

KROMEK UK STANDARD TERMS & CONDITIONS OF SALE

1. DEFINITIONS AND INTERPRETATION

In these terms and conditions of sale, the following words shall have the following meanings:

“**Business Day**” means a day (other than Saturday, Sunday or public holiday) when banks in London are open for business;

“**Buyer**” means the person(s), firm or company who purchases the Products from the Seller;

“**Confidential Information**” means any confidential information relating to the Seller’s business, including, but not limited to, products, customer lists, pricing policies, operational methods, product development techniques or plans, methods of manufacture, technical processes, designs and design projects, inventions and research programs, trade secrets and know how, user manuals, systems documentation and other business affairs of the Seller.

“**Contract**” means the contract between the Seller and Buyer for the sale and purchase of the Products, incorporating these terms and conditions;

“**Force Majeure Event**” has the meaning set out in clause 14.1;

“**Intellectual Property Rights**” means patents, trademarks, service marks, registered designs, copyrights, database rights, design rights, confidential information, and any other similar rights recognised from time to time anywhere in the world in or associated with the Products

“**Products**” means any products agreed in the Contract to be supplied to the Buyer by the Seller (including any part or parts of them);

“**Seller**” means Kromek Limited (Company No: 4728565); NETPark, Thomas Wright Way, Sedgefield, TS21 3FD UK

“**Specification**” means the specification for the Products supplied by the Seller to the Buyer.

2. APPLICATION

- 2.1 These terms and conditions shall apply to any Contract for the sale of Products by the Seller and shall apply to the exclusion of any other terms and conditions referred to or issued to the Seller or implied by trade practice or custom or by course of dealing.
- 2.2 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 Seller which is not set out in the Contract. Any samples, drawings, descriptive matter, or advertising issued by the Seller and any descriptions or illustrations contained in the Seller’s catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Products described in them. They shall not form part of the Contract or any other contract between the Seller and the Buyer for the sale of the Goods.
- 2.3 Quotations are valid for 30 days unless otherwise specified and may be revised or withdrawn at any time before acceptance by the Seller.
- 2.4 Any order or acceptance of a quotation for the Products by the Buyer shall be deemed to be an offer by the Buyer to purchase the Products, subject to these terms and conditions. An order shall only be deemed to be accepted by the Seller when acknowledged in writing by the Seller.

3. CANCELLATION AND RETURNS

- 3.1 Orders for Products may not be cancelled by the Buyer after acceptance by the Seller without the Seller’s prior written agreement. Cancellation of or changes to an order may be accepted on the basis that the Seller is reimbursed for all costs, damages, expenses and any loss of profit incurred as a result of such cancellation or change.

- 3.2 If, following agreement by the Seller, Products are returned by the Seller, the Seller shall pay a re-stocking charge of 5% of the of the invoice value of the Products, save where Products are returned due to the Products not complying with clause 6.1 where no charge shall be payable. All Products must be returned undamaged and in their original packaging.

4. CREDIT

- 4.1 Acceptance and delivery of orders by the Seller shall at all times be subject to the approval of the Buyer's credit worthiness by the Seller. The Seller may, at any time, require the Buyer to provide pre-payment for Products or such other form of security upon such terms and conditions as may be satisfactory to the Seller and the Seller may make performance of the Contract by it conditional on receiving such pre-payment or security.
- 4.2 If the Buyer is subject to any of the of the events listed clause 10.1.2 the Buyer is declared or becomes insolvent, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, takes or suffers any similar action in any jurisdiction or any step is taken by it or any other person in respect of any of these circumstances., the Seller may elect to cancel any unfulfilled order.

5. DELIVERY

- 5.1 The Seller shall deliver the goods in accordance with the agreed terms of delivery (Incoterms®2010) as stated in the Quotation.
- 5.2 Delivery of the Products shall be in accordance with (Incoterms®2010
- 5.3 Any dates quoted for delivery are subject to the normal conditions of carriage applicable to the mode of transport used. The Seller shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 5.4 The Seller may deliver the Products in part-shipments, which shall be invoiced and paid for separately. Each part-shipment shall constitute a separate Contract. Any delay in delivery or defect in a part-shipment shall not entitle the Buyer to cancel any other part-shipment.

6. WARRANTY

- 6.1 The Seller warrants that on delivery, and for period of [12] months from the date of delivery ("**Warranty Period**"), the Products shall conform in all material respects with their applicable Specification.
- 6.2 Subject to clause 6.3 and 6.4, if:
- 6.2.1 the Buyer gives notice in writing to the Seller during the Warranty Period within a reasonable time of discovery that some or all of the Products do not comply with the warranty set out in clause 6.1; and
 - 6.2.2 the Seller is given a reasonable opportunity of examining such Products; and
 - 6.2.3 the Buyer (if asked to do so by the Seller) returns such Products to the Seller's place of business at the Buyer's cost, the Seller shall, at its option, repair or replace such Products.
- 6.3 The Seller shall not be liable for Products' failure to comply with the warranty set out in Clause 6.1 if:
- 6.3.1 the Buyer makes any further use of such Products after giving notice in accordance with Clause 6.2; or
 - 6.3.2 the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Products or good trade practice; or
 - 6.3.3 the Buyer alters or repairs such Products without the written consent of the Seller; or
 - 6.3.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.

- 6.4 The Buyer must give the Seller written notice of any defect in the Products:
- 6.4.1 within 7 days of delivery, if the defect was apparent on delivery; or
 - 6.4.2 within 48 hours of becoming aware of any latent defect which was not apparent on delivery.
- 6.5 Except as provided in this clause 6, the Seller shall have no liability to the Buyer in respect of the Products' failure to comply with the warranty set out in clause 6.1.
- 6.6 Except as set out in these terms and 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.
- 6.7 These terms and conditions shall apply to any repaired or replacement Products supplied by the Seller.

