

## Terms and Conditions of Sale for TOX PRESSOTECHNIK LTD.

### 1. DEFINITIONS AND INTERPRETATIONS

1.1. In these Conditions:  
 "TOX" means TOX PRESSOTECHNIK Ltd  
 "Buyer" means the person firm or company so described in the order;  
 "Conditions" means the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes any varied or special terms and conditions agreed in writing between TOX and the buyer;  
 "Contract" means the contract of the sale and supply of the goods and/or the supply and performance of the services subject to these conditions;  
 "Goods" means the goods (including any installment of the goods or any part of them including service) described in the order;  
 "Order" means any written quotation of TOX which is accepted by the buyer, or any written order of the buyer which is accepted by TOX for the supply of goods or performance of services;  
 "Price" means the fixed price (unless otherwise stated) of the goods and/or the charge for the services;  
 "Specification" includes any plans, drawings, data or process or other technical requirements or information to the goods or services agreed between the parties.

### 2. GENERAL BASIS OF SALE

2.1. These conditions apply to all Contracts for sale of goods and service by TOX.  
 2.2. The placing of an order by the buyer for the goods or service shall constitute acceptance of these conditions notwithstanding any other terms and conditions subject to which any quotation by TOX is accepted or purported to be accepted or any such order is made or purported to be made by the buyer.  
 2.3. No Order submitted by the buyer shall be deemed to be accepted by TOX unless and until confirmed in writing by TOX's authorised representative.  
 2.4. No variation to these conditions shall be binding unless agreed in writing between the authorised representatives of the buyer and TOX.  
 2.5. The buyer acknowledges that all advice, instructions or recommendations of TOX rely and are dependent upon all the information and technical background given to TOX by the buyer.  
 2.6. Where the buyer does not specify a particular process or measurement correctly, TOX will not be liable for any defect or failure of the process or entitle the buyer to withhold payment if TOX have dispensed with such inspection on request of the buyer for whatever reason.

### 3. ORDERS AND SPECIFICATIONS

3.1. The buyer shall be responsible to TOX for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the buyer, and for giving TOX any necessary information relating to the goods pursuant to clause 2.5 or otherwise within a sufficient time to enable TOX to perform the contract in accordance with its terms.  
 3.2. The quantity, quality, description, functionality, facilities, functions, capacity and description of the goods shall, subject as provided in these conditions, be as specified in the order and any applicable specification as set out either in TOX's quotation or any documents referred to in the order. In the event of conflict, preference will be given to TOX's terms.  
 3.3. All drawings, illustrations or any product literature or other publications of TOX must be regarded as approximations only.  
 3.4. Any specification supplied by TOX to the buyer in connection with the contract, together with all intellectual property rights in the specification, shall be the exclusive property of TOX. The buyer shall not disclose to any third party or use any such specification except to the extent that it is or becomes public knowledge through no fault of the buyer, or as required for the purpose of the contract. Upon request of TOX the buyer will return to TOX any documents (or other media) in or upon which any part of the specification has been supplied by TOX and shall not retain copies thereof.  
 3.5. If the goods are to be manufactured or any process is to be applied to the goods by TOX in accordance with a specification submitted by the buyer, the buyer shall indemnify TOX against all loss, damages, costs and expenses awarded against or incurred by TOX in connection with any claim for infringement of any intellectual property rights of any other person which results from TOX's use of the specification so submitted by the buyer.  
 3.6. TOX reserves the right to make any changes in the specification of the goods which are required to conform with any statutory or other regulatory requirements applicable to the goods.  
 3.7. No order which has been accepted by TOX may be cancelled by the buyer except with the agreement in writing of TOX and on terms that the buyer shall indemnify TOX in full against all loss, costs, damages, charges and expenses incurred by TOX as a result of cancellation.  
 3.8. No order which has been accepted by TOX may be changed or altered by the buyer except with the agreement in writing of TOX and payment by the buyer of a 10% surcharge (calculated as 10% of the price) to TOX.

