

# Terms And Conditions



## DEFINITIONS:

In these Conditions, the following definitions apply:

- **"Buyer"** means the person or firm who purchases the Goods from the Company;
- **"Call-Off Orders"** are those orders placed by customers who place orders in bulk but require delivery in stages over a period of time;
- **"the Company"** means Fraser Anti-Static Techniques Limited (company number 02642741);
- **"the Contract"** means the contract between the Company and the Buyer for the sale and purchase of the Goods in accordance with these Conditions;
- **"Conditions"** means the terms and conditions set out in this document as amended from time to time in accordance with clause 19.2;
- **"Force Majeure Event "** has the meaning given in clause 13;
- **"Goods"** means the goods (or any part of them) set out in the Order;
- **"Order"** means the Buyer's order for the Goods, whether set out in the Buyer's purchase order form, or in the Buyer's written acceptance of a Quotation, or placed by fax, email or telephone call to the Company, as the case may be;
- "person" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's representatives, successors or permitted assigns;
- **"Premises"** means the Company's premises at Scotts Business Park, Bampton, Devon, EX16 9DN, or such other premises as the Company may operate from;
- **"Quotation"** means any written quotation given by the Company or its agents or representatives to the Buyer; and
- **"Specification"** means any specification for the Goods, including any related plans and drawings that are supplied to the Company by the Buyer, or produced by the Company and agreed in writing by the Buyer.

## 1. ORDERS:

- 1.1. All Orders placed with (the Company shall be accepted and executed solely in accordance with the conditions set out below whether or not the Buyer's conditions or purchase order or acceptance purports to disclaim or negate any of the following conditions, and to the exclusion of any other terms which are implied by trade, custom, practice or course of dealing. No variations or additions to these conditions of sale will be recognised by the Company unless specifically accepted and confirmed in writing by the director of the Company.
- 1.2. The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions. The Buyer shall ensure that the terms of the Order and any relevant Specification are complete and accurate. Where the Buyer provides a Specification, the Order is not made until all of the details and drawings required by the Company in order to be able to proceed are received by the Company.
- 1.3. The Company may refuse to accept and execute any Orders placed with it.
- 1.4. A Quotation shall not constitute an offer, and unless previously withdrawn, shall be valid only for the specific period shown on the Quotation. All Quotations made and all Orders taken by representatives or agents of the Company remain subject to acceptance by the Company. Orders are accepted at the time that the Company's written acknowledgement ("the Order Acknowledgement") is despatched to the Buyer, at which point the Contract shall come into existence.
- 1.5. Any agreed Call Off Orders will be valid for a 12 month period ONLY. This period will commence from the initial date stated on the first Order Acknowledgement. Once this 12 month period has expired, any outstanding quantities of goods will be immediately invoiced to the customer, and the Buyer will be obliged to take delivery of and pay for them in accordance with the terms of this agreement.
- 1.6. The Company also reserves the right to invoice and ship goods held on stock on the Buyer's behalf in the event of a Call-Off Order cancellation.

## 2. PRICES:

- 2.1. All Quotations are offered based upon current known costs but all Orders accepted are invoiced at prices ruling on the day of acceptance of the Order. Unless otherwise specified all prices are for delivery at the Premises. Packaging, insurance, and carriage costs shall be in addition to the quoted prices.
- 2.2. The price of the Goods is exclusive of amounts in respect of Value Added Tax (VAT). The Buyer

shall, on receipt of a valid VAT invoice from the Company pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Goods. The Company may invoice the Buyer for the Goods on or at any time after the completion of delivery.

