

## Terms & Conditions of Sale

Last Updated 04.10.18

### 1. GENERAL

(i) In these conditions 'Seller' means Specflue Ltd; 'Buyer' means any person or body corporate who accepts a quotation of the Seller for the sale of goods or whose order for goods is accepted by the Seller; and "Agreement" means the contract between Seller and Buyer and each order from a Buyer which is accepted by the Seller shall constitute a separate Agreement.

(ii) All tenders and quotations are submitted and each Agreement is made solely upon and subject to the following terms and conditions which constitute the whole and only agreement between the parties relating to such Agreement, superseding all previous negotiations and representations, whether oral or written, and to the exclusion of all other terms and conditions except such (if any) as are specifically accepted by the Seller in writing.

(iii) No variation or waiver of an Agreement and no terms and conditions put forward by the Buyer or printed on any purchase order or other document given to the Buyer for the supply of goods or services will have any effect unless agreed in writing.

(iv) If any provision of these Terms and Conditions or an Agreement is or becomes invalid, illegal or unenforceable in any way under law, it shall to the extent of such invalidity, illegality or unenforceability be deemed severable and the remainder of such provision shall continue in full force and effect.

### 2. SAMPLES, DRAWINGS AND SPECIFICATIONS

(i) Any sample or sales literature provided by the Seller or displayed on its website is intended only as an indication of the quality, colour, size and finish of the product and the Seller will not accept liability for any deviation in the goods supplied arising from factors outside its control.

(ii) The Seller shall not be under any obligation to check or verify the accuracy or adequacy of any plans or specifications supplied by the Buyer and the Seller shall not be liable for any loss arising directly or indirectly from any error, omission, inaccuracy or fault in such plans or specifications.

(iii) Where goods are supplied based on the Buyer's designs or specifications, no guarantee is given or implied as to the suitability for the purpose for which they are used.

### 3. CANCELLATION AND VARIATIONS

(i) Cancellation of an order cannot be accepted or goods returned for credit unless previously agreed to in writing by the Seller. In the case of goods returned for credit, proof of the original purchase must be provided in the form of a despatch note or invoice.

(ii) No variation of any order shall be binding upon the Seller unless the same shall be agreed in writing.

(iii) In the event that the Seller agrees in writing to accept the return of stock items, a charge of 20% of invoice price will be made, such sum representing a reasonable pre-estimate of the Seller's average costs of collection and administration. Stock items means items normally held in stock by the Seller.

(iv) Items specially ordered or manufactured or not normally held by the Seller as stock will not be accepted for return and credit.

(v) Any goods accepted by the Seller for credit must be returned in the original packaging and in resaleable condition.

### 4. DELIVERY

(i) Time for delivery of goods is given as accurately as possible but is not guaranteed unless agreed in writing. Time of delivery shall not in any circumstances be of the essence of the Agreement. The Seller shall not be liable for any delay in delivery of 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.

(ii) Delivery of the goods shall be at the place of delivery set out in the order or such location as the parties may agree, and shall be completed on the arrival of goods at the delivery location. Signature of a delivery note by an agent, employee or representative of the Buyer, or by an independent carrier, shall be conclusive proof of delivery.

(iii) During unloading at the Buyer's premises or other delivery location, the Seller shall be deemed to act as agent of the Buyer under the Buyer's supervision.

(iv) The Buyer shall make all necessary arrangements to take possession of the goods on the delivery date at the place of delivery. If the Buyer fails to make such arrangements, the Seller shall either leave the goods at the place of delivery during the hours of 7.30 and 5 pm, or at its absolute discretion: a) make additional charges for failed delivery, b) allocate new delivery dates, c) store the goods at the Buyer's risk and cost (including insurance), d) invoice the Buyer for the goods, e) terminate the Agreement without liability to the Seller, and f) recover from the Buyer all costs and losses incurred by the Seller.

