

MARTEC LIMITED
TERMS AND CONDITIONS OF SALE (Issue 6 Apr 2020)

1. INTERPRETATION

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

Buyer : the person, firm or company who purchases goods from the Company

Company : Martec Limited a company incorporated and registered in England with company number 02122813 whose registered office is Amphenol LTD, Thanet Way, Whitstable. Kent CT5 3JF

Company Premises : the Company's premises at St Augustine's Business Park, Estuary Close, Whitstable, Kent CT5 2QJ

Contract : any contract between the Company and the Buyer for the sale and purchase of the Goods incorporating these conditions

Goods : any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them)

Working Days : any day Monday to Thursday 8.00am until 5.30pm, inclusive, and Friday 8.00am until 1.00pm, that the banks in London are open for business

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these conditions.

2. APPLICATION OF TERMS

2.1 The Company contracts upon the terms of these conditions to the exclusion of all other 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 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 shall 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 a director of the Company. The Buyer acknowledges that he 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 by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.

2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer. Once acknowledged. The order is firm and unless otherwise agreed all parts must be scheduled and called off within a 6 month period for quantities less than 200pcs and within 12 months for quantities greater than 200, from acknowledgement of order.

Failure to do so will result in shipment of the outstanding Quantities on either the 6 month or 12 month anniversary As outlined above.

2.6 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

2.7 Any quotation is given on the basis that no contract shall come into existence until the Company despatches an acknowledgement of order to the Buyer. 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 shall be as set out in the Company's quotation or acknowledgement of order and in the drawings, descriptive matter and specifications issued by the Company.

3.2 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 described in them. They shall not form part of the Contract.

4. PRICE

4.1 The price shall be the Company's quoted price. The price is exclusive of any value added tax and all costs in relation to packaging, loading, unloading, carriage and insurance, all of which amount the Buyer shall pay in addition when it is due to pay for the Goods.

4.2 Non-recurring engineering charges if any shall be reimbursed to the Company in payment for tools and equipment especially required for a particular part supplied to the Buyer and do not give the Buyer any claim or right to the said tools and equipment.

4.3 The Company may, by giving notice to the Buyer at any time up to 7 days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:-

4.3.1 any factor beyond the Buyer's control (including foreign exchange fluctuations, increases in taxes, tariffs and duties and increases in labour, materials and other manufacturing costs);

4.3.2 any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the specification of the Goods; or

4.3.3 any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate or accurate information or instructions.

5. PAYMENT

5.1 Payment of the price for the Goods is due in Pounds Sterling 30 days from date of invoice and time for payment shall be of the essence.

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

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

5.4 Payment terms as specified in condition 5.1 are conditional upon receipt by the Company of satisfactory trade and banker's references prior to the delivery of the Goods. If satisfactory references are not forthcoming the Company reserves the right to require payment in full prior to the delivery of the Goods.

5.5 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 HSBC Bank Plc, accruing on a daily basis until payment is made, whether before or after any judgment.

5.6 Returned cheques will be charged at £25.00 per presentation for payment.

5.7 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the

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Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

6. DELIVERY

6.1 Unless otherwise agreed in writing by the Company delivery of the Goods shall take place at the Company's place of business and the Buyer shall take delivery of the Goods within 7 days of the Company giving it notice that the Goods are ready for delivery.

6.2 The Company shall use reasonable endeavours to fulfil the contract by any stipulated dates but such dates are intended to be an estimate and time of delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time. In particular, if events beyond the Company's reasonable control prevent or hinder the Company any delivery dates shall be extended by the period of delay.

6.3 The Company shall deliver the Goods to the address stipulated in the order.

6.4 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three 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 (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.

6.5 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 authorisation:

6.5.1 risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);

6.5.2 the Goods shall be deemed to have been delivered; and

6.5.3 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).

6.6 If the Company delivers to the Buyer a quantity of Goods of up to 5% more or less than the quantity accepted by the Company the Buyer shall not be entitled to object or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for the Goods at the pro rata Contract rate.

