



CONDITIONS OF SALE

1. DEFINITIONS

- 1.1 The "Seller" means Harkness Screens (USA) Limited.
- 1.2 The "Buyer" is the person or company buying the Goods under these terms and conditions.
- 1.3 The "Goods" means the goods which are to be sold under a contract of sale between the Seller and the Buyer.

2. FORMATION OF CONTRACT

- 2.1 These conditions shall apply to all contracts between the Seller and the Buyer to the exclusion of all other terms and conditions.
- 2.2 All orders shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these conditions. Acceptance of Goods at delivery shall be deemed conclusive evidence of acceptance of these conditions.
- 2.3 No addition or variation of these conditions shall be binding on the Seller unless expressly agreed to in writing and signed by a director of the Seller on its behalf. No other agent or representative of the Seller has any authority to vary or omit these conditions or any of them.

3. PRICES

- 3.1 Prices invoiced will be those ruling at the date of despatch of the Goods.
- 3.2 Subject to Clause 3.1, all prices are subject to change without notice.

4. TAXES

All prices are quoted exclusive of any applicable Federal or State taxes which, where applicable, will be charged at the rate in force at the time of despatch of the goods.

5. TERMS OF PAYMENT

- 5.1 Payment shall be made in full, without set-off or counter claim, not later than 30 days following the date of invoice (unless alternative arrangements have been agreed in advance). Payment terms in respect of Export Goods (as defined in Clause 15) shall be agreed in writing prior to delivery. Time for payment is of the essence.
- 5.2 In the event of non-payment of any sum due to the Seller by the due date, all sums owing to the Seller by the Buyer shall become due.
- 5.3 The Seller reserves the right to charge interest on unpaid invoices and any other sums due to the Seller and outstanding at the rate of 1.5% per month, calculated daily, from the date when payment becomes due until the date when payment is made and interest will accrue after as well as before any judgement. The Buyer will reimburse the Seller for all costs and expenses (including legal costs on an indemnity basis) incurred in the collection of any overdue amount.
- 5.4 Without prejudice to any other rights which the Seller may have in the event of non-payment of any sums outstanding on the due date, the Seller shall have the right to cease supplying other Goods ordered by the Buyer from the Seller whether under this contract or any other.

6. DELIVERY

- 6.1 Time and dates quoted for delivery are estimates only and the time for delivery of the goods shall not be of the essence.
- 6.2 Where delivery is made by instalments, delay in delivering one or more instalments shall not entitle the Buyer to refuse to accept any remaining instalments.
- 6.3 The Buyer shall not refuse to accept delivery of any consignment or instalment on account of any shortage or defect in any other delivery.
- 6.4 US Delivery (for Export goods see 15.4) takes place when the Goods are delivered to the ground floor entrance of the building of the Buyer's premises, unless the Buyer has given the Seller special instructions as to carriage or delivery, in which case delivery shall take place when the Goods are delivered to the order of the Buyer, including collection from the premises of the Seller. The Buyer assumes responsibility to have appropriate resource available to receive Goods from the Seller (or the Seller's delivery agent).
- 6.5 The Seller shall not be liable in any way for any losses, damages or expenses (whether direct, indirect, or consequential) suffered by the Buyer due to any delay or failure in delivering the Goods.
- 6.6 Save when Clause 11.1 applies, and without prejudice to any other rights which the Seller may have, where the Buyer does not accept delivery of the Goods a transport and delivery charge equal to 15% of the nett order value of those Goods shall be payable by the Buyer to the Seller, save in respect of special order goods where the full invoice price will be payable.

7. SHORT DELIVERY/WRONG PRODUCT DELIVERED/NON-DELIVERY

- 7.1 No claims for shortage, or for damage to Goods, or for delivery of wrong products shall be made unless the Seller is notified in writing, quoting number of delivery note or sales order number within three working days after the day of delivery, in accordance with Clause 6. In the absence of such notification, the Buyer shall be deemed to have accepted the Goods and payment in full will become due in accordance with the terms of Clause 5.
- 7.2 No claim for non-delivery shall be made unless the Seller is notified in writing within 7 days of the date of invoice. In the absence of such notification, the Seller shall be deemed to have delivered the Goods and payment in full become due in accordance with Clause 5.

