

**TERMS AND CONDITIONS OF SALE**

1. Interpretation
- 1.1 In these Terms:
  - “Buyer” means the person who accepts the Seller’s Written quotation for the sale of the Goods or whose Written order for the Goods is accepted by the Seller;
  - “Goods” means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Terms;
  - “Seller” means Hitaltech U.K. Limited (registered in England under number 03290371);
  - “Contract” means the contract for the sale and purchase of the Goods;
  - “Terms” means the standard terms of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Seller;
  - “Writing”, and any similar expression, includes facsimile transmission but not electronic mail or other forms of electronic communication.
- 1.2 A reference in these Terms to a 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 Terms are for convenience only and shall not affect their interpretation. If any provision of the Contract (including any provision of these Terms) is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
2. FORMATION OF CONTRACT
- 2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with the Seller’s written quotation (if accepted by the Buyer), order acknowledgement or the Buyer’s Written order (if accepted by the Seller), subject in either case to these Terms, which shall govern the Contract to the exclusion of any other terms 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 order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until such order has been accepted in Writing by the Seller.
- 2.3 No variation to these Terms shall be binding unless agreed in Writing by an authorised representative of the Seller.
- 2.4 The Seller’s employees or agents are not authorised 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 any such representations which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.
- 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.
- 2.7 No waiver by the Seller of any breach shall operate as a waiver of any other or subsequent breach.
3. ORDERS AND SPECIFICATIONS
- 3.1 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.
- 3.2 The quantity, quality and description of the Goods and any specification for them shall be as set out in the Seller’s quotation.
- 3.3 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 in connection with, or paid or agreed to be paid by the Seller in settlement of, any claim 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.
- 3.4 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or E.U. requirements or, where the Goods are to be supplied to the Seller’s specification, which do not materially affect their quality or performance.
- 3.5 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 labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.
4. PRICES
- 4.1 The price for the Goods shall be as set in the Seller’s quotations, order acknowledgements or elsewhere, and are subject to revision in accordance with Clauses 4.4 and/or 4.5.
- 4.2 Except as otherwise stated in Writing by the Seller, all prices are given by the Seller exclusive of value added tax and on an ex works basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller’s premises, the Buyer shall be liable to pay the Seller’s charges for transport, packaging and insurance.
- 4.3 Where carriage, packing, insurance, storage or other charges are shown separately from the price of the Goods they will nevertheless be payable by the Buyer at the same time as if they formed part of the price and shall be treated as part of the price for the Goods.
- 4.4 Where goods have been imported by the Seller the price shown in the quotation or the order acknowledgement represents the sterling price based on the rate of exchange between sterling and the relevant foreign currency which would apply if the goods were despatched on the date of the quotation or order acknowledgement. For the purpose of invoicing a currency correction factor will be applied if necessary to the above price to take into account any change in the relevant rate of exchange between the date when the above price was calculated and the date when the Goods are actually despatched. The relevant exchange rate and correction factor will be shown, as appropriate, on the quotation, order acknowledgement and invoice.
- 4.5 The Seller reserves the right, by giving Written 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 labour, 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.
5. PAYMENT
- 5.1 Subject as otherwise provided in these Terms, Payment shall be made in English pounds sterling in immediately available funds within 30 days of the date of invoice, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer.
- 5.2 If the Buyer fails to make any payment on the due date then, without limiting any other right or remedy available to the Seller, the Seller may:
  - 5.2.1 cancel the contract or suspend any further deliveries to the Buyer;
  - 5.2.2 appropriate 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 fit (notwithstanding any purported appropriation by the Buyer); and
  - 5.2.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid from the due date of payment until the date of actual payment at the daily rate of 5% per annum above the base rate from time to time of National Westminster Bank PLC.
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 of the Contract unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date on giving reasonable notice to the Buyer.
- 6.2 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Terms or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.3 If the Seller fails to deliver the Goods (or any instalment) for any reason other than any 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 limiting 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 or charge the Buyer for any shortfall below the price under the Contract.
- 6.5 In cases where the Seller concludes the contract of carriage and/or arranges for the insurance of the goods for transit the Seller shall be deemed to acting solely as an agent of the Buyer and section 32(2) and (3) of the sale of goods act 1979 shall not be applicable.
- 6.6 If upon delivery the goods are found to be damaged the Seller shall not in any event be liable unless:
  - (a) the Buyer gives written notice to the Seller and to the carrier within three days of receipt of goods; and
  - (b) the Buyer gives the Seller a reasonable opportunity to arrange for the inspection of the goods in the state, condition and location in which they were delivered.Replacement of damaged goods will only be considered by the Seller where the requirements of clauses 6.6(a) and 6.6(b) have been met.
- 6.7 Unless otherwise agreed in writing the Seller reserves the right to deliver up to 2% more or less than the total number of items stated in or calculated from the contract and such delivery shall satisfy in full the contract from which it arose subject to an appropriate adjustment by the Seller to the contract price.
- 6.8 The Seller reserves the right (without prejudice to any other rights it may have) to charge the Buyer any costs, charges or expenses incurred by the Seller as a result to any warehousing (including charges for storage in the Seller’s own premises) carriage, insurance and/or handling in consequence of any act or omission of the Buyer, its servants or agents or as a result of any special requirements or stipulations of the Buyer not provided for in the Contract.
