

STANDARD TERMS AND CONDITIONS OF SALE

The buyer's attention is in particular drawn to the provisions of condition 10.4.

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

Buyer: the person, firm or company who purchases the Goods from the Company.
Company: Master Magnets Limited, Burnt Meadow Road, North Moons Moat, Redditch, Worcestershire B98 9PA registered in England under number 1303706.
Contract: any contract between the Company and the Buyer for the sale and purchase of the Goods and/or supply of Services, incorporating these conditions.
Delivery Point: the place where delivery of the Goods is to take place under condition 4.
Goods: any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).
"Services" means the Services described in the Order.
"Warranties" means such warranties in respect of the Goods and/or Services as may be provided by the Company to the Client.
"Warranty Agreement" means the separate form of agreement between the Company and the Buyer (if any) incorporating the Warranties.

1.2 Words in the singular include the plural and in the plural include the singular.
1.3 A reference to one gender includes a reference to the other gender.
1.4 Condition headings do not affect the interpretation of these conditions.

2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other standard terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document.
2.2 No standard terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
2.3 These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by the Managing Director of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
2.4 Each order or acceptance of a quotation for Goods and/or Services by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase Goods and/or Services subject to these conditions.
2.5 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.
2.6 Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

3. DESCRIPTION

3.1 The quantity and description of the Goods and/or Services shall be as set out in the Company's quotation or acknowledgement of order.
3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract and this is not a sale by sample.
3.3 If the Goods are to be manufactured or any Process is to be applied to the Goods and/or Services to be performed in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trademark, know-how, or other industrial or intellectual property rights of any other person which results from the Company's use of the Buyer's specification.
3.4 The Company reserves the right to make any changes in the specification of the Goods and/or Services which are required to conform with any applicable statutory or EU requirements or, where the Goods and/or Services are to be supplied to the Company's specification, which do not materially affect their quality or performance.

4. DELIVERY

4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Company's place of business.
4.2 The Buyer shall take delivery of the Goods within 14 days of the Company giving it notice that the Goods are ready for delivery.
4.3 Any dates specified by the Company for delivery of the Goods and/or performance of the Services are intended to be an estimate unless the Company acting by a Director shall expressly guarantee the delivery date in writing. The Goods may be delivered and/or Services performed by the Company in advance of the quoted delivery date on giving reasonable notice to the Buyer.
4.4 Time for delivery shall not be of the essence.
4.5 Time for delivery shall not be made of the essence by any notice from the Buyer purporting to make time for delivery of the essence.
4.6 Subject to the other provisions of these conditions the Company shall not be liable for any indirect or consequential loss (all of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods or performance of the Services (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.
4.7 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
(a) the Goods shall be deemed to have been delivered; and
(b) the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
4.8 The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading and unloading the Goods.
4.9 If the Company delivers to the Buyer a quantity of Goods of up to 5% more or less than the quantity ordered by the Buyer, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.
4.10 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
4.11 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.
4.12 The Company shall be entitled to suspend the performance of the Services if:

4.12.1 any sums are due to the Company but remain unpaid under a Contract or any other contract entered into between the Company and the Buyer until such time as all such sums have been paid in full and cleared funds; or
4.12.2 the Company (in its sole discretion) reasonably believes that it is not safe for its employees or agents to continue to perform the Services on site, until such time as the Company deems that the Services can be performed safely.

5. NON-DELIVERY

5.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
5.2 The Company shall not be liable for any non-delivery of Goods or non performance of the Services (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery or non performance within 14 days of the date when the Goods and/or Services would in the ordinary course of events have been received or performed (as the case may be).
5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.
5.4 Any liability of the Company for non-performance of the Services (or part thereof) shall be limited to performing the Services (or part thereof) within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Services (or part thereof).

6. RISK/TITLE

6.1 The Goods are at the risk of the Buyer from the time of delivery.
6.2 Notwithstanding Delivery and the passing of risk, property in and title to the Goods shall remain with the Company until the Company has received payment of the full price of (a) all Goods and/or Services the subject of the Contract and (b) all other goods and/or services supplied by the Company to the Buyer under any contract whatsoever. Payment in full of the price shall include, without limitation, the amount of any interest or other sum payable under the terms of this and all other contracts between the Company and the Buyer.
6.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
(a) hold the Goods on a fiduciary basis as the Company's bailee;
(b) store the Goods (at not cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
(c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
(d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.
6.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
(a) any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
(b) any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
6.5 The Buyer's right to possession of the Goods shall terminate immediately if:
(a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer, or

- (b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
- (c) the Buyer attempts to encumber or in any way charge any of the Goods.

6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

6.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

6.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

6.9 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 6 shall remain in effect.

7. PRICE

7.1 The price for the Goods and/or Services shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.

7.2 The Company reserves the right by giving written notice to the Buyer at any time before delivery to increase the price of the Goods and/or Services 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 and/or Services which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions.

8. PAYMENT

8.1 Subject to condition 8.4, payment of the price for the Goods and/or Services is due in the currency stated on the Company's invoice on the last working day of the month following the month in which the Goods are delivered or deemed to be delivered or Services performed (as the case may be).

8.2 Time for payment shall be of the essence.

8.3 No payment shall be deemed to have been received until the Company has received cleared funds.

8.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

8.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

8.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment. Also without limiting any other right or remedy available to the Company, the Company may:-

- 8.6.1 Cancel the contract or suspend any further deliveries to the Buyer; and
- 8.6.2 Appropriate any payment made by the Buyer to such of the Goods and/or Services (or the Goods and/or Services supplied under any other contract between the Buyer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Buyer).