(v) If the Seller fails to deliver the goods, its entire liability shall be limited to the excess (if any) over the price of the goods, of the cost to the Buyer of purchasing similar goods to replace those not delivered.

(vi) In the case of goods to be supplied by instalments, each delivery shall constitute a separate contract and failure by the Seller for any reason to deliver any instalment shall not entitle the Buyer to treat the Agreement as repudiated or to cancel any other instalment.

(vii) A Delivery Charge may be applied for orders under £50.00 excluding VAT

### 5. LOSS OR DAMAGE IN TRANSIT

(i) Goods will normally be despatched by the Seller's own transport. In such cases the Seller will replace, free of charge, goods damaged or lost in transit provided that written notification is given to the Seller within three days of delivery.

(ii) The risk of loss or damage to or deterioration of goods despatched by carrier shall be borne by the Buyer, but will be insured under the carrier's insurance where available.

(iii) Total non-delivery or non-arrival of the whole of any consignment must be advised to the Seller (and, if relevant, the carrier) within four days of despatch date.

### 6. INSPECTION/SATISFACTION

The Buyer shall inspect the goods immediately on arrival thereof and shall note shortages or damage on the delivery note and give notice to the Seller by telephone, fax or email within three days, with full details of any claim.

The buyer will be bound to take delivery of the goods notwithstanding that the quantity of goods is either 5% greater or less in quantity than the goods ordered. In the event of any such discrepancy the price shall be adjusted accordingly.

### 7. PACKAGING

Packaging where appropriate will be charged by the Seller to the Buyer and credited in full when returned to the Seller's depot in good condition.

### 8. TITLE AND RISK

(i) All goods sold remain the property of the Seller until the Buyer has paid for them and has paid all other amounts due and payable to the Seller. The risk in goods sold or supplied passes to the Buyer on delivery if despatched by the seller's own transport, on despatch to the Buyer if

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delivered by carrier, or on collection by the Buyer.

(ii) Until such time as the 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, but shall be entitled to re-sell or use the goods in the ordinary course of its business.

(iii) Until such time as the property 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.

(iv) The Buyer shall not be entitled to pledge or in any way charge by way of security 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 right or remedy of the sale) forthwith become due and payable.

### 9. INSOLVENCY OF BUYER

(i) This clause applies if:

(a) the Buyer makes any involuntary 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 purpose of amalgamation or reconstruction); or  
(b) an encumbrance takes possession of or a receiver is appointed over any of the property or assets of the Buyer; or

(c) the Buyer ceases or threatens to cease to carry on business; or  
(d) 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.

(ii) 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

Agreement or suspend any further deliveries under the Agreement 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.

### 10. PRICE AND PAYMENT

(i) The price payable for goods and services supplied under the Agreement shall be the price effective at the time of supply. Unless specifically quoted as a fixed price for a specific period or agreed otherwise in writing, all prices are subject to variation from time to time.

(ii) The price of goods is exclusive of the costs and charges of packaging, insurance and transport of the goods (if by carrier) which shall be invoiced to the Buyer.

(iii) The price of goods and services is exclusive of VAT. The Buyer shall, on receipt of a valid VAT invoice from the Seller, pay such amounts in respect of VAT as are chargeable.

(iv) Subject to any special terms agreed in writing between the Seller and the Buyer, the Seller shall 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 collected by the Buyer or the Buyer wrongfully fails to take delivery of the goods, in which event the Seller shall be entitled to invoice the Buyer for the product at any time after the Seller has notified the Buyer that the goods are ready for collection or (as the case may be) the Seller has tendered delivery of the goods.

(v) The Buyer shall pay each invoice, without any set-off, counterclaim, deduction or withholding, no later than the end of the month following the

month of invoice and the Seller shall be entitled to recover the product notwithstanding that delivery may not have taken place and the property and the goods have not passed to the Buyer. The time of payment of the price shall be the essence of the Agreement.