6.7 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of this Contract. 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.

6.8 Any delivery date quoted is not guaranteed nor is the time quoted for delivery a condition of the Contract. The Seller will use its reasonable endeavours to meet any delivery dates but, subject to having used its reasonable endeavours, it will not be liable for any failure to meet a delivery date nor for any direct, indirect or consequential loss of any kind arising from a delay in delivery howsoever caused. Goods and/or services may be delivered by the Seller in advance of any specified delivery date upon the Seller giving reasonable notice to the Buyer.

7. NON-DELIVERY

7.1 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 to the contrary.

7.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within five Working Days from the date when the Goods would in the ordinary course of events have been received.

7.3 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.

8. RISK/TITLE

8.1 The Goods are at the risk of the Buyer from the time of delivery either to the Buyer or his courier at the Company's place of business or (if agreed by the parties pursuant to 6.1 above) upon delivery by the Company to the Buyer's place of business. Unloading of the Goods shall be done at the risk of the Buyer.

8.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

8.2:1 the Goods; and

8.2:2 all other sums which are or which become due to the Company from the Buyer on any account.

8.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:

8.3.1 hold the Goods on a fiduciary basis as bailee for the Company;

8.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party and marked in such a way that they are clearly identified as the Company's property;

8.3.3 not to destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

8.3.4 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf against all risks to the reasonable satisfaction of the Company.

On request the Buyer shall produce the policy of insurance to the Company

8.3.5 notify the Company immediately if it becomes subject to any of the events listed in condition 10.2; and

8.3.6 give the Company such information relating to the Goods as the Company may require from time to time.

8.4 Notwithstanding that the Goods remain the property of the Company the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of the Company. Any such sale or dealing shall be a sale or use of the Company's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until ownership the Goods passes from the Company the entire proceeds of the sale or otherwise of the Goods shall be held in trust for the Company and shall not be mixed with other money or paid into any overdrawn Bank Account and shall be at all material times identified as the Company's money.

8.5 The Buyer's right to possession of the Goods shall terminate immediately if the Buyer becomes subject to any of the events listed in condition 10.2 or the Company reasonably believes that any such event is about to happen and notifies the Buyer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any right or remedy the Company may have, the Company may at any time require the Buyer to deliver up the Goods 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.

8.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the

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Goods has not passed from the Company.

8.7 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. Where the Company is unable to determine whether any 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.

8.8 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of Goods before ownership has passed to the Buyer. Without prejudice to the other rights of the Company, if the Buyer does so all sums owing by the Buyer to the Company shall forthwith become due and payable.

8.10. On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this Condition 8 shall remain in effect.

9. ACCEPTANCE AND RETURN OF THE GOODS

9.1 The Buyer shall be deemed to have accepted the Goods five Working Days after the delivery to the Buyer.

9.2 Goods may not be returned to the Company without the Company's express permission. Duly authorised returns shall be sent to the Company's Premises or such other place designated by the Company, at the Buyer's expense.

10. BUYER'S INSOLVENCY OR INCAPACITY

10.1 If the Buyer becomes subject to any of the events listed in condition 10.2, or the Company reasonably believes that the Buyer is about to become subject to any of them and notifies the Buyer accordingly, then, without limiting any other right or remedy available to the Company, the Company may cancel or suspend all further deliveries under the Contract or under any other contract between the Buyer and the Company without incurring any liability to the Buyer, and all outstanding sums in respect of Goods delivered to the Buyer shall become immediately due.