9. QUALITY

9.1 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Buyer and the Buyer shall be entitled to the benefit of any warranty or guarantee given to the Company by any manufacturer or supplier of the Goods.

9.2 The Buyer shall have the benefit of such Warranties as may be provided by the Company to the Buyer (at the Company's discretion) in the Warranty Agreement (provided such Warranty Agreement has been duly signed by a Director of the Company. Any such Warranty Agreement so provided shall be subject to the following provisions of this clause 9.

9.3 The Company shall be under no liability

- 9.3.1 In respect of any defect in the Goods and/or Services arising from any drawings, design or specification supplied by the Buyer
- 9.3.2 In respect of and defect arising from failure to follow the Company's instructions (whether oral or in writing);-
- 9.3.3 In respect of any defect arising from the further use by the Buyer of such Goods after notice has been given under clause 9.4.1.

9.4 The Company shall not be liable for a breach of any Warranties unless:

- 9.4.1 the Buyer gives written notice of the defect to the company, and, if the defect is as a result of damage in transit to the carrier, within 14 days of the time when the Buyer discovers or ought to have discovered the defect; and
- 9.4.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business for the examination to take place there, or if necessary allows the Company to make a site visit and in the case of Services to go to the Buyer's premises in respect of the performance of the Services to inspect the same.
- 9.4.3 The costs of (i) returning the Goods for inspection or (ii) The Company making a site visit to inspect the Goods or Services referred to in clause 9.4.2 above shall, subject to clause 9.6.1 below, be borne by the buyer.

9.5 If the Buyer fails to notify the Company of any defect in the Goods and fails to refuse delivery the Buyer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure and the Buyer shall be bound to pay the Price as if the Goods had been delivered in accordance with the Contract.

9.6 Subject to condition 9.3 and condition 9.4, if any of the Goods and/or Services do not conform with the Warranties (if any) the Company shall:-

- 9.6.1 if the defective Goods and/or Services are defective due to the Company's fault, the Company will repair or replace such Goods (or the defective part) or redo the Services or refund the price of such Goods or Services at the pro rata contract rate provided that, if the Company so requests, the Buyer shall, at the Company's expense, return the Goods or the parts of such Goods which are defective to the Company and any expenses or Costs, paid by the Buyer under clause 9.4 in having the Goods examined shall be reimbursed to the Buyer.
- 9.6.2 if the Goods and/or Services are defective due to the fault of the Buyer then at its option, the Company will repair or replace such Goods (or the defective part) or re-perform the Services provided that prior to any such repair, replacement or re-performance the company will submit a quotation for such repair, replacement or re-performance to the Buyer and the Buyer must indicate that it would like the Company to carry out the repairs or provide a replacement or re-perform the services.

9.7 If the Company complies with condition 9.6 it shall have no further liability for a breach of any of the Warranties (if any) in respect of such Goods and/or Services.

9.8 The Company shall not be liable for any accidental damage suffered by or caused to the Buyer arising out of the performance of the Services by the Company. The Buyer shall ensure that it is insured against all such losses and liabilities.

10. LIMITATION OF LIABILITY

10.1 Subject to condition 4, condition 5 and condition 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

- (a) any breach of these conditions;
- (b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
- (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these conditions excludes or limits the liability of the Company:

- (a) for death or personal injury caused by the Company's negligence; or
- (b) under section 2(3), Consumer Protection Act 1987; or
- (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- (d) for fraud or fraudulent misrepresentation.

10.4 Subject to condition 10.2 and condition 10.3:

10.4.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to a sum equivalent to the price paid to the Company for the Goods and/or Services that are the subject of the Buyer's claim:-

10.4.2 the company shall not be liable to the Buyer for any:-

- a) pure economic loss;
- b) loss of profit;
- c) loss of business;
- d) depletion of goodwill;
- e) loss revenue;
- f) downtime costs;
- g) costs of providing alternative equipment;
- h) additional labour costs;
- i) loss of contracts;
- j) loss of anticipated savings or otherwise

in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11. ASSIGNMENT

11.1 The Company may assign the Contract or any part of it to any person, firm or company.

11.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

12. FORCE MAJEURE

12.1 The Company reserves the right to defer the date of deliver or to cancel the contract or reduce the volume of the Goods ordered by the buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of [80] days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

13. CANCELLATION

13.1 This clause 13 applies if:-

- 13.1.1 the buyer makes a 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
- 13.1.2 an encumbrancer takes possession, or a receiver and/or manager, administrator or administrative is appointed, of any the Buyers undertaking or any part thereof or documents are filed with the Court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986); or
- 13.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
- 13.1.4 the Company is unable to obtain credit insurance up to the full amount of any credit risk that the Company has from time to time with the Buyer or such risk is withdrawn; or
- 13.1.5 The Buyer gives the Company reasonable reason to believe that it may be unable to pay for any Goods and/or Services ordered; or
- 13.1.6 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.

13.2 If this clause applies then, without limiting any other right or remedy available to the Seller, the Seller may cancel the Contract or suspend any further deliveries of Goods and/or the performance of Services under the Contract without any liability to the Buyer, and if the Goods have been delivered and/or Services performed but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

14. GENERAL

14.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

14.2 If any clause or sub-clause of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable then such clause or sub-clause shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

14.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

14.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

14.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

14.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

15. COMMUNICATIONS

15.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:

- (a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or
- (b) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.

15.2 communications shall be deemed to have been received:

- (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- (b) if delivered by hand, on the day of delivery; or
- (c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

15.3 Communications addressed to the company shall be marked for the attention of the Managing Director.