### 4. PRICE OF THE GOODS

4.1. The price shall be TOX's quoted price. The price quoted is valid for 30 days only, after which time they may be altered by TOX without giving notice to the buyer.  
 4.2. TOX reserves the right, by giving notice to the buyer at any time before delivery, to increase the price to reflect any increase in the cost to TOX which is due to any factor beyond the control of TOX, any change in delivery dates, quantities or the specifications which is requested by the buyer, or any delay caused by any instructions of the buyer or failure of the buyer to give TOX adequate or accurate information or instructions.  
 4.3. Except as otherwise stated under the terms of the order and unless otherwise agreed in writing between the buyer and TOX, the price is given by TOX on an ex works basis (Weingarten, Germany), and where TOX agrees to deliver the goods otherwise than at TOX premises, the buyer shall be liable to pay TOX's charges for transport, packaging and insurance (unless otherwise stated in the quote).  
 4.4. The price is exclusive of any applicable value added tax, which the buyer shall be additionally liable to pay to TOX.

### 5. TERMS OF PAYMENT

5.1. Subject to any special terms agreed in writing between the buyer and TOX, TOX shall be entitled to invoice the buyer for the price on or at any time after delivery of the goods or the buyer wrongfully fails to take delivery of the goods, in which event TOX shall be entitled to invoice the buyer for the price at any time after TOX has notified the buyer that the goods are ready for collection or (as the case may be) TOX has tendered delivery of the goods.  
 5.2. The buyer shall pay the price within 30 days of the date of TOX's invoice unless otherwise notified by TOX to the buyer in writing, and TOX shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the goods has not passed to the buyer see 5.4 for payment failure procedure. The time of payment of the price shall be of the essence of the contract. Receipts for payment will be issued only upon request.

5.3. If the buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to TOX, TOX shall be entitled to:  
 5.3.1. Cancel the contract or suspend any further deliveries to the buyer;  
 5.3.2. Appropriate any payment made by the buyer to such of the goods (or goods and/or services supplied under any other contract between the buyer and TOX) as TOX may think fit (notwithstanding any purported appropriation by the buyer); and  
 5.3.3. Charge the buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 8 per cent per annum above HSBC Bank Plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest) before and after judgment.  
 5.4. If the buyer fails to make a payment on the due date written notification will be given to the buyer informing them of a missed payment, 14 days after the first notification a final reminder will be sent of which the buyer will have 14 days until TOX may start legal proceedings (unless agreed otherwise in writing)

### 6. DELIVERY

6.1. Delivery of the goods shall be made to the invoicing address unless otherwise stated within the quote. In the event of a change of delivery address TOX reserve the right to increase delivery charges.  
 6.2. Upon payment of delivery TOX will deliver the goods FCA UK Mainland unless otherwise agreed. The buyer shall upon request by TOX nominate a carrier or vessel willing to receive the goods within 30 days from date of TOX's request. If no carrier is nominated, a preferred TOX carrier shall be used.  
 6.3. Any dates quoted for delivery of the goods are approximate only and TOX shall not be liable for any early or late delivery of the goods however caused.  
 6.4. Where the goods are to be delivered in installments, each delivery shall constitute a separate contract and failure by TOX to deliver any one or more of the installments in accordance with these conditions or any claim by the buyer in respect of any one or more installments shall not entitle the buyer to treat the contract as a whole as repudiated.  
 6.5. If TOX fails to deliver the goods (or any installment), TOX'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.  
 6.6. If the buyer fails to take delivery of the goods or fails to give TOX adequate delivery instructions at the time stated for delivery (otherwise than by reason of any Force Majeure or by reason of TOX's fault) then, without prejudice to any other right or remedy available to TOX, TOX may:  
 6.6.1. Store the goods until actual delivery and charge the buyer for the reasonable costs (including insurance) of storage; or  
 6.6.2. 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 or charge the buyer for any shortfall below the price under the contract.  
 6.7. Any charges quoted for delivery of the goods including transport, packaging and insurance are approximate only and TOX shall not be liable for any changes to the charges quoted however caused.

### 7. RISK AND PROPERTY

7.1. Risk of damage to or loss of the goods shall pass to the buyer when the shipment has left our works:  
 7.1.1. In the case of goods to be delivered at TOX's premises, at the time when TOX 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 TOX's premises, at the time of delivery or, if the buyer wrongfully fails to take delivery of the goods, the time when TOX has tendered delivery of the goods.  
 7.2. The property in the goods shall not pass to the buyer until TOX has received in cash or cleared funds payment in full of the price and all other goods agreed to be sold by TOX to the buyer for which payment is then due.

