

## **TERMS OF SALE OF CLEAR EDGE INDIA (“the Seller”)**

### **Precedence**

1. These terms will apply to all contracts involving the supply of goods by the Seller to the Buyer or made with any other persons and/or agents at the Buyer’s request and supersedes all previous agreements, understandings, negotiations and communications on that subject matter.
2. If there is any inconsistency between these terms and any order submitted by the Buyer or any other arrangement between the parties, these terms will prevail unless otherwise expressly agreed to in writing by the Seller.
3. Where the Buyer issues a subsequent purchase order or other documentation with additional terms and conditions, the Buyer’s additional terms and conditions will not be applicable to the sale of the goods unless the Buyer’s terms and conditions have been expressly agreed to in writing by the Seller. The supply of goods as required by the Buyer’s purchase order will not be deemed to be an acceptance on the part of the Seller to supply the goods on the Buyer’s terms and conditions.

### **No Credit Obligation**

4. Without prejudice to the Seller’s rights, the acceptance of any credit application by the Seller does not create any obligation on the Seller to provide credit. Accordingly all credit is provided at the Seller’s absolute discretion and may be withdrawn by the Seller at any time. In addition, the Seller will be entitled at any time to withhold delivery of any goods where an order has been accepted if it considers the Buyer’s creditworthiness to be unsatisfactory.
5. Orders once accepted cannot be cancelled by the Buyer except by agreement in writing by the Seller and upon payment to the Seller of such amount as may be necessary to indemnify the Seller against all losses (including loss of profit) resulting from the said cancellation.

### **Price**

6. Any estimate or quoted price does not include any sales tax and other taxes and duties which may be applicable. Where the delivery term is ex works, and the Buyer requires insurance or freight and such, the costs involved in providing insurance, freight and such amounts will be paid by the Buyer in addition to the price.
7. The Seller may also charge the Buyer where specifications, scoping or rework results in additional cost, work and or liability for the Seller or the Buyer alters the specifications after the date of the order confirmation by the Seller.
8. Pricing subject to pass-through of any levied tariffs or surcharges. The Buyer is bound to pay the price current at the time of order confirmation by the Seller.

### **Payment**

9. Time for payment is of the essence.
10. Where goods are supplied by the Seller on credit and no alternative payment terms have been agreed to by the Seller in writing, payment of cleared funds is due in full 30 calendar days from date of invoice. If an Event of Default occurs (as defined in clause 0), payment is due immediately.
11. The Buyer may not withhold payment or make any deductions from any amount owing without the Seller’s prior written consent.

## Delivery

12. Delivery will be as per the delivery terms as confirmed by the Seller's order confirmation.
13. The Buyer shall inspect the goods forthwith on delivery. No claim for short or wrongful delivery, non-conformity with specification or other overt breach of contract will be valid or entertained by the Seller unless received in writing by the Seller within 14 days after date of delivery.
14. The Seller may deliver the goods by instalments where practical.
15. No goods shall be returned without the express written of the Seller. Goods specially made to the Buyer's specific requirements are not returnable. Where the Seller authorises the return of any goods, any freight or carriage incurred shall be for the account of the Buyer.
16. If the Seller fails to deliver the goods or makes defective delivery of part of the goods, the Buyer is not entitled to cancel the contract but will provide the Seller with 14 days' notice to rectify the delivery or defective workmanship.
17. Any time stated for delivery of the goods is a reasonable estimate only. The Seller is not liable for any delay in delivery or non-delivery of the goods caused by any factor beyond the Seller's reasonable control.
18. In addition to the Buyer's obligation to accept delivery of and pay for the quantity of goods ordered, the Seller may also in its discretion require the Buyer to accept delivery of and pay for +/- 10% of the quantity of rolled goods ordered and delivered.
19. If the Buyer refuses to accept delivery of any of the goods, the Seller may charge the Buyer for any additional costs incurred as a result, including storage and transportation costs.

## Risks

20. The risk of any loss, damage to or deterioration of the goods passes to the Buyer upon delivery as per the delivery terms set out on the Seller's order confirmation.
21. The Buyer will insure the goods for their full replacement value for the benefit of the Seller until ownership of the goods has passed to the Buyer.

