for Goods given by Bender UK;
<b>Site</b>	where a Quotation expressly includes installation of the Goods, the premises of the Customer detailed in the Quotation, in which the Goods are to be installed.

#### 1.2 In these Conditions (except where the context requires otherwise):

- 1.2.1 the singular includes the plural and vice versa, and references to any gender includes the other genders;
- 1.2.2 headings are for convenience only and do not affect their interpretation;

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- 1.2.3 references to a "person" includes an individual, corporation (whether incorporated or unincorporated), partnership, trust, unincorporated association and any other entity or association of any nature;
- 1.2.4 a reference to a party includes its personal representatives, successors or permitted assigns;
- 1.2.5 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.6 any words following the terms "including", "include", "for example" or any similar expression are by way of illustration and emphasis only and shall not limit the generality or extent of any other words or expressions;
- 1.2.7 where any period of time dates from a given day or the day of an act or event, such period is to be calculated exclusive of that day; and
- 1.2.8 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 must ensure that the terms of the Order submitted by the Customer are complete and accurate.
- 2.3 A Quotation shall not constitute an offer. A Quotation shall only be valid for a period of 30 days from its date of issue.
- 2.4 The Order shall only be deemed to be accepted when Bender UK issues a written acceptance of the Order, at which point and on which date the Contract shall come into existence.
- 2.5 No Order which has been accepted by Bender UK may be cancelled by the Customer, except with the agreement in writing of Bender UK and provided that the Customer indemnifies Bender UK in full against all loss (including without limitation loss of profit), costs (including without limitation the cost of all labour and materials used), damages, charges and expenses incurred by Bender UK as a result of cancellation
- 2.6 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 Bender UK which is not set out in the Contract.
- 2.7 Any samples, drawings, descriptive matter, or advertising produced by Bender UK and any descriptions or illustrations contained in Bender UK's catalogues or brochures are

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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.

- 2.8 Acceptance of delivery of the Goods will be deemed conclusive evidence of the Customer's acceptance of these Conditions.

### 3. Goods

- 3.1 The quantity and description of the Goods will be as set out in the Quotation.
- 3.2 Bender UK reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements or if any such amendment would not materially affect the quality or performance of the Goods.

### 4. Delivery

- 4.1 Bender UK shall use its reasonable endeavours to ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Bender UK reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable) and special storage instructions (if any).
- 4.2 Bender UK shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**") at any time after Bender UK notifies the Customer that the Goods are ready. Delivery of the Goods will be made during the Customer's usual business hours if possible. The Customer may also collect the Goods from Bender UK's premises.
- 4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location unless the Goods are collected from Bender UK in which case delivery of the Goods shall be completed on collection from Bender UK. The Customer will provide, at its expense at the Delivery Location, adequate and appropriate equipment and manual labour for off-loading the Goods.
- 4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Bender UK 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 comply with clause 4.5 or to provide Bender UK with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 Where the Quotation on which the Order is based includes installation of the Goods, the Customer shall:
- 4.5.1 be responsible (at the Customer's cost) for preparing the Site for the delivery of the Goods;
- 4.5.2 provide Bender UK with such information and materials as Bender UK may reasonably require in order to install the Goods, and ensure that such information is accurate in all material respects;

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- 4.5.3 provide the Bender UK Engineer with access to the Site (including giving him any required Site induction, showing him where the Goods are to be installed and/or giving him all relevant keys, permits and access to allow him into the area in which the Goods are to be installed) and other facilities as reasonably required by Bender UK to enable Bender UK to install the Goods without delay;
- 4.5.4 ensure that a representative of the Customer is in attendance at all times whilst a Bender UK Engineer is installing the Goods at the Site;
- 4.5.5 inform Bender UK of any security clearance which the Bender UK Engineer may require to visit the Site (such information to be provided in adequate time to complete such security clearance prior to such visit),

and if Bender UK is prevented from carrying out delivery or installation on the specified date because the Customer has failed to comply with this clause 4.5, Bender UK may levy additional charges to recover its loss arising from this event.

- 4.6 If Bender UK 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. Bender UK 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 Bender UK with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods. Bender UK shall have no liability to the Customer for direct, indirect or consequential loss, howsoever caused (including in negligence) by any delay in delivery except as set out above.
- 4.7 If the Customer fails to take delivery of the Goods within 3 (three) Business Days of Bender UK notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Bender UK's failure to comply with its obligations under the Contract:
  - 4.7.1 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 Bender UK notified the Customer that the Goods were ready; and
  - 4.7.2 Bender UK shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.8 If 10 (ten) Business Days after the day on which Bender UK notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, Bender UK may:
  - 4.8.1 store or arrange for storage of the Goods until actual delivery or sale in accordance with clause 4.7.2 and charge the Customer for all related costs and expenses (including without limitation, storage and insurance); and/or
  - 4.8.2 following written notice to the Customer, resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs,

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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.