8. DAMAGE IN TRANSIT

- 8.1 Goods damaged in transit must be reported to the Seller immediately by signing the delivery note "damaged on arrival". This must be returned to the Seller within 3 working days of delivery. Any damaged Goods must be retained (including wrappings, cartons, etc) for inspection.
- 8.2 In the event that the delivery note was signed but not marked "damaged on arrival" and also when goods are supplied 'ex-works', the Seller cannot be held responsible for damages in transit.

9. RETURN OF GOODS

- 9.1 Goods cannot be accepted for return without the prior consent of the Seller which will be given at the Seller's discretion. Subject to Clause 11.1 customised Goods shall not under any circumstance be accepted for return.
- 9.2 A handling charge of 15% of nett order value will be made on all Goods (other than customised Goods) returned save where Clause 11.1 applies. The invoice price in respect of customised Goods shall be payable notwithstanding any such return.
- 9.3 Any Goods returned in accordance with this Clause 9, must be in original condition and returned correctly packed in original packaging.
- 9.4 Risk in any Goods to be returned remains with the Buyer until the Goods are delivered to the Seller or until the Seller collects such Goods.
- 9.5 Return of Export Goods may only take place with the prior agreement of, and by arrangement with, the Seller.

10. CANCELLATION AND TERMINATION

- 10.1 No order which has been accepted by the Seller may be cancelled by the Buyer except with the prior written agreement of the Seller, and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profits), costs (including labour and materials), damages, charges and expenses incurred by the Seller as a result.
- 10.2 Without prejudice to any obligation of the Buyer under Clause 14.5 should any of the events in Clause 14.5.1, 14.5.2 and 14.5.3 occur the Seller may, without prejudice to any of its rights arising out of this contract, terminate the contract forthwith.

11. QUALITY OF GOODS

- 11.1 Subject to the provisions of Clauses 7 and 8, if the Buyer proves to the Seller's reasonable satisfaction (within 12 months of delivery or other period which may be agreed) that the Goods are not in accordance with the order, or are defective by reasons of faulty material or workmanship which is due to the act or omission of the Seller, the Seller, at its option, may either repair or replace the Goods or the defective part thereof or issue a credit note. These provisions do not apply to any defect due to normal wear and tear.
- 11.2 Save as expressly provided, all warranties and conditions relating to quality, fitness for purpose or compliance with description (whether implied by statute or otherwise) are hereby excluded to the extent permitted by law, provided that (save as provided in Clause 15 below) nothing in these conditions shall restrict or exclude liability for death or personal injury caused by the negligence of the Seller, and further provided that this clause shall not deprive a Buyer, who is dealing as a consumer pursuant to Section 12 of the Unfair Contract Terms Act 1977, of his or her statutory rights.
- 11.3 Subject to Clause 11.2 the Seller's liability to the Buyer shall not in any event exceed the invoice price of the goods and the Seller shall not be liable for any indirect or consequential loss suffered.

12. INABILITY TO SUPPLY

- 12.1 Without prejudice to any other condition hereof should the manufacture or supply or despatch of the whole or any part of the Goods be interrupted, prevented or hindered by any cause or causes whatsoever beyond the Seller's control, the Seller shall be entitled to postpone or suspend any delivery or deliveries until (in the Seller's reasonable judgement) any such cause has ceased to operate. The Seller shall be under no liability whatsoever in respect of such postponement or suspension.
- 12.2 If delivery is delayed for more than three months, the Seller has the option of cancelling the contract and refunding any payment made by the Buyer.
- 12.3 Without prejudice to the generality of the foregoing, the causes referred to in sub-clause 12.1 shall include war, fire, accident, breakdown of plant or machinery, industrial action, dispute (including strikes and lockouts), non-availability of and restrictions on supplies, non-delivery or delay in delivery of any materials or other circumstances (of whatsoever nature and not limited to the foregoing), which directly or indirectly interrupt or hinder the due performance of the contract.

13. PRODUCT CHANGES

- 13.1 The Seller may change the product range, alter specifications, substitute items and change the price list without prior notice.
- 13.2 Drawings, specifications, product finishes and colour shades in the Seller's literature and advertisements are approximate only and do not constitute a trade description.

