

AVENTICS LIMITED

GENERAL 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.

Buyer: the person or firm who purchases the Goods from the Seller.

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 Seller and the Buyer for the sale and purchase of the Goods in accordance with these Conditions.

Force Majeure Event: those events beyond a party's reasonable control. Including, but not limited to, acts of God, flood, terrorist attack, storms, adverse weather conditions and failure of suppliers.

Goods: the goods (or any part of them) to be supplied to the Buyer under the Contract.

Order: the Buyer's order for the Goods.

Seller: Aventics Limited (registered in England and Wales with company number 08197240).

1.2 **Construction.** In these Conditions, the following rules apply:

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. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted. 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 Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Separate conditions shall apply to assembly and repair work and the licensing of software whether or not such software is incorporated into the Goods.

2.2 The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Seller 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 Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Seller which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter, or advertising produced by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures 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 A quotation for the Goods given by the Seller shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue. A quotation may be withdrawn at any time by the Seller by written or oral notice.

2.7 In the event of any conflict between these Conditions and any terms and conditions in a quotation, the specific terms and conditions in the quotation shall prevail.

2.8 Any Orders for Goods placed via our website will be subject to separate website terms and conditions of sale.

3. DELIVERY

3.1 The Seller 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 the Seller notifies the Buyer that the Goods are ready.

3.2 The Goods shall be DAP (Delivered at Place) (Incoterm 2010).

3.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Seller shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods. Where such delay occurs, the delivery dates shall be extended by the period of time of the Force Majeure Event.

3.4 If the Seller fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality at the best price possible. The Seller 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 Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

3.5 If the Buyer fails to accept delivery of the Goods within three Business Days of the Seller notifying the Buyer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Seller's failure to comply with its obligations under the Contract, delivery of the Goods shall be deemed completed at 9:00am on the third Business Day after the day on which the Seller notified the

- Buyer that the Goods were ready and the Seller shall store the Goods until delivery takes place and charge the Buyer for all related costs.
- 3.6 If 10 Business Days after the day on which the Seller notified the Buyer that the Goods were ready for delivery the Buyer has not accepted delivery of them, the Seller may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Buyer for any excess over the price of the Goods or charge the Buyer for any shortfall below the price of the Goods.
- 3.7 Unless otherwise requested by the Buyer, the Seller 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 Buyer to cancel any other instalment.
- 4. QUALITY**
- 4.1 The Seller warrants that on delivery the Goods shall conform in all material respects with their description; be free from material defects in design, material and workmanship and be fit for any purpose held out by the Seller.
- 4.2 Subject to clause 4.3, if:
- (a) the Buyer gives notice in writing to the Seller within a reasonable time of discovery (but in any event no later than 15 days after delivery of the Goods) that some or all of the Goods do not comply with the warranty set out in clause 4.1;
 - (b) the Seller is given a reasonable opportunity of examining such Goods; and
 - (c) the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Buyer's cost,
- the Seller shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 4.3 The Seller shall not be liable for Goods' failure to comply with the warranty set out in clause 4.1 in any of the following events: the Buyer makes any further use of such Goods after giving notice in accordance with clause 4.2; the defect arises because the Buyer failed to follow the Seller's instructions; the Buyer alters or repairs such Goods without the written consent of the Seller; the defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal storage or working conditions; or the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 4.4 Except as provided in this clause 4, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 4.1. If the notification of a defect under clause 4.2 (a) is unjustified, the Seller will be entitled, in its discretion, to demand compensation from the Buyer for any expenses the Seller incurred due to such notification.
- 4.5 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.
- 4.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Seller.
- 5. TITLE AND RISK**
- 5.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery (being when the Goods are available to the Buyer for unloading).
- 5.2 Title to the Goods shall not pass to the Buyer until the Seller receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Seller has supplied to the Buyer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 5.3 Until title to the Goods has passed to the Buyer, the Buyer shall: hold the Goods as fiduciary agent and bailee of the Seller; store the Goods separately from other goods held by the Buyer so they remain identifiable; not remove, deface or obscure any identifying mark or packaging on the Goods; maintain the Goods in satisfactory condition and insure the Goods for their full price; notify the Seller immediately if it becomes subject to events in clause 7.2; give the Seller information relating to the Goods as the Seller requires and allow the Seller (and the Seller's representatives) to enter the Buyer's premises to recover the Goods or to satisfy itself that this clause 5.3 is being complied with.
- 5.4 Subject to clause 5.5, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Seller receives payment for the Goods. However, if the Buyer resells the Goods before that time it does so as principal and not as the Seller's agent and title to the Goods shall pass from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs.
- 5.5 If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 7.2, then, without limiting any other right or remedy the Seller may have:
- (a) the Buyer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
 - (b) the Seller may at any time require the Buyer to deliver up all Goods in its possession which have not been resold or incorporated into another product and if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