### **3. DELIVERY:**

- 3.1. Goods ordered will be despatched on the delivery date stated in the Quotation wherever possible, however date of delivery cannot be guaranteed. Delivery dates given by the Company are approximate only and the time for delivery is not of the essence. Any time for delivery mentioned within a Quotation shall date from the receipt by the Company of the Buyer's Order. In particular but without prejudice to the generality of the foregoing, forward delivery dates are given in good faith.
- 3.2. The Buyer shall collect the Goods from the Company's Premises or such other location as may be advised by the Company prior to delivery (Delivery Location) within 3 Business Days of the Company notifying the Buyer that the Goods are ready. Delivery of the Goods shall be completed when they are collected from the Premises or on the Goods' arrival at the Delivery Location as the case may be.
- 3.3. The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods. In all such cases the Company may suspend orders or withdraw Quotations.
- 3.4. If the Company fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Under no circumstances shall the Company be liable for any consequential loss or damage arising from delay in delivery or by any failure to deliver.
- 3.5. If the Buyer fails to take delivery of the Goods or any part of them within 3 Business Days of the due date / Company notifying the Buyer that the Goods are ready, or fails to provide any instruction documents licences or authorisations required to enable the Goods to be delivered on the due date then, except where such failure or delay is caused by a Force Majeure Event or the Company's failure to comply with its obligations under the Contract:
  - delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Company notified the Buyer that the Goods were ready; and
  - the Company shall be entitled upon giving written notice to the Buyer to store or arrange for the storage of the Goods until delivery takes place, upon which risk in the Goods shall pass to the Buyer, and the Company shall charge the Buyer for all related costs and expenses (including insurance).
- 3.6. If 10 Business Days after the Company notified the Buyer that the Goods were ready for delivery the Buyer has not taken delivery of them, the Company may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Buyer for any excess over the price of the Goods or charge the Buyer for any shortfall below the price of the Goods.
- 3.7. The Buyer shall not be entitled to reject the Goods if the Company delivers up to and including 5% more or less than the quantity of Goods ordered[, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Buyer that the wrong quantity of Goods was delivered.
- 3.8. The Company may deliver the Goods by instalments, which shall be invoiced and paid for separately. For the purposes of the entitlement to reject the Goods only, each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment. This clause 3.8 also applies to Call-Off Orders.
- 3.9. Risk on the Goods passes when they are delivered to the Buyer.
- 3.10. Delivery shall be effected and the risk shall pass to the Buyer, when the Goods are handed over to the Buyer, or his authorised agent or any person whom the person effecting delivery reasonably assumes to be so authorised or in the event of delivery being undertaken by an independent contractor, when the goods shall be handed over to the independent contractor or his authorised agent.

### **4. QUALITY:**

- 4.1. All reasonable care will be taken by the Company to ensure that goods equipment and services conform to the Company's standards or to the appropriate specification within the limits of reasonable commercial accuracy and tolerance and are of good materials and workmanship.
- 4.2. Provided that there is no contravention of clause 4.3 below, if the Buyer gives notice in writing to the Company within 12 months of discovery that some or all of the Goods are not of satisfactory

quality, and the Company is given a reasonable opportunity to inspect such Goods, and the Buyer, on being asked to do so by the Company, returns the Goods to the Company's premises at the Buyer's own cost, then the Company shall, at its discretion, repair or replace the said Goods free of charge to the Buyer.

4.3. Clause 4.2 shall not apply, and the Company will not be liable for any defect if:

- The Goods have been overloaded or misused
- The Goods have not been installed in accordance with the wiring instructions provided and/or the Buyer is not given access to verify the same.
- An electrical supply other than that specified has been used.
- In any other way the Buyer has failed to follow the Company's oral or written instructions as to the storage, installation, use and maintenance of the Goods or good trade practice
- dismantling or repairs have been made to the Goods otherwise than by the Company or its authorised agent.
- The defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal storage or working conditions.
- The Buyer makes further use of the Goods after giving notice in accordance with Clause 4.2
- The Goods are not returned carriage paid to the Company or its authorised agent.

4.4. The Company will not accept any liability whatsoever for consequential loss or damage which may in any way arise out of the Goods, equipment or services supplied or any defects in them.

4.5. Except as provided in this clause 4, the Company shall have no liability to the Buyer in respect of defective products.

4.6. Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

4.7. These Conditions shall apply to any repaired or replacement Goods supplied by the Company.

## **5. INDEMNITY:**

5.1. The Buyer shall indemnify the Company against all claims in respect of any loss injury or damage sustained by a third party howsoever caused after receipt of Goods by the Buyer or after the property has passed from the Company whichever is the earlier.

## **6. PAYMENT FOR GOODS AND SERVICES:**

6.1. The Buyer shall pay each invoice in full and in cleared funds by the end of the month following the month in which the invoice was dated. Time of payment is of the essence.

6.2. The Buyer shall pay all amounts due under the Contract in full, without any deduction or withholding except as required by law and the Buyer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Company may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Company to the Buyer.

6.3. In the event of any payment by the Buyer becoming overdue, the Company reserves the right to charge interest on the invoice price or the balance at the compound rate of 3% over National Westminster Bank Plc base rate from time to time, per calendar month calculated on a daily rate from the time the invoice becomes overdue until final payment, whether before or after judgment. The Buyer shall pay the overdue amount, together with the interest payable. Should payment become more than 28 days overdue, the Company reserves the right to pass the matter to collection agents and to charge any costs, including the collection agent's fees, back to the customer.