14. RETENTION OF TITLE

- 14.1 Risk in the goods shall pass to the Buyer on delivery and the Buyer shall insure goods with a reputable insurance company against all risks for their full value from that time.
- 14.2 Notwithstanding the provisions of Clause 14.1, property and ownership in the Goods shall not pass from the Seller until:
 - 14.2.1 the Buyer shall have paid the Seller for the goods; and
 - 14.2.2 no other sums are then outstanding from the Buyer to the Seller on any account whatever whether or not such sums have become due for payment.
- 14.3 Until property in the Goods passes to the Buyer, the Buyer shall:-
 - 14.3.1 be bailee of the Goods;
 - 14.3.2 ensure the Goods are readily identifiable as the property of the Seller.In the event that the Goods are stored on the premises of any third party (save where such third party has received the Goods by virtue of Clause 14.4), the buyer shall ensure that the third party complies with the provisions of this sub-clause.
- 14.4 Notwithstanding the provisions of this clause, the Buyer may as principal in the ordinary course of the business sell the Goods for market value or use the Goods in the ordinary course of its business.
- 14.5 At any time prior to property in the Goods passing to the Buyer, in the event of:-
 - 14.5.1 the Buyer's insolvency;
 - 14.5.2 the Buyer's failure to pay any amount due to the Seller, or
 - 14.5.3 any breach by the Buyer of these conditions the Buyer must immediately place any Goods in its possession or under its control at the Seller's disposal and the Seller's representatives shall have (without prejudice to any of the Seller's other rights and remedies) the right to enter the Buyer's premises and retake possession of such goods. In such event, the Buyer shall procure that the Seller has access to the premises of any third parties where Goods in which property has not yet passed to the Buyer are stored.
- 14.6 Should any event listed in Clause 14.5 occur, the Buyer's right to sell and to use the Goods shall immediately cease.
- 14.7 The Buyer shall not charge, mortgage, create a lien upon the Goods or permit the creation thereof or assign its rights in respect of the Goods.
- 14.8 Each clause and sub-clause of this clause is separate, severable and distinct.

15. EXPORT CONTRACTS

- 15.1 Unit prices for goods sold for export from the United States ("Export Goods") shall be ex-works and shall include the cost of standard packaging used on the Export Goods. Should special packaging be requested or required, an additional cost will be charged.
- 15.2 Such Incoterms (meaning the international rules for the interpretation of trade terms of the International Chamber of Commerce) as are presently in force shall apply to all terms and conditions in respect of an Overseas Buyer, save where Incoterms shall be in conflict with another clause contained herewith in which case the latter shall prevail.
- 15.3 Export Goods may be shipped C and F at the Seller's discretion and at the cost of the Buyer.
- 15.4 Export Delivery takes place when Goods are accepted by the Buyer's shipping agent (ex-works) or when the Goods are released by the Seller's shipping agents (C and F).
- 15.5 All payments must be in US Dollars unless agreed in writing by the Seller.
- 15.6 Save as expressly provided in Clause 11.1, all warranties and conditions relating to quantity, quality, and merchantability, unless for purpose or compliance with the description of the Export Goods (whether implied by statute or otherwise), are hereby excluded to the extent permitted by law.

16. GENERAL

- 16.1 The contract shall be governed by the laws of the State of Virginia. Both Seller and Buyer irrevocably consent to the jurisdiction of the United States District Court and the State courts of Virginia and agree that any action relating to these conditions shall only be brought in said courts.
- 16.2 The Seller may enter into sub-contracts for the manufacture or supply of the whole or any part of the Goods.
- 16.3 Waiver by the Seller of any of its rights hereunder or the giving of time to the Buyer shall not affect the Seller's rights arising on any subsequent or other breach by the Buyer.
- 16.4 Any notice sent by the Seller will be deemed to have been served provided it is sent by pre-paid post to the Buyer's last known business address. Notices sent by post shall be deemed to be served 2 working days after the date of posting.
- 16.5 Any provision hereof which is, or may be void or unenforceable, shall, to the extent of such invalidity or unenforceability, be deemed severable and shall not affect the other provisions hereof.
- 16.6 The Seller reserves the right to consult whomsoever it considers appropriate for the purposes of Trade References and will record information in respect of such opinions, which will be made available to other businesses for the continuing assessment of credit risk. The information will only be stored for the purpose of assessing credit worthiness.