6. PRICE AND PAYMENT

- 6.1 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 Seller's published price list in force as at the date of delivery. Spare parts and Goods which have been repaired shall be shipped against a reasonable flat rate charge for shipping and packaging plus any charges in respect of the service rendered by the Seller.
- 6.2 The Seller may, by giving notice to the Buyer 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 any factor beyond the Seller's control, any request by the Buyer to change the delivery date(s), quantities or types of Goods or any delay caused by the Buyer or any failure of the Buyer to give accurate instructions.
- 6.3 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 Buyer.
- 6.4 The price of the Goods is exclusive of amounts in respect of value added tax (VAT). The Buyer shall, on receipt of a valid VAT invoice from the Seller, pay to the Seller such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 6.5 The Seller may invoice the Buyer for the Goods on or at any time after the completion of delivery.
- 6.6 The Buyer shall pay the invoice in full and in cleared funds by the last day of the month following the month of invoice and the Seller may issue invoices in the month in which the Goods are delivered or would have been delivered save for postponement otherwise than due to default on the part of the Seller. Payment shall be made to the bank account nominated in writing by the Seller. Time of payment is of the essence.
- 6.7 If the Buyer fails to make any payment due to the Seller under the Contract by the due date for payment, then the Seller may suspend without notice all further deliveries of the Goods and the Buyer 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 actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount.
- 6.8 The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.

7. TERMINATION AND SUSPENSION

- 7.1 If the Buyer becomes subject to any of the events listed in clause 7.2, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer.
- 7.2 For the purposes of clause 7.1, the relevant events are:
- (a) Any distress or execution is levied on the Buyer's property or if the Buyer has a receiver, administrator, administrative receiver or manager appointed over the whole or any part of its assets, becomes insolvent, compounds or makes any arrangement with its creditors, is the subject of a bankruptcy petition or order, or 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 Buyer or the Buyer goes into liquidation or if the Buyer suffers any analogous proceeding under foreign law;
 - (b) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
 - (c) the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
 - (d) (being an individual) the Buyer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 7.3 Without limiting its other rights or remedies, the Seller may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer becomes subject to any of the events listed in clause 7.2(a) to clause 7.2(d), or the Seller reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.
- 7.4 The Seller may terminate the Contract if the Buyer is in material breach of the terms of the Contract and fails to remedy such breach (if remediable) within 30 days of being notified to do so by the Seller.
- 7.5 On termination of the Contract for any reason the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest.
- 7.6 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

8. LIMITATION OF LIABILITY

- 8.1 Nothing in these Conditions shall limit or exclude the Seller's liability for any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.
- 8.2 Subject to clause 8.1:
- (a) the Seller shall under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of

- business, loss of data, loss of goodwill, loss of opportunity, any wasted expenditure, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with each Order, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total price of the Goods in respect of that Order.
- 9. FORCE MAJEURE**
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.
- 10. INTELLECTUAL PROPERTY RIGHTS**
- 10.1 The Seller will not be liable for any claims against the Buyer arising from any infringement of any third party Intellectual Property Rights.
- 10.2 If any third party makes a claim, or notifies an intention to make a claim against the Buyer, the Buyer must give written notice of the Claim to the Seller, not make any admission of liability, allow the Seller to take control of the claim and any proceedings and follow all instructions given to it by the Seller.
- 10.3 If any claim is made, or in the Seller's reasonable opinion is likely to be made, against the Buyer, the Seller may at its sole option and expense procure for the Buyer the right to continue to use the Goods (or part thereof), modify or replace the Goods so that they cease to be infringing or terminate the Contract immediately on written notice and refund any of the charges paid by the Buyer as at the date of termination (less a reasonable sum in respect of the Buyer's use of the Goods) on return of the Goods to the Seller.
- 11. GENERAL**
- 11.1 **Assignment and other dealings.**
The Seller may at any time assign or deal in any other manner with all or any of its rights or obligations under the Contract. The Buyer may not assign or deal in any other manner with any or all of its rights or obligations under the Contract without the Buyer's prior written consent.
- 11.2 **Notices.**
- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, 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 other next working day delivery service, at 9.00 am on the second Business Day after posting; 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, one Business Day after transmission.
- 11.3 **Severance.** If any provision (or part) of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable.
- 11.4 **Waiver.** A waiver of any right or remedy under the Contract or law 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 prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent 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 to enforce its terms.
- 11.6 **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the Seller.
- 11.7 **Governing law.** The Contract shall be governed by and construed in accordance with the law of England and Wales and each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction in respect of the Contract.
- 11.8 **Confidential Information.**
- (a) Both the Seller and Buyer undertake that it shall not at any time during the Contract and for a period of two years after termination disclose to any person any confidential information concerning the business of the other party (**Confidential Information**), except as permitted by clause 11.8(b).
- (b) Either the Seller or the Buyer may disclose the other party's Confidential Information:
- (i) to its employees, officers, agents, consultants or subcontractors (**Representatives**) who need to know such information for the purposes of the Contract, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this clause 11.8 as though they were a party to the Contract. The disclosing party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause; and
- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.