7. PRICE

- 7.1 Unless agreed otherwise in writing by the Seller, the price of each of the Products sold shall be as set out in the Seller's written acceptance of a Buyer's order.
- 7.2 The price of the Products does not include value added tax or other applicable taxes or duties, or any costs for transportation, special packaging, tariffs, permits and special inspections. Any such costs or taxes will be added to the invoice for the Products and paid by the Buyer.

8. RISK AND TITLE

- 8.1 Risk passes from the Seller to the Buyer on delivery in accordance with Clause 5 above. Any Products returned from the Buyer's premises to the Seller's premises in on accordance with these terms and conditions will be returned at the Buyer's risk unless the Products in question are carried by the Seller or its agent.
- 8.2 Title to the Products shall not pass to the Buyer until the Seller has received payment in full (in cash or cleared funds) for:
- 8.2.1 the Products; and
 - 8.2.2 any other products or services that the Seller has supplied to the Buyer.
- 8.3 Until title to the Products has passed to the Buyer, the Buyer shall:
- 8.3.1 hold the Products on a fiduciary basis as the Seller's bailee;
 - 8.3.2 store the Products separately from all other Products held by the Buyer so that they remain readily identifiable as the Seller's property;
 - 8.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
 - 8.3.4 maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - 8.3.5 notify the Seller immediately if it becomes subject to any of the events listed in clause 10.1.2 the Buyer is declared or becomes insolvent, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, takes or suffers any similar action in any jurisdiction or any step is taken by it or any other person in respect of any of these circumstances.; and
 - 8.3.6 give the Seller such information relating to the Products as the Seller may require from time to time, but the Buyer may resell or use the Products in the ordinary course of its business
- 8.4 If before title to the Products passes to the Buyer the Buyer becomes subject to any of the events listed in clause 10.1.2 the Buyer is declared or becomes insolvent, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or

threatens to do any of these things, takes or suffers any similar action in any jurisdiction or any step is taken by it or any other person in respect of any of these circumstances., or the Seller reasonably believes that any such event is about to happen and notifies the Buyer accordingly, then, provided that the Products have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Seller may have, the Seller may at any time require the Buyer to deliver up the Products and, if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Products are stored to recover them.

9. TERMS OF PAYMENT

- 9.1 The Seller may invoice the Buyer for the Products on or at any time after completion of delivery of the Products.
- 9.2 Invoices are due and payable by the Seller within thirty (30) days from date of invoice in pounds sterling unless otherwise agreed in writing by the Seller. Time for payment is of the essence.
- 9.3 If the Buyer fails to make any payment due to the Seller under the Contract by the due date for payment (“**due date**”), then the Buyer shall pay interest on the overdue amount at the rate of 4% per annum above HSBC plc’s base lending rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount. The Seller reserves the right to claim for interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 9.4 The Seller reserves the right to change the payment terms set out in clause 9.2. Invoices are due and payable by the Seller within thirty (30) days from date of invoice in pounds sterling unless otherwise agreed in writing by the Seller. Time for payment is of the essence., if, in the Seller’s opinion, the financial condition or previous payment record of the Buyer so warrants.
- 9.5 Any payments for the Products will become due upon the date of termination of the Contract.
- 9.6 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 Supplier in order to justify withholding payment of any such amount in whole or in part. The Seller 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 Seller to the Buyer.

10. TERMINATION

- 10.1 The Seller shall have the right (without limiting any other right or remedy available to it) to terminate the Contract immediately if:
 - 10.1.1 the Buyer is in breach of the Contract and fails to remedy such breach within [14] days of the Seller giving the Buyer notice to do so; or
 - 10.1.2 the Buyer is declared or becomes insolvent, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, takes or suffers any similar action in any jurisdiction or any step is taken by it or any other person in respect of any of these circumstances.

11. LIMITATION OF LIABILITY

- 11.1 Nothing in these terms and conditions shall limit or exclude the Seller’s liability for:
 - 11.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 11.1.2 fraud or fraudulent misrepresentation; or
 - 11.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or

11.1.4 any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.

11.2 Subject to Clause 11.1:

11.2.1 the Seller 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; and

11.2.2 the Seller'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, shall not exceed the total value of the Contract.

12. INTELLECTUAL PROPERTY AND CONFIDENTIAL INFORMATION

12.1 The Customer acknowledges and agrees that the Intellectual Property Rights are the Seller's property and nothing in the Contract shall be construed as conferring any licence or granting any rights in favour of the Customer in relation to the Intellectual Property Rights.

13. The Buyer agrees not to use Confidential Information for any purpose other than the purpose for which it is supplied under the Contract and agrees not to divulge Confidential Information to any of its employees who do not need to know it, and to prevent its disclosure to or access by any third party without the prior written consent of the Seller except to its professional advisers or as may be required by law or any legal or regulatory authority. The Buyer shall use a reasonable degree of care to protect the Confidential Information which in any event will not be less than the same degree of care which it uses to protect its own confidential information and to keep and ensure its employees and agents keep any and all such information confidential.

14. FORCE MAJEURE

14.1 Neither party shall 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, without limitation, 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.

15. GENERAL

15.1 Assignment and subcontracting.

15.1.1 The Seller 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.

15.1.2 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 Seller.

15.2 Notices.

15.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, commercial courier, fax or e-mail.

15.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause **15.2.1**; 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; or, if sent by fax or e-mail, one Business Day after transmission.

15.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

15.3 Severance.

15.3.1 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.

15.3.2 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.

15.4 Waiver.

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.

15.5 Third party rights.

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

15.6 Variation.

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.

15.7 Governing law and jurisdiction.

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), 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.