10.2. For the purposes of condition 10.1, the relevant events are:-

10.2.1 the Buyer 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; or

10.2.2 the Buyer 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 other than (where the Buyer is a company) these events take place for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer; or

10.2.3 (being an individual) the Buyer is the subject of a bankruptcy petition or order; or

10.2.4 a credit or encumbrancer of the Buyer 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; or

10.2.5 (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 Buyer; or

10.2.6 (being a company) a floating charge holder over the Buyer's assets has become entitled to appoint or has appointed an administrative receiver; or

10.2.7 a person becomes entitled to appoint a receiver over the Buyer's assets or a receiver is appointed over the Buyer's assets; or

10.2.8. any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 10.2.1 to 10.2.7 (inclusive); or

10.2.9 the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or

10.2.10 the Buyer's financial position deteriorates to such an extent that in the Company's opinion the Buyer's capability to adequately fulfil its obligations under the contract has been placed in jeopardy;

10.2.11 (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.

11. LIMITATION OF LIABILITY

11.1 Subject to condition 6 and condition 7, 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:

11.1.1 any breach of these conditions;

11.1.2 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and

11.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

11.2 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.

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

11.3.1 for death or personal injury caused by the Company's negligence;

11.3.2 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

11.3.3 for fraud or fraudulent misrepresentation.

11.4 Subject to condition 10.2 and condition 10.3:

11.4.1 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 and in no circumstances shall exceed the Contract price; and

11.4.2 the Company shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for indirect, or consequential compensation or loss whatsoever (howsoever caused) which arise out of or in connection with the Contract.

12. ASSIGNMENT

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

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

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Company.

13. FORCE MAJEURE

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of 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, adverse weather conditions, 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, reduction in or unavailability of power at the manufacturing plant, breakdown of plant or machinery, or any other cause beyond the reasonable control of the Company, provided that, if the event in question continues for a continuous period in excess of 90 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

14. EXPORT COMPLIANCE

Where the supply of goods and/or services are subject to export controls the Buyer agrees to be bound by all relevant regulations which also includes the US regulations International Traffic in Arms (ITAR) and Export Administration Regulations (EAR). The Buyer shall comply with all export laws and where required obtain all relevant licences, permits or other authorizations required to transfer (including in-country transfer), export or re-export of any goods and/or related technology. The Buyer is prohibited from exporting, re-exporting to any country or entity subject to UN, EU or OSCE (Organisation for Security and Cooperation in Europe) sanctions or embargoes. The Buyer shall not use the goods for any purpose associated with chemical, biological or nuclear weapons or missile capable of delivering such weapons, nor will the goods be resold if the Buyer knows or suspects that the goods are intended or likely to be used for such purposes. The Buyer shall not use the goods or any replica of them in any nuclear explosive activity or unsafeguarded nuclear fuel cycle. The Buyer shall promptly provide all information and documentation reasonably requested by Seller to assist Seller in complying with its obligations in exporting goods pursuant to applicable export control laws. Contracts will not be acknowledged until this documentation is received. The Seller cannot export any goods without a valid original end-user statement. Where appropriate the Seller reserves the right to invoice for the goods on the requested delivery date if all documentation required to export has not been received.

15. GDPR – Data Protection Privacy Policy

The Seller may process information in accordance with its Privacy Policy for legitimate business interests.

This Privacy Policy can be found on our website at www.martec.solutions. The protection and security of the Buyer's personal business data is important to us. The Privacy Policy explains how we collect, use, share and protect personal business data which form part of these Terms and Conditions.

16. CANCELLATION

Save as provided in these conditions the Contract may not be cancelled except by agreement in writing of both parties and upon the payment to the Company of such amount as may be necessary to indemnify the Company against all loss resulting from the said cancellation.

17. GENERAL

17.1 Each right or remedy of the Company under this

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

17.2 If 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 it 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.

17.3 Any 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.

17.4 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 to be a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

17.5 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 who is not a party to it.

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

18. COMMUNICATIONS

18.1 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:

18.1.1 (in the case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company;

18.1.2 (in the case of 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.

18.2 Communications shall be deemed to have been received:

18.2.1 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

18.2.2 if delivered by hand, on the day of delivery; or
18.2.3 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.

18.3 Communications addressed to the Company shall be marked for the attention of the Site Manager.