7. TITLE
- 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 that the Goods are available for collection; 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 Terms, the property 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 Until such time as the property 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 the Buyer may resell or use the Goods in the ordinary course of its business.
- 7.4 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 may at any time require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, enter on 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 moneys owing by the Buyer to the Seller shall (without limiting any other right or remedy of the Seller) forthwith become due and payable.
8. CALL-OFF ORDERS AND DELAYED DELIVERIES
- 8.1 Call-off orders must be completed within one year from the date of order. The Seller will not normally accept instructions to delay delivery of an order beyond the date given in the order acknowledgement. However, if such a delay is agreed the Seller reserves the right to pass onto the Buyer any extra costs involved.
9. WARRANTY AND GENERAL LIABILITIES
- 9.1 Subject to the following provisions 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 either (a) the date of delivery, or (b) the date on which the Buyer is informed that the goods are ready for collection (whichever occurs earlier).
- 9.2 The above warranty is given by the Seller subject to the following conditions:
  - 9.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
  - 9.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful 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;
  - 9.2.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
  - 9.2.4 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 is given by the manufacturer to the Seller;
  - 9.2.5 a 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 must (whether or not delivery is refused by the Buyer) be notified to the Seller within three days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within seven days 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.
- 9.3 Subject as expressly provided in these Terms, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 9.4 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Terms.
- 9.5 Where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods and their failure to meet specification is notified to the Seller in accordance with these Terms, the Seller may 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), in which case the Seller shall have no further liability to the Buyer.
- 9.6 Except in respect of death or personal injury caused by the Seller’s negligence, or liability for defective products under the Consumer Protection Act 1987, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Terms.
- 9.7 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 limiting the foregoing, the following shall be regarded as causes beyond the Seller’s reasonable control:
  - 9.7.1 Act of God, explosion, flood, tempest, fire or accident;
  - 9.7.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
  - 9.7.3 acts, restrictions, regulations, bye laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
  - 9.7.4 import or export regulations or embargoes;
  - 9.7.5 strikes, lockouts or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
  - 9.7.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
  - 9.7.7 power failure or breakdown in machinery.
10. HEALTH AND SAFETY AT WORK
- 10.1 The Buyer shall be solely responsible for and shall keep the Seller indemnified against any loss, liability or expense arising directly or indirectly from use of the Goods other than in accordance with the uses to which a competent engineer would put goods of that description and specification (which may be contained in literature supplied by the Seller as to use or operation) and it is a condition of any Contract that the Buyer shall display any Written information which may have been supplied by the Seller about the use for which the Goods are designed and have been tested, the results of any relevant tests and conditions necessary to ensure that Goods will be safe and without risks to health when properly used in accordance with the Seller’s instructions and that the specification of Goods contained in any trade catalogues or circulars are made known to the persons who will use the Goods.
11. INSOLVENCY OF THE BUYER
- 11.1 This clause 11 applies if:
  - 11.1.1 the Buyer makes a composition or voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) enters administration or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or a moratorium comes into force in respect of the Buyer (within the meaning of the Insolvency Act 1986); or
  - 11.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
  - 11.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
  - 11.1.4 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.
- 11.2 If this clause applies then, without limiting any other right or remedy available to the Seller, the Seller may 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.
12. ASSIGNMENT
- 12.1 This agreement of any right or rights of the Buyer hereunder may not be assigned in whole or in part without the prior written consent of The Seller.
13. DEFAULT
- 13.1 The Seller may (without prejudice to any other rights it may have) by notice in writing to the Buyer terminate any contract forthwith if the Buyer:
  - (a) commits any breach of any of the terms (including without limitation terms concerning the time for payment of the purchase price) of that or any other contract with the Seller and on its behalf to be observed and performed PROVIDED that if such breach is remediable The Seller has previously given to the Buyer notice thereof and the same has not been remedied within seven days thereafter;
  - (b) becomes insolvent or enters into any kind of composition, scheme or arrangement of compromise for the benefit of its creditors generally or permits or suffers any process of execution or distress to be levied or its assets or judgment against it to remain unsatisfied for seven days;
  - (c) (being a company) has an order made or passes a resolution for winding up or is dissolved or has an administrative or other receiver appointed of any of its assets or any administration order made against it;
  - (d) (being an individual) dies or becomes bankrupt or is the subject of a receiving order or an administrative order; or
  - (e) (being a partnership) is dissolved.
14. CANCELLATION OF ORDER
- 14.1 The Seller will only accept cancellation of orders on the basis that the Buyer is prepared to pay cancellation costs to be determined by The Seller. These costs will normally depend on the length of time between the cancellation date and the due delivery date as well as on the purchase and/or storage of raw materials, semi-finished and finished products, and on tooling in connection with the execution of such orders.
15. LAW AND JURISDICTION
- 15.1 The proper law of the contract shall be English law and shall except where otherwise herein provided be dealt with by the court of England, save that The Seller shall be entitled to bring proceedings against the Buyer in the courts of the jurisdiction where the Buyer resides or carries on business.