(vi) If the Buyer fails to make payment on the due date, the Seller may:  
(a) cancel the Agreement or suspend any further deliveries to the Buyer;  
(b) appropriate any payment made by the Buyer to such of the goods 'or the goods supplied under any other contact between the Seller and the Buyer' as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and  
(c) charge the Buyer interest in accordance with the Late Payments of Commercial Debts (Interest) Act 1998.

### 11. DEFECTIVE MATERIAL AND GOODS

(i) Subject to the provisions of these Terms and Conditions, the Seller warrants that, on delivery, goods supplied under an Agreement will conform in material respects with any applicable specification and be free from material defects in design, material and workmanship.

(ii) Subject to condition 11(iv) the Seller agrees to replace or repair at its option goods supplied by it and proved to its satisfaction to be faulty

Provided that such fault is notified in writing to the Seller within 30 days from the date of despatch from the Seller's works of such faulty goods and before installation of the material. Any free replacement shall

include free delivery to the Buyer's premises.

(iii) Subject as expressly provided in these Conditions, all other warranties, conditions or other terms implied by statute or common law, including the terms implied by sections 13 to 15 of the Sale of Goods Act 1979, are excluded to the fullest extent permitted by law.

(iv) Under no circumstances shall the Seller have any liability of whatever kind for:

(a) any defect resulting from wear and tear, faulty installation, accident, improper use by the Buyer or use by the Buyer except in accordance with the instructions or advice of the Seller or the manufacturer of any goods or neglect or from any instructions or materials provided by the Buyer;

(b) any goods which have been adjusted, modified or repaired;  
(c) the suitability of any goods for any particular purpose or use under specific conditions whether or not the purpose or conditions were known or communicated to the Seller;

(d) any technical information, recommendations, statements or advice furnished by the Seller, its servants or agents not given in writing in response to a specific written request from the Buyer before an Agreement is made; or

(e) any variations in the quantities or dimensions of any goods or changes of their specifications or substitution of materials or components, if the variation or substitution does not materially affect the characteristics of the goods, and the substituted materials or components are of a quality equal or superior to those originally specified.

(iv) These Conditions shall apply to any repaired or replacement goods supplied by the Seller

### 12. LIMITATION OF LIABILITY

(i) Nothing in these Conditions shall limit or exclude the Seller's liability for  
a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

b) fraud or fraudulent misrepresentation;

c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or;

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d) any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.

(ii) Subject to clause 12(i) above 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 or damage to revenue, profits, savings, use contracts, production, goodwill, business opportunity or business or any indirect or consequential loss arising under or in connection with the Agreement; and

(iii) The Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Agreement, whether in contract, tort (including negligence) breach of statutory duty, or otherwise, shall in no circumstances exceed the price of goods under the Agreement.

(iv) In no event will the Seller have any liability for loss or damage caused by unusual wind conditions or turbulence, or any climatic conditions or geographical conditions which may affect the operation of any chimney and/or appliance. It is for the Buyer to satisfy himself of the suitability of any product intended to be used in any particular location.

(v) The Seller's total liability resulting from the provision of technical advice or training by the Seller in return for a specific fee shall be limited to the amount of the fee received for such advice or training.

### 13. FORCE MAJEURE

The Seller shall be under no liability for any delay, loss or damage caused wholly or in part by Act of God, Governmental restriction condition or control or by reason of any act done or not done pursuant to a trade dispute whether such dispute involves the Seller's employees or by reason of any other matter or thing beyond the reasonable control of the Seller.

### 14. LAW APPLICABLE

These terms and conditions and any dispute shall be governed and construed in accordance with English law and the jurisdiction shall be the courts of England.

### 15. ASSIGNMENT

(i) The Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement. In the event of the Seller assigning its rights under any Agreement, the Buyer shall not be entitled to raise any counterclaim or set-off the Buyer may have against the Seller, against the assignee in answer to any claim for payment by the assignee.

(ii) The Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Agreement without the prior written consent of the Supplier.

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