### 8. BUYERS OBLIGATIONS

The buyer shall be responsible at its own expense for:  
 8.1. The availability and supply of adequate supplies of air, electricity, and other necessary utilities;  
 8.2. The operation of its own plant and machinery including all health and safety advice for the product that has been supplied.  
 8.3. The buyer shall be obliged to take care of the goods under distraint. Should any maintenance work be required, the buyer shall be in charge of the maintenance work at regular intervals, the buyer agrees to inform us immediately on any seizure of the delivered goods by third parties, as, e.g. attachment, damage or destruction  
 8.4. Inform TOX within five days in writing of any material changes in the site design, materials of construction, operating conditions and uses or requirement of, or in respect to, the system(s) which are used together with or to which the goods are applied;  
 8.5. The buyer shall inform us immediately on any ownership change of the objects of our delivery or the change of buyer business place.

### 9. WARRANTIES

9.1. Subject to the conditions set out in clauses 8, 9 and 10 TOX warrants that the goods will correspond with the specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of their initial use or 12 months from delivery, whichever is the first to expire or such other period specified in the order or subsequently agreed between the parties in writing.  
 9.2. The above warranty is given by TOX subject to the following conditions:  
 9.2.1. TOX 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. TOX shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, irregular maintenance, failure to follow TOX's instructions (whether oral or in writing), misuse or alteration or repair of the goods / material without TOX's approval;  
 9.2.3. TOX shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price 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 TOX, 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 TOX.  
 9.3. TOX will not be liable for any loss whether direct or indirect or consequential or loss of profit or any damage (unless agreed in writing at the order stage). The goods supplied will not be covered by any warranties if:  
 9.3.1. Any inaccurate or insufficient information or technical background has been given to TOX at or before the order stage;  
 9.3.2. Any failure to comply strictly with the instructions, advice or recommendations given to the buyer by TOX;  
 9.3.3. Any use or application of the goods for any purpose other than those detailed in the specification or advised by TOX; or  
 9.3.4. Any breach of the obligations set out in clause 8;  
 9.3.5. Any failure to comply with any applicable legislation or any guidelines issued by the Health and Safety Executive or other appropriate regulatory authority current at the time of use of the goods by the buyer or any of its employees, agents or sub-contractors.

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9.4. Any parameters given in respect of the performance of the goods are based on the design parameters set out in the specification and TOX will not be liable for any failure of the goods to achieve these parameters unless the operating conditions for the goods are the same as set out in the specification.

9.5. 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 or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

9.6. 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 Conditions.

9.7. Any claim by the buyer which is based on any defect in the quantity, quality or condition of the goods or their failure to correspond with the specification shall be notified to TOX within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the buyer does not notify TOX accordingly, the buyer shall not be entitled to reject the goods and TOX shall have no liability for such defect or failure.

9.9. Where any valid claim in respect of any of the goods which is based on any defect in the quality or condition of the goods or their failure to meet the specification is notified to TOX in accordance with these Conditions, and provided the goods are returned to TOXs premises carriage paid TOX will at its option either replace the goods (or the part in question) free of charge or refund to the buyer the price of the goods (or a proportionate part of the price), but TOX shall have no further liability to the buyer.

9.10. Except in respect of death or personal injury caused by TOXs negligence, TOX 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 any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of TOX, its employees or agents or otherwise) which arise out of or in connection with the supply of the goods or their use or resale by the buyer and the entire liability of TOX under or in connection with the Contract shall not exceed the price, except as expressly provided in these conditions.

## **10. INSOLVENCY OF BUYER**

10.1. If the buyer makes any voluntary arrangement with its creditors or becomes bankrupt or becomes subject to an administration order or goes into liquidation or TOX reasonably apprehends that any of the events mentioned above is about to occur then TOX shall be entitled to 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.

## **11. GENERAL**

11.1. TOX 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 TOXs obligations in relation to the goods, if the delay or failure was due to any cause beyond TOXs reasonable control.

11.2. Any notice required or permitted to be given by either party to the other under these conditions shall be in writing addressed to that party as its registered office or principle 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.

11.3. No waiver by TOX of any breach of the Contract by TOX shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.4. If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

11.5. The Contract and its performance shall be governed by the laws of England, and TOX agrees to submit to the non-exclusive jurisdiction of the English court