

**SELEE CORPORATION**  
**STANDARD TERMS AND CONDITIONS OF SALE**

**1. INTERPRETATIONS**

1.1 In these Conditions:

“BUYER” means the entity or person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller.

“SELLER” means Selee Corporation.

“QUOTATION” means an offer in Writing by the Seller to sell the Goods to the Buyer at certain prices and terms. A Quotation may be in the form of a proposal, a *pro forma* invoice, a quote, or another standard form of quotation.

“GOODS” means the goods, including any installment of the goods or any parts for the goods, which the Seller is to supply to the Buyer under the Contract and in accordance with these Conditions.

“CONTRACT” means the contract for the purchase and sale of the Goods.

“CONDITIONS” means the standard terms and conditions of sale set out in this document and, unless the context otherwise requires, includes any special terms and conditions agreed in Writing between the Buyer and the Seller.

“WRITING” includes correspondence, facsimile transmission, e-mail or other comparable written means of communication.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

**2. BASIS OF SALE**

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written Quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made by the Buyer.

2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorized representatives of the Buyer and the Seller. The Seller expressly limits

acceptance to these Conditions and notifies the Buyer of its objection to any inconsistent terms, unless otherwise agreed to in Writing between the authorized representatives of the Buyer and the Seller.

- 2.3 The Seller's employees or agents are not authorized to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations that are not so confirmed.
- 2.4 Any description contained in the Seller's catalogs, samples, price lists or other advertising material is intended mainly to present a general picture of the Goods and shall not form a representation or be part of the Contract.
- 2.5 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.6 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

### **3. ORDERS AND SPECIFICATIONS**

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorized representative.
- 3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.3 The quantity, quality and description of the Goods shall be set out in the Seller's Quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller). The specification for the Goods shall be in accordance with:
  - 3.3.1 the current edition of the relevant product description leaflet as published from time to time by the Seller and:
  - 3.3.2 any further specifications or descriptions (if any) expressly listed or set out on the face of the order. No other specification shall form part of or be incorporated by reference into the Contract.
- 3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall

indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller (including Seller's legal expenses) in connection with or paid or agreed to be paid by the Seller in settlement of any claim relating thereto or for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

- 3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance, provided, however, that Seller shall not be liable for any failure to make such changes.
- 3.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labor and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

#### **4. PRICE OF THE GOODS**

- 4.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted or a quoted price is no longer valid, the price listed in the Seller's published price list current at the date of acceptance of the order. All prices quoted are valid for 30 days only. If the Buyer has not accepted the prices quoted within 30 days, the Seller may alter the prices without giving notice to the Buyer.
- 4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods 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 labor, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 4.3 Any special packaging of Goods requested by the Buyer shall be an extra charge and unless provided to the contrary containers and packaging will not be returnable.
- 4.4 Damage or shortage of Goods at delivery shall be reported to the Seller within 48 hours of receipt of Goods at the Buyer's premises. Non-delivery of Goods shall be reported within 10 days of the date of dispatch as notified to the Buyer in advice notices.
- 4.5 In addition to the price specified herein, the amount of any present or future tax applicable to the sale, manufacture, delivery, use or other handling of the Goods shall be

payable by the Buyer. The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

- 4.6 Unless otherwise agreed in writing all tools, drawings and other equipment manufactured or obtained by the Seller for the purposes of the Contract (whether partly or wholly at the expense of the Buyer or not) shall be and remain the property of the Seller.
- 4.7 Unless otherwise agreed in Writing the sale of the Goods is made FCA (Free Carrier) the Seller's plant under Incoterms 2000, and the price does not include delivery.

## **5. TERMS OF PAYMENT**

- 5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall in the case of a Buyer whose credit has been approved by the Seller be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be received by the Buyer upon tender by the Seller and the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods have been tendered for delivery by the Seller and the Seller has tendered delivery of the Goods. In the case of a Buyer whose credit has not been approved by the Seller, payment will be due cash on delivery to the Buyer or its designated carrier.
- 5.2 The Buyer shall pay the price of the Goods within 30 days of the date of the invoice, notwithstanding that delivery may not have taken place and title to Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- 5.3.1 cancel the Contract or suspend any further deliveries to the Buyer;
  - 5.3.2 apply any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think appropriate (notwithstanding any purported application by the Buyer); and
  - 5.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid at the rate of 12 per cent per annum or the highest rate allowed by law, whichever is lower, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

## 6. DELIVERY

- 6.1 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.2 Where the Goods are to be delivered in installments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the installments in accordance with these Conditions or any claim by the Buyer in respect of any one or more installments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.3 If the Seller fails to deliver the Goods for any reason other than a cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 6.4 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
- 6.4.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
  - 6.4.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract.
- 6.5 Quantities of goods may vary from the quantities ordered by up to plus or minus 5% (five per cent). Such variations will be shown on invoices and charged pro-rata.

