

SPACEMAKER CABINS LIMITED

CONDITIONS OF SALE

1 DEFINITIONS

1.1 In these Conditions the following words shall have the following meanings:

“the Buyer” the person, firm or company who purchases the Goods from the Seller.

“Conditions” the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) any special terms and conditions agreed in writing between the Seller and the Buyer.

“Contract” the contract between the Seller 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 Seller (including any part or parts of them).

‘Intellectual Property Rights’ copyright, know-how, design rights, patents, trade marks and service marks (in each case whether registered or not) and all other intellectual property rights and any applications for the protection or registration of any of these rights and all renewals and extensions thereof existing in any part of the world whether now known or in the future created

“the Seller” Spacemaker Cabins Limited whose principal place of business is at Unit 6, c/o Ferndale Transport, Staithes Road, Hedon, Hull, HU12 8DX

“Trade Mark” such trade marks, names or logos as are used by the Seller on or in relation to the Goods at any time.

1.2 “In writing” shall be deemed to include email or facsimile.

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

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

2 FORMATION AND APPLICATION OF CONTRACT

2.1 All quotations of the Seller are subject to these Conditions. These Conditions shall govern the Contract to the exclusion of any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document and the Buyer waives any right which it might have to rely on such terms or conditions.

2.2 No variation to these Conditions or any representation about the Goods shall have effect unless expressly agreed in writing and signed by a duly authorised representative of the Seller.

2.3 Each order for Goods by the Buyer from the Seller shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions.

2.4 The Buyer shall ensure that the terms of its order are complete and accurate. Any variation in the Buyer’s order must be confirmed in writing (this will include the acceptance of additional charges resulting from changes in the Buyer’s requirements).

2.5 Any quotation given by the Seller is given not as an offer but as an invitation to treat. No Contract will come into existence until the Seller despatches to the Buyer an acceptance in writing following an order being placed by the Buyer.

2.6 All assurances given or terms discussed before order or arising from previous transactions shall not take effect as part of the Contract or as collateral warranty or Contract, nor shall they bind the Seller in any other way, unless repeated in the Seller's quotation and set out clearly in the Buyer's written order and accepted by the Seller in accordance with the provisions of Condition 2.5 above.

2.7 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, and waives any claim for breach of, any such representations which are not so confirmed.

3 DESCRIPTION

3.1 The description of the Goods shall be as set out in the Seller's quotation or, in the absence of quotation, in the Buyer's written order subject to acceptance by the Seller of any order in accordance with Condition 2.5 above.

3.2 Any description, information or drawing contained in any catalogue, brochure, price list, advertisement or communication or any statement made verbally or in writing by any of the agents or employees of the Seller shall not be construed to enlarge, vary or override in any way any of these Conditions and shall not form part of the Contract. They shall be regarded as published or made for the sole purpose of giving an approximate idea of the Goods described in or by them.

4 PRICES

4.1 Subject to the express provisions of any quotation, prices quoted by the Seller are valid for no longer than 30 days after despatch of quotation provided that the Seller has not previously withdrawn it. The price payable shall be the price referred to in the Seller's acceptance of the Buyer's order in accordance with Condition 2.5 of these Conditions.

4.2 The price for the Goods shall be exclusive of any value added tax which the Buyer shall pay in addition.

5 COST VARIATION

5.1 Quoted prices are subject to amendment before or after acceptance by the Seller to meet any rise in cost of particular materials or components specified by the Buyer.

5.2 Alterations

Amendments instituted by the Buyer and resulting in further work having to be done shall incur an additional charge appropriate to the extra work and any additional costs entailed.

5.3 Expedited Delivery

When work is rearranged at the Buyer's request for delivery sooner than the quoted time and accepted by the Seller, the Seller reserves the right to make a charge for overtime and any additional costs entailed.

6 PAYMENT

6.1 Payments shall be as follows: 50% of the total price shall be payable on receipt of pro forma invoice by the Buyer and no work shall be commenced by the Seller until such time as this payment is received by the Seller. The remaining 50% of the total price shall be payable by the Buyer on delivery. Time for payment shall be of the essence.

6.2 No payment shall be deemed to have been received until the Seller has received the full amount in cleared funds.

6.3 The Buyer shall make all payments due under the Contract in full without any deduction by way of exercise of lien, set-off, counterclaim, discount, abatement or otherwise.

6.4 All sums payable to the Seller under the Contract shall become due immediately upon termination of the Contract despite any other provision.

6.5 If the Goods are delivered in instalments, the Seller shall be entitled to invoice each instalment as and when delivery thereof has been made, and payment shall be due in respect of each such instalment in accordance with these payment terms.

6.6 If upon the terms applicable to any order, the price shall be payable by instalments or if the Buyer has agreed to take specified quantities of the Goods at specified times, a default by the Buyer in the payment of any due instalment or the failure to give delivery instructions in respect of any quantity of goods outstanding shall cause the whole of the balance of the Contract price to become due forthwith.