- 4.9 The Customer shall be deemed to have accepted the Goods when the Customer has had 2 (two) Business Days to inspect them after delivery and has not notified Bender UK in writing of any defect in accordance with clause 5.2.1.
- 4.10 The Customer shall not be entitled to reject the Goods if Bender UK delivers up to and including 5 (five) per cent less than the quantity of Goods ordered and the quantity delivered will be deemed to be quantity ordered.
- 4.11 Bender UK may deliver the Goods by instalments, which shall be invoiced and paid for separately in accordance with these Terms. 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 Bender UK warrants that on delivery, and for a period of 12 (twelve) Months from the date of delivery (warranty period), the Goods shall:

- 5.1.1 conform in all material respects with their description; and
- 5.1.2 be free from material defects in design, material and workmanship.

- 5.2 Subject to clause 5.3, if:

- 5.2.1 the Customer gives notice in writing to Bender UK during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1; and
- 5.2.2 Bender UK is given a reasonable opportunity of examining such Goods; and
- 5.2.3 the Customer (if asked to do so by Bender UK) returns such Goods (being all the Goods unless otherwise agreed with Bender UK) to Bender UK's place of business at the Customer's cost,

Bender UK shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

- 5.3 Bender UK shall not be liable for Goods' failure to comply with the warranty set out in clause 5.2.1 in any of the following events:

- 5.3.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
- 5.3.2 the defect arises because the Customer failed to follow Bender UK'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;

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- 5.3.3 the defect arises as a result of Bender UK following any drawing or design supplied by the Customer;
- 5.3.4 the Customer alters or repairs such Goods without the written consent of Bender UK;
- 5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- 5.3.6 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.3.7 Bender UK has not received payment of all sums due in full (in cash or cleared funds) for the Goods in question in accordance with clause 8.4;
- 5.4 Except as provided in this clause 5, Bender UK shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 4.5.1.
- 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 Bender UK.

## 6. Return of Non-Faulty Goods

- 6.1 Goods may, at Bender UK's discretion, be returned within 30 days of the date of delivery provided that the relevant order number is quoted and the Goods are returned to Bender UK complete, undamaged and in their original undamaged packaging. Goods accepted for return will be credited for the price paid by Customer less a 25% handling charge.

## 7. Title and risk

- 7.1 The risk of damage to or loss of the Goods shall pass to the Customer on completion of delivery (or deemed delivery in accordance with clause 4).
- 7.2 Ownership of the Goods shall not pass to the Customer until Bender UK has received payment of all sums due in full (in cash or cleared funds) for:
  - 7.2.1 the Goods; and
  - 7.2.2 any other goods or services that Bender UK has supplied to the Customer in respect of which payment has become due.
- 7.3 Until title to the Goods has passed to the Customer, the Customer shall:
  - 7.3.1 hold the Goods on a fiduciary basis as Bender UK's bailee;
  - 7.3.2 store the Goods (at no cost to Bender UK) separately from all other goods held by the Customer so that they remain readily identifiable as Bender UK's property;



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- 7.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 7.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- 7.3.5 notify Bender UK immediately if it becomes subject to any of the events listed in clause 10.1.2; and
- 7.3.6 give Bender UK such information relating to the Goods as Bender UK may require from time to time,
- 7.4 Notwithstanding the terms of clause 7.3, the Customer may resell or use the Goods in the ordinary course of its business before ownership has passed to it provided that:
  - 7.4.1 any sale will be at full market value and the Customer will account to Bender UK accordingly;
  - 7.4.2 any such sale will be a sale of Bender UK's property on the Customer's own behalf and the Customer will deal as principal when making such a sale; and / or
  - 7.4.3 if before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clauses 10.1.2 to 10.1.5, or Bender UK 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 Bender UK may have, Bender UK may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them. Bender UK will be entitled to recover payment for the Goods notwithstanding that title in any of the Goods has not passed from Bender UK.
- 7.5 Where Bender UK is unable to determine whether any goods are the Goods in respect of which Bender UK's right to possession has terminated, Bender UK will be deemed to have sold all goods of the kind sold by Bender UK to the Customer in the order in which they were invoiced to the Customer.
- 8. Prices and Payment**
  - 8.1 The price of the Goods shall be the price set out in the Quotation, or, if no price is quoted, the price set out in Bender UK's published price list in force as at the date of delivery.
  - 8.2 Unless otherwise specified in the Quotation, the price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
  - 8.3 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax ("VAT"). The Customer shall, on receipt of a valid VAT

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invoice from Bender UK, pay to Bender UK such additional amounts in respect of VAT as are chargeable on the supply of the Services.

- 8.4 Customer shall pay for the Goods on or prior to delivery unless Bender UK agrees otherwise in writing. Payment shall be made to the bank account nominated in writing by Bender UK. Time of payment is of the essence.
- 8.5 If the Customer fails to make any payment due to Bender UK under the Contract by the due date for payment (due date), then the Customer shall pay interest on the overdue amount at the rate set in the Late Payment of Commercial Debts (Interest) Act 1998. 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.
- 8.6 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 Bender UK in order to justify withholding payment of any such amount in whole or in part. Bender UK 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 Bender UK to the Customer.