## 7. RISK AND PROPERTY

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
- 7.1.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer the Goods have been tendered for delivery by the Seller; or
  - 7.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take

delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, title in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 7.3 The Buyer hereby grants a security interest in the Goods to secure the payment of the obligations of the Buyer as set forth herein and any other sums due and arising from the Buyer to the Seller arising out of credit previously granted, credit contemporaneously granted and credit granted in the future by the Seller to the Buyer. The Buyer agrees to execute any and all financing statements that the Seller may, from time to time, wish to file with the appropriate authorities. Until such time as title in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until the that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 7.4 Until such time as title in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods, which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## **8. WARRANTIES AND LIABILITY**

- 8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of six months from delivery.
- 8.2 The above warranty is given by the Seller subject to the following conditions:
- 8.2.1 the Seller shall be under no liability in respect of any defect arising from any drawing, design or specification supplied by the Buyer;

- 8.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;
- 8.2.3 the Seller shall be under no liability under the warranty (or any other warranty, condition or guarantee) if the total price of the Goods has not been paid by the due date for payment;
- 8.2.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as given by the manufacturer to the Seller.
- 8.3 Except as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law. **ANY EXPRESS WARRANTY NOT PROVIDED HEREIN AND ANY IMPLIED WARRANTY, GUARANTY OR REPRESENTATION AS TO PERFORMANCE, AND ANY REMEDY FOR BREACH OF CONTRACT, TORT OR OTHER LEGAL THEORY WHICH, BUT FOR THIS PROVISION, MIGHT ARISE BY IMPLICATION, OPERATION OF LAW, CUSTOM OF TRADE OR COURSE OF DEALING, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, WITH RESPECT TO THE GOODS IS EXCLUDED AND DISCLAIMED BY THE SELLER.**
- 8.4 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or, where the defect or failure was not apparent on reasonable inspection, within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller 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.
- 8.5 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.
- 8.6 **TO THE EXTENT PERMITTED BY LAW, THE REMEDIES PROVIDED HEREIN ARE THE SOLE AND EXCLUSIVE REMEDIES. IN NO EVENT SHALL THE SELLER BE LIABLE FOR DIRECT, INDIRECT, SPECIAL,**

**INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFITS OR PLANT DOWNTIME), WHETHER OR NOT BASED ON THE SELLER'S NEGLIGENCE, AND WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, OR WHETHER BASED ON OR RELATED TO THE SUPPLY OF THE GOODS OR THEIR USE OR RESALE BY THE BUYER.**

- 8.7 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:
- 8.7.1 Act of God, explosion, flood, tempest, fire or accident;
  - 8.7.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
  - 8.7.3 acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental authority;
  - 8.7.4 import or export regulations or embargoes;
  - 8.7.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
  - 8.7.6 difficulties in obtaining raw materials, labor, fuel, parts or machinery;
  - 8.7.7 power failure or breakdown in machinery.

**9. TRADE NAME**

Where the Goods are sold by reference to a trade name or mark of the Seller, the Buyer and its successors in title shall have the right to describe such of its products as incorporate a substantial quantity or proportion of the Goods by reference to the trade name or mark in question. This right shall be subject to the Seller's prior approval of the quality and standards of workmanship and design of the Buyer's products.

**10. INSOLVENCY OF BUYER**

- 10.1 This clause applies if:
- 10.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administrative order in bankruptcy, or files for bankruptcy or otherwise goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or

10.1.2 a creditor takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

10.1.3 the Buyer ceases, or threatens to cease, to carry on business; or

10.1.4 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.

10.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## **11. EXPORT TERMS**

11.1 Where the Goods are supplied for export from the United States, the provisions of this clause 11 shall (subject to any special terms agreed in Writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.

11.2 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon and if the Buyer fails to comply with such requirements the Buyer shall (in addition to any other liability it may have to the Seller) be liable to indemnify the Seller in respect of any costs and expenses incurred by the Seller in pursuance of the Contract.

11.3 Unless otherwise agreed in Writing between the Buyer and Seller, the Goods shall be delivered FOB to the air or seaport of shipment and the Buyer undertakes to adequately insure Goods against loss when risk passes to the Buyer. When a Contract is expressed to be either C and F or CIF to an overseas territory the price of the Goods will include the cost of freight by air or sea to principal ports only in the territory named and CIF prices will include insurance protection against breakage risk or total loss for the amount of the CIF price plus 10%.

11.4 Payment of all amounts due to the Seller shall be made by irrevocable letter of credit opened by the Buyer in favor of the Seller and confirmed by a bank acceptable to the Seller and enable the Seller to present the Contract documents through such bank as the Seller may from time to time designate.

## **12. GENERAL**

12.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its principal place of

business or such other address as may be at the relevant time have been notified pursuant to this provision to the party giving the notice.

- 12.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 12.4 The laws of the State of North Carolina, USA, shall govern the Contract and the courts located in the State of North Carolina shall have exclusive jurisdiction of any dispute arising out of or relating thereto. The parties hereto irrevocably submit to the jurisdiction of the courts located in the State of North Carolina. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.
- 12.5 The Seller reserves the right to sub-contract the whole or any part of the Contract.