6.7 In the event of late payment by the Buyer if the Buyer does not remedy the breach in full within 7 days of notification by the Seller that the payment is overdue the Seller reserves the right to employ such third party services as it considers appropriate to obtaining payment of the amount outstanding, including interest as soon as possible and the Buyer shall be liable for all costs incurred by the Seller. Without limitation to the generality of the foregoing such costs may include all legal fees incurred, any commission charged by third parties for successful collection of the amount outstanding and all other costs directly attributable to the late or non-payment of an account duly owed to from the Buyer to the Seller.

6.8 If the Buyer fails to pay the Seller any sum due pursuant to the Contract the Buyer will be liable to pay interest to the Seller on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of the Seller's bankers accruing on a daily basis until payment is made, whether before or after any judgment.

7 DELIVERY

7.1 Any date quoted for delivery of the Goods by the Seller is an estimate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time of delivery shall not be of the essence of the contract. If no date has been quoted delivery will be within a reasonable time.

7.2 Subject to the other provisions of these Conditions, the Seller shall not be liable for any loss (including but not limited to loss of profit and consequential loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods, nor will any delay entitle the Buyer to terminate or rescind the Contract unless the delay exceeds 60 days over the estimated date of delivery.

7.3 Unless agreed otherwise delivery shall be ex works the Seller's premises. For the avoidance of doubt and loading, carriage, transport, insurance and unloading of the Goods shall be at the cost and responsibility of the Buyer. Where it is agreed that delivery shall be made by an independent carrier delivery to the carrier at the Seller's premises shall be delivery to the Buyer.

7.4 The description of any consignment of Goods as recorded by the Seller upon despatch from the Seller's place of business shall be conclusive evidence of the Goods received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

7.5 The Buyer shall note any claim for any shortfall in the delivery of Goods and/or damage to Goods on the delivery schedule at the time of delivery and shall confirm such claims in writing to the Seller within three working days from the date of delivery. Compliance with this requirement shall be a condition precedent to any claim for short delivery.

7.6 Any liability of the Seller for non-delivery of the Goods shall be limited to delivering the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

7.7 If short delivery does take place, the customer undertakes not to reject the Goods but to accept the Goods delivered as a part performance of the Contract. Any liability of the Seller for any shortfall in the delivery of the Goods shall be limited to making up the shortfall in the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

7.8 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery or the Seller is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions for delivery the Seller shall be entitled to store the Goods until actual delivery and the Buyer will be liable for all related costs and expenses (including without limitation storage and insurance).

7.9 Where the Goods are delivered in instalments, each delivery shall constitute a separate Contract. Any failure by the Seller to deliver any one of more of the instalments in accordance with these Conditions 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.

8 RISK AND PROPERTY

8.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the point of delivery.

8.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these conditions, 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, including any interest on such sums.

8.3 Where under any Contract delivery takes place prior to receipt by the Seller of all the sums due and payable under the Contract as referred to in Condition 8.2 of these Conditions then, until ownership of the Goods has passed to the Buyer in accordance with Condition 8.2, the Buyer shall:

8.3.1 hold the Goods on a fiduciary basis as the Seller's bailee;

8.3.2 store the Goods (at no cost to the Seller) separately to other goods of the Buyer or any third party in a way that they remain readily identifiable as the Seller's property;

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

8.3.4 maintain the Goods in satisfactory condition insured for their full price against all risks and hold the proceeds of insurance on trust for the Seller and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

8.4 The Buyer may resell the Goods which come into its possession before ownership has passed to it solely on the condition that any sale shall be on the Buyer's own behalf in the ordinary course of business at full market rate and the Buyer shall deal as principal when making such sale. The Buyer shall account to the Seller from the proceeds of sale of the Goods such amount as is outstanding and due to the Seller to enable 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, including any interest on such sums. Where the sums available from such sale are insufficient to make payment in full to the Seller of all sums due from the Buyer to the Seller the Buyer shall remain liable for payment to the Seller of any such outstanding amount, including interest.

8.5 The Buyer's right to possession of the Goods shall terminate immediately and all sums shall become due and payable immediately if:

8.5.1 the Seller requires the Buyer to deliver up the Goods under Condition 8.8; or

8.5.2 the Buyer has a bankruptcy order made against it or makes an arrangement or composition with its creditors or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors or (being a body corporate) convenes a meeting of creditors (whether formal or informal) or enters into liquidation (whether voluntary or compulsory), or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

8.5.3 the Buyer encumbers or in any way charges any of the Goods or suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between the Seller and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade.

8.7 Should the Buyer alter the Goods by subjecting them to any manufacturing process or incorporating them into another product or mixing them in any way then the resulting product ("altered Goods") will pass into the ownership of the Seller until payment due under all Contracts between the Seller and the Buyer has been made in full and all the Seller's rights and Buyer's obligations hereunder shall extend to the altered Goods.

8.8 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, the Buyer grants the Seller, its agents and employees an irrevocable licence to enter any premises where the Goods are or may be stored to recover them.