## Ownership

22. Ownership of the goods remains with the Seller and does not pass to the Buyer until the Buyer pays the full amount owing for the goods and any other moneys owing by the Buyer to the Seller.
23. While ownership of the goods remains with the Seller:
  - 23.1 The Buyer must store the goods in accordance with the Seller storage specifications, in its original packaging, away from direct sunlight, properly segregated and stored in-doors and clearly identify them as belonging to the Seller.
  - 23.2 The Seller authorises the Buyer in the ordinary course of business to use the goods or to sell them but only where the Buyer is an approved Seller's agent. This authority is revoked from the time that an Event of Default occurs or the Seller notifies the Buyer in writing that this authority is revoked.

- 23.3 If the Buyer has not paid in full for any goods by the due date, the Seller or its agents may enter the premises where any goods are stored and remove them. The Seller shall not be responsible for any damage caused in entering and removing the goods. The Buyer is liable for all costs incurred by the Seller in entering and removing the goods. The Seller may resell, where practical, any of the goods and apply the proceeds in reduction of the debt owed by the Buyer to the Seller.
24. If the Buyer resells or uses the goods before ownership of the goods has passed to the Buyer, the proceeds of such sale or use shall be received and held by the Buyer in trust for the Seller in such portion of the proceeds that does not exceed the Buyer's indebtedness to the Seller. The Seller may at any time by notice in writing require the Buyer to pay to the Seller the proceeds of the sale or of the use of the goods already received and/or used by the Buyer.
25. The Seller reserves the right to audit the Buyer's records to determine that all payments received and made has been done in a correct and timely manner.

### Warranty

26. Subject to compliance by the Buyer to the Seller's Storage Specifications, the maximum defect correction period will be twelve (12) month's from the date of delivery of the goods in accordance with the delivery terms as set out in the Seller's order confirmation.
27. For purposes of these terms, "defect" or "defective" means any defective aspect of the goods not in accordance with these terms, or any damage, deficiency, fault in workmanship of the goods directly caused by the Seller. Defective does not mean or include any inadequacy in design, performance or any intended purpose not agreed to expressly in writing by the Seller or failure by the Buyer to comply with the Seller's Storage Specifications.
28. Save as set out in these terms and in any written warranty provided by the Seller to the Buyer, the Seller gives no warranty in respect of the goods or any services to which these terms apply and all conditions and warranties expressed or implied by statute, common law, equity, trade custom or usage or otherwise howsoever are excluded to the maximum extent that such exclusion is permitted by law.

### No Representations

29. The Seller, to the fullest extent permitted by law, accepts no liability for any claim by the Buyer or by any other person including any claim relating to or arising from any conditions, warranties or representations as to fitness or suitability for any purpose, merchantability or otherwise whether express or implied by law, trade custom or made by any agent or representative which are not expressly confirmed by the Seller in writing. The Buyer agrees to indemnify the Seller against any claim by any other person against the Seller.
30. No statement description information or warranty condition or recommendation contained in any catalogue price list, advertisements or communication or made verbally by any of the Agents or employees of the Seller shall be construed to enlarge vary or over-ride in any way, any of these conditions.
31. Nothing in these terms is intended to have the effect of contracting out of the provisions of any fair trading legislation or consumer guarantees legislation except to the maximum extent permitted by those legislations and these terms are to be modified to the extent necessary to give effect to that intention.

## Intellectual Property

32. The Buyer warrants that the use by the Seller of any designs or instructions supplied by the Buyer will not infringe the patents, trademarks, designs or copyright of any other person and the Buyer agrees to indemnify the Seller against any claim relating to or arising from the infringement of any such intellectual property of any other person.
33. The Buyer shall indemnify the Seller against all costs claims and damages incurred or threatened arising out of any alleged infringement of patents, trademarks or copyright occasioned by the manufacture or sale of the Goods made to the specifications or special requirements of the Buyer.
34. The Buyer acknowledges and agrees that nothing in these terms grant the Buyer any Intellectual Property Rights or any rights in any Intellectual Property owned, licensed or paid for by the Seller.