## **7. VALUE ADDED TAX:**

7.1. Any omission or error in the rate of tax cannot be taken to mean that Value Added Tax is not payable or that the stated rate is correct and where chargeable to Value Added Tax, all Quotations shall be construed on the basis that Value Added Tax is to be charged thereon whether the same is shown or not.

## **8. ADVERTISING:**

8.1. The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that

it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Samples, drawings, catalogues, price lists and other advertising matter are only an indication of the type and range of goods, equipment and services offered by the Company and no particulars therein shall be binding on the Company and they shall not form part of any order or contract between the Company and the Buyer.

**9. SPECIFICATION BY THE BUYER:**

9.1. The Buyer shall indemnify and keep indemnified the Company against all claims costs damages and expenses incurred by or for which the Company may become liable as a result of the carrying out of any work required to be done on or to the Goods in accordance with the requirements or specifications of the Buyer.

**10. DEFAULT:**

10.1. If the Buyer makes default in any payment or commits any breach of the terms and conditions of the order or agreement or suffers distress or execution or becomes insolvent or commits any act of bankruptcy or enters into any arrangement or composition with his creditors or goes or is put into liquidation (other than solely for amalgamation or reconstruction) or if a Receiver is appointed over any part of the Buyer's business, the Company may without prejudice to any rights which may have accrued or that may accrue to it as its option inter alia:

- Require payment in advance for all or any deliveries or
- Suspend any further deliveries until such default or breach is rectified or
- Cancel the order and/or
- Cancel or procure cancellations of any other orders which the Buyer has placed with the Company so far as any Goods remain to be delivered there under
- Refuse to execute any order or agreement.

**11. LICENCE AND CONSENTS:**

11.1. If any licence or consent of any Government or authority shall be required for the purchase or importation of the Goods by the Buyer the Buyer shall obtain the same at its own expense and if necessary or so required provide evidence of the same to the Company on demand.

**12. TITLE:**

12.1. Notwithstanding delivery and the passing of risk title shall remain with the Company and shall not pass to the Buyer until the amount due under the invoice for them has been paid for in full.

12.2. Until title passes the Buyer shall hold the Goods as bailee for the Company and shall:

- store or mark the Goods so that they can at all times be identified as the property of the Company.
- not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- notify the Company immediately if it becomes subject to any of the events listed in clause 10 ; and
- give the Company such information relating to the Goods as the Company may require from time to time,

12.3. If before title to the Goods passes to the Buyer, the Buyer becomes subject to any of the events listed in clause 10, or the Company reasonably believes that any such event is about to happen and notifies the Buyer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Company may have, the Company may at any time require the Buyer to deliver up the Goods. If the Buyer fails to do so promptly, the Company may enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them. without being liable for any damage caused by so doing and use or sell all or any of the Goods and so terminate (without any liability to the Buyer) the Buyer's right to use or sell or otherwise deal in them.

12.4. The Company shall be entitled to maintain an action for the price of any Goods notwithstanding that title in them has not passed to the Buyer.

**13. FORCE MAJEURE:**

13.1. The Company shall not be liable for any failure or delay in performing its obligations under the

Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

**14. LIMITATION OF LIABILITY:**

14.1. Nothing in these Conditions shall limit or exclude the Company's liability for:

- subcontractors (as applicable);
- fraud or fraudulent misrepresentation; or
- breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- defective products under the Consumer Protection Act 1987; or
- any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.

Subject to clause 14.1 :

- the Company shall not be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or indirect or consequential loss arising under or in connection with the Contract (including any losses that may result from a deliberate breach of the Contract by the Company, its employees, agents or subcontractors; and
- the Company's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, including losses caused by a deliberate breach of the Contract by the Company, its employees, agents or subcontractors, to 50% of the price of the Goods.

**15. ASSIGNMENT AND SUBCONTRACTING:**

15.1. The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

15.2. The Buyer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Company.

**16. LAW:**

16.1. This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

**17. SEVERANCE:**

17.1. If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

17.2. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

**18. WAIVER:**

18.1. A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

**19. THIRD PARTY RIGHTS:**

19.1. A person who is not a party to the Contract shall not have any rights under or in connection with

it.

- 19.2. Any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Buyer.

**20. NOTICES:**

- 20.1. Any notice required to be given under or in connection with the Contract shall be in writing, and shall be deemed to have been duly given if sent by pre-paid first class post, recorded delivery, or commercial courier, addressed to the party concerned at its principal place of business or last known address.
- 20.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the Premises (for the Company) or the address of the Buyer given in the Order if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 20.3. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

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