8.9 The Buyer shall not 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 prejudice to any other right or remedy of the Seller) forthwith become due and payable.

8.10 The Seller may maintain an action against the Buyer for payment of the agreed price notwithstanding that the title in the Goods has not passed to the Buyer from the Seller.

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

9 WARRANTIES

9.1 The Seller warrants (subject to the other provisions of these Conditions) that upon delivery the Goods will comply with the Seller's specification for the Goods.

9.2 The Seller shall not be liable for a breach of the warranty in Condition 9.1 if:

9.2.1 the Buyer does not give notice in writing of any defect to the Seller within 5 working days of delivery and the Seller is not given a reasonable opportunity of examining the Goods; or

9.2.2 the Buyer makes any further use of the Goods after giving notice of any defect unless the defect is of a minor nature and the Buyer does not make any use which causes any worsening of the defect; or

9.2.3 the defect arises because of the acts, omissions, negligence or default of the Buyer, its servants or agents including in particular but without prejudice to the generality of the foregoing, any failure by the Buyer to comply with any recommendations of the Seller as to location, use or handling of the Goods; or

9.2.4 the Buyer alters the Goods or any part of them without the consent in writing of the Seller.

9.3 Subject to Condition 9.2, if any of the Goods do not conform with the warranty in Condition 9.1 the Seller shall at its option replace the defective part and shall have no further liability for breach of the warranty in Condition 9.1 in respect of such Goods. If the Seller so requests, the Buyer shall, at the Seller's reasonable expense, return the Goods or the parts of such Goods which are defective to the Seller.

9.4 In the case of Goods not of the Seller's manufacture, the Seller will use its reasonable efforts to pass onto the Buyer any benefits obtainable under any warranty given by the Seller's supplier provided that the Goods have been accepted and paid for in full.

9.5 Where the Goods are for delivery by instalment any defect in any instalment shall not be a ground for cancellation of the remaining instalments and the Buyer shall be bound to accept delivery thereof.

9.6 Material(s) used may vary from those detailed in the Contract, but in such case will be the nearest equivalent available either from the same or an alternative source of supply.

10. LIMITATION OF LIABILITY

10.1 Subject to Condition 9, the following provisions set out the entire liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of any:

10.1.1 breach of these Conditions;

10.1.2 use made or resale by the Buyer of any of the Goods; and

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

10.2 Subject as expressly provided in these Conditions, 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 and other terms implied by statute or common law are excluded to the fullest extent permitted by law.

10.3 Nothing in these Conditions excludes or limits the liability of the Seller:

10.3.1 for death or personal injury caused by the Seller's negligence;

10.3.2 for defective products under section 2(3) of the Consumer Protection Act 1987;

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

10.3.4 for fraud or fraudulent misrepresentation.

THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF
CONDITION 10.4

10.4 Subject to Conditions 10.2 and 10.3:

10.4.1 the Seller shall not be liable to the Buyer for economic loss, loss of profit, goodwill, business opportunity or production downtime or any type of indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract; and

the Seller'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 the price of the Goods the subject of the claim.

11 SAMPLES

11.1 All samples, drawings, descriptive matter and advertising issued by the Seller and any descriptions or illustrations contained in the Seller's quotations, 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 and the sale shall not be a sale by sample unless expressly said to be so in the Contract.

12. EVENTS BEYOND THE SELLER'S CONTROL

12.1 The Seller shall not be liable to the Buyer or deemed to be in breach of the Contract by reason of 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: acts of God, fire, explosion, failure of public services, epidemic, shortages of materials, failures of suppliers to supply materials, defective materials, delays in transport, strike, lock-out or other form of industrial action; restraints or delays affecting carriers, civil commotion, riot, act of terrorism, or war.

13 SELLER'S INTELLECTUAL PROPERTY

13.1 The Buyer shall have no rights in respect of the Trade Marks or other Intellectual Property Rights of the Seller and the Buyer hereby acknowledges that it shall not acquire any rights in respect thereof and that all such rights (and goodwill) are and shall remain vested in the Seller.

13.2 The Buyer shall not use the Seller's name, logo or other intellectual property rights in advertising or publicity without the Seller's prior written consent.

13.3 The Buyer shall not alter remove or tamper with any of the Trade Marks or other means of identification where these are used on or in relation to the Goods or use any of the Trade Marks in any way which might prejudice their distinctiveness or validity or the goodwill of the Seller.

14 ASSIGNMENT

14.1 The Buyer shall not assign the Contract or any part of it without the prior written consent of the Seller.

14.2 The Seller shall be entitled to assign or sub-contract the Contract or any part of it to any person, firm or company.

15 GENERAL

15.1 If any provision of the Contract is found by any 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 remain in full force and effect.

15.2 Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

15.3 Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

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

15.5 Nothing in these Conditions confers on any third party any benefit or any right to enforce any of these Conditions.

16 NOTICES

16.1 Any notices required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

17 LAW

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