## Default

35. If an Event of Default occurs, the amount owing for the goods shall immediately become due and payable notwithstanding that the due date for payment has not arisen.
36. If the Buyer does not pay to the Seller the price for the goods by the due date, the Seller may do one or more of the following:
  - 36.1 Suspend its performance of or cancel any contract between the Seller and the Buyer;
  - 36.2 Withdraw any previously agreed credit, discounts or special terms;
  - 36.3 Charge interest at the Interest Rate (as defined in clause 0) (plus sales tax or other taxes and/or duties) from the date on which payment became due until the date the Seller receives payment in full.
37. For the purpose of these terms, an Event of Default means:
  - 37.1 The Buyer fails to pay the Seller for the goods by the due date; or
  - 37.2 The Buyer commits an act of bankruptcy; or
  - 37.3 If the Buyer is a company, the Buyer has resolved or the Buyer or any of its creditors has applied to liquidate the Buyer, the Buyer becomes insolvent or a receiver or manager is appointed in respect of any part of its assets or business; or
  - 37.4 The Seller has reasonable grounds for believing that any of the events described in this clause are about to occur.
38. For the purpose of clause 0, "Interest Rate" means a rate per annum equal to 3% above that charged, or which would be charged, to the Seller by the Seller's principal banker from time to time during the relevant period.

## Force Majeure

39. The Seller shall be entitled at its option to determine, delay or cancel delivery or reduce the amount delivered, notwithstanding anything to the contrary herein contained, and the Seller shall not be liable in or for any damages for any breach or non-observance of any of its obligations contained herein which results from or is caused by reason of or on account of any circumstances beyond its control, including (without prejudice to the generality of the foregoing) acts of god, natural hazards occurring outside human control, acts of the public enemies, revolution, rebellion, insurrection, military or usurped power, riots, civil commotions, strikes, lock outs or other industrial disputes or disturbances, confiscation, expropriation, requisition or transfer by or under the order of any government, public or local authority, or any inevitable accident, or any combination of these circumstances.

### Limitation of Liability

40. Without limiting this clause, the Seller's liability to the Buyer or any other person under any claim shall not exceed the price of the goods or the cost of repairing or replacing the goods, whichever is the lesser.
41. The Seller shall not be responsible, obligated, or liable for any injury or damage resulting from an application or use of its goods, either singly or in combination with other products. The Seller's sole liability for breach of warranty or any other claim shall be limited to repair or replacement of the goods or return of the purchase price, at the Seller's sole option.
42. The Seller shall not be liable for damages, including but not limited to consequential, incidental, punitive, loss of profit, liquidated or special damages arising out of or in connection with the delivery, use or performance of the goods or arising out of acceptance of these terms.
43. The Buyer shall indemnify the Seller against all liability, cost, or expense that may be sustained by the Seller because of any loss, damages and/or injury arising out of or in connection with the Buyer's use of the goods.

### Confidentiality

44. The Buyer agrees that it may be given access to, or come into possession of, confidential information of the Seller which information may contain details about the employees, customers and suppliers, trade secrets, proprietary data, information regarding price sensitivity, market position, finances, operations, strategies, business plans, products, services, agreements and transactions, the Seller's intellectual property and/or other information that is specifically designated in writing as confidential of the Seller.
45. Any drawings, illustrations, confidential information and specifications prepared by the Seller in reply to the Buyer remain the property of the Seller and must not be communicated to any third party without the Seller's previous written permission. The Buyer hereby undertakes that it shall not discuss any information contained herein with any third party without the prior written consent of the Seller. Any drawings and illustrations prepared in connection with the supply of the goods or contained in the Seller's price list, are not binding as to dimensions or details unless it is specifically stated on such drawings or illustrations that dimensions or details are binding.
46. Any confidential information of the Seller remains the property of the Seller and the Buyer may not make it public at any stage and will ensure that it will be kept confidential even after termination of the supply of the goods.
47. The Buyer may only disclose the Seller's confidential information as required by law. In the event where the Buyer is obligated to disclose any of the Seller's confidential information under this clause, the Buyer will immediately notify the Seller of the disclosure and the full extent of the confidential information disclosed.
48. In the event of a breach of the Buyer's confidentiality obligations, the Seller is entitled to will initiate, without delay legal action for damages plus an injunction against the Buyer, whether or not the Buyer directly or indirectly benefitted from the breach or not.
49. These confidentiality obligations continue to apply after these terms end and, if requested by the Seller, the Buyer must immediately must:
  - 49.1 Return or destroy the Seller's confidential information and delete any electronic copies saved on its computers; and
  - 49.2 Immediately provide the Seller with a written declaration to the effect that it has complied with its obligations under this clause.