## 9. Limitation of liability

- 9.1 Nothing in these Conditions shall limit or exclude Bender UK's liability for:
- 9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - 9.1.2 fraud or fraudulent misrepresentation;
  - 9.1.3 breach of the terms implied by section 2 of the Sale and Supply of Goods and Services Act 1982; or
  - 9.1.4 any matter in respect of which it would be unlawful for Bender UK to exclude or restrict liability.
- 9.2 Subject to clause 9.1 Bender UK shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract for any loss of profit, or any indirect or consequential loss (including at all times, without limitation, economic loss, loss of business, depletion of goodwill or similar).
- 9.3 Subject to clause 9.1, Bender UK's total liability in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise arising under or in connection with the Contract shall, in no circumstances exceed the price paid for the Goods in the Order under which the liability has arisen.
- 9.4 Bender UK hereby excludes to the fullest extent permitted in law, all conditions and warranties, whether express (other than as set out in these Conditions) or implied,



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statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Customer.

9.5 The Customer acknowledges that the above provisions of this clause 9 are reasonable and reflected in the price which would be higher without those provisions, and the Customer will accept such risk accordingly.

9.6 This clause 9 shall survive termination of the Contact.

### 10. Termination

10.1 Bender UK may terminate this Contract or cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and Bender UK without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due if the Customer:

10.1.1 commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within a period of 10 (ten) Business Days after receipt of notice in writing requiring it to do so; or

10.1.2 summons a meeting of its creditors, makes a proposal for a voluntary arrangement, becomes subject to any voluntary arrangement, is unable to pay its debts within the meaning of section 123 Insolvency Act 1986, has a receiver, manager or administrative receiver appointed over any of its assets, undertakings or income, has passed a resolution for its winding-up (save for the purpose of a voluntary reconstruction or amalgamation previously approved in writing by the party serving notice), is subject to a petition presented to any Court for its winding-up (save for the purpose of a voluntary reconstruction or amalgamation previously approved in writing by the party serving notice), has a provisional liquidator appointed, has a proposal made for a scheme of arrangement under Part 26 (arrangements and reconstructions) Companies Act 2006, has an administrator appointed in respect of it or is the subject of an application for administration filed at any court or a notice of intention to appoint an administrator given by any person or is the subject of a notice to strike off the register at Companies House; or

10.1.3 becomes bankrupt, insolvent, makes any composition with his creditors, has a receiver appointed under the Mental Health Act 1893 or dies; or

10.1.4 ceases, or threatens to cease, to carry on all or substantially the whole of its business; or

10.1.5 or the equivalent of any of the above occurs to the Customer under the jurisdiction to which the Customer is subject; or

10.1.6 Bender UK reasonable believes that one of the above circumstances is about to occur.

10.2 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.

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### 11. Force majeure

- 11.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract 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 but not limited to 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, extremes of weather, 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.

### 12. Variation and Waiver

- 12.1 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 Bender UK.
- 12.2 No failure to exercise or delay in exercising any right or remedy provided under the Contract or by law constitutes a waiver of such right or remedy, nor shall it prevent or restrict any future exercise or enforcement of such right or remedy.
- 12.3 No single or partial exercise of any right or remedy under the Contract shall prevent or restrict the further exercise of that or any other right or remedy.

### 13. Notices

- 13.1 Any notices given under clauses 10 (Termination) or 13 (Notice) must be in writing and may be delivered by hand, first class post, Special Delivery post, fax or email, addressed to the recipient at its registered office or to any other address, fax number or email address as notified in writing to the sender by the other party.

### 14. Entire Agreement

- 14.1 The Contract constitutes the whole agreement and understanding of the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of the Contract. Each party acknowledges that it has not relied upon any warranty, representation, statement or understanding other than those expressly set out in the Contract.
- 14.2 Nothing in this clause shall limit or exclude any liability for fraudulent misrepresentation.

### 15. Rights of Third Parties

- 15.1 No term of the Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to the Contract.

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### 16. Assignment

- 16.1 Bender UK may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate any or all of its obligations under the Contract to any third party or agent.
- 16.2 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 Bender UK.

### 17. Severance

- 17.1 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 and the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

### 18. Arbitration

- 18.1 Any dispute, controversy or claim arising out of or relating to the Contract, including any question regarding its breach, existence, validity or termination or the legal relationship established by the Contract may be finally resolved by arbitration and the parties agree that upon either party giving written notice to the other of such dispute such matter shall be referred to a mutually agreed upon arbitrator or if the parties have not agreed upon an arbitrator within 30 days of the date of the written notice, to the president, or some person appointed by the president, of the Institute of Electrical Engineers.

### 19. Governing Law and Jurisdiction

- 19.1 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, English law, and, subject to clause 18, the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.