## Storage Specifications

50. The goods must be stored in accordance with the Seller's Storage Specification as set out below and as detailed in the Supplier's order confirmation:
  - 50.1 The goods must be kept in its original sealed packaging, including any cardboard or wooden box packaging provided;
  - 50.2 Storage must be in a safe and secure environment, free from any exposure to external damage, contamination and/or exposure to rodents, pests and feral animals;
  - 50.3 The goods must not be exposed to strong temperature and humidity fluctuations;
  - 50.4 Ideal conditions for transportation are between +5°C and 30°C and 55%-60% relative humidity;
  - 50.5 Extreme temperature conditions must be avoided, either direct heat (exceeding 50°C) as goods may become softened or cold conditions (lower than 5°C) as the goods may become brittle and prone to flex fatigue;
  - 50.6 Ideal storage conditions are +23°C and 50% relative humidity (standard climate according to DIN EN ISO 139);
  - 50.7 Once the goods are opened for installation, the goods must be installed in process quickly and the opened goods must not be exposed to the environment for excessive periods (e.g. exposure to the environment for longer than 8 hours);
  - 50.8 The goods must not be subjected to sub-zero temperatures. Where the goods have been exposed to sub-zero temperatures, it should be brought back to ambient temperatures for at least one hour before use;
  - 50.9 Avoid exposure to direct sunlight / UV light;
  - 50.10 Avoid exposure to noxious gases and reducing agents;
  - 50.11 Avoid exposure to moisture;
  - 50.12 Care must be taken when using material handling equipment with internal combustion engines as the goods may be flammable.

## Arbitration

51. The Parties will attempt in good faith to resolve any dispute, controversy or claim arising out of or in relation to these terms through negotiations between the senior management of each party with authority to settle the relevant dispute.
52. If the dispute cannot be settled amicably within thirty (30) days from the date on which either party has served written notice on the other of the dispute then the matter will be referred to arbitration. Where a dispute cannot be settled amicably, all disputes arising out of or in connection with these terms and/or supply of the goods shall be submitted to the International Court of Arbitration of the International Chamber of Commerce and shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules in effect at the time of applying for arbitration.
53. All arbitration proceedings will be completed in English.
54. The arbitral award is final and binding upon both parties.

## Miscellaneous

55. The invalidity or unenforceability of any part or provision of these terms do not affect the enforceability of any other part or provision of these terms and the invalid or unenforceable part is severable.
56. In the event of a discrepancy or difference between the English and any translated version of these terms, the English version will prevail.
57. Any changes and amendments to this terms or the terms of the supply of goods must be agreed to by both in writing and signed by each of the Parties.
58. If a party consists of one or more persons or an obligation applies to one or more persons, these terms bind them jointly and each of them severally.
59. The Parties submit to the exclusive jurisdiction of the International Court of Arbitration of the International Chamber of Commerce and any courts that may hear appeals from the International Court of Arbitration of the International Chamber of Commerce in India in respect of any proceedings in connection with these terms and/or the supply of the goods.
60. Subject to the provisions of clauses 51, 52, 53, and 54 (Arbitration) and clauses 55, 56 and 59 (Miscellaneous) and unless otherwise specified in these terms and conditions, the contract law from time to time in force in India shall apply in respect of any proceedings in connection with these terms and/or the supply of the goods, including its formation, interpretation, operation, enforcement and discharge.