

In Situ Europe - Standard Trading Conditions

NOTE: These Standard Trading Conditions are an important document which set out the terms and conditions on which the Company agrees to supply Products and Services. The Customer's attention is drawn in particular to clause 10 relating to the limitation of the Company's liability. Separate terms apply to the hire of Products by the Company.

1. Definitions and interpretation

(a) In these Standard Trading Conditions the following words shall have the following meanings:

"the Company" shall mean In Situ Europe, registered in England with company number 2573628 whose registered office and principal place of business is at Unit 24 Thornhill Road, North Moons Moat Industrial Estate, Redditch, Worcs, UK and shall be construed so that the Company may subcontract or arrange for any other company within the Company's group of companies to perform any obligation of the Company under a Contract and performance by such company shall constitute performance by the Company and so that any such company shall also be entitled on behalf of the Company to exercise any right of the Company under a Contract;

"Contract" shall mean a contract between the Company and the Customer for the sale and purchase of the Products or Services under these Standard Trading Conditions;

"the Customer" shall mean any person or entity who purchases or agrees to purchase Products or Services from the Company;

"the Products" shall mean all Products, materials, software, manuals and packaging supplied or to be supplied by or for the Company to the Customer, whether or not manufactured or produced by the Company; and includes, where the context allows, the Services;

"the Services" shall mean any services supplied or to be supplied by or for the Company to the Customer either in connection with the supply of Products or otherwise;

(b) The headings used in these Standard Trading Conditions are for convenience only and shall have no effect on the interpretation. References to a clause are to a clause in these Standard Trading Conditions. Reference to "in writing" shall include (without limitation) communication by e-mail.

2. Making the Contract

(a) Any quotation issued by or for the Company is not an offer to contract but is an "invitation to treat" only.

(b) Any order issued by the Customer to the Company constitutes an offer to enter into a Contract and is subject to acceptance by the Company by the Company's written acknowledgement of the order or by delivery of the Products. Acceptance of the delivery of the Products by or on behalf of the Customer shall in any event constitute acceptance by the Customer of these Standard Trading Conditions.

(c) Other than as expressly agreed by a Company director on behalf of the Company in writing, orders are accepted by the Company strictly on the basis that these Standard Trading Conditions shall apply to the Contract to the exclusion of any other terms that the Customer may seek to impose or incorporate.

(d) Subject to clause 3(c), no variation of these Standard Trading Conditions permitted or shall be effective unless expressly authorised and confirmed by a director of the Company in writing.

(e) No servant or agent of the Company other than a director has authority to make any representation or give any warranty in relation to the Products. If any statement or representation has been made to the Customer by the Company, its servant or agents upon which the Customer proposes to rely and that statement or representation is not set out in the Company's quotation or correspondence in writing signed by a director of the Company prior to the Company's acceptance of the order, then the Customer must clearly set out that statement or representation and the Customer's reliance on the same in a document attached to or enclosed with the order and in any such case the Company shall be entitled to confirm, reject or clarify in what terms (if at all) the Company agrees to be bound and to submit a new quotation.

(f) If there are any particular factors (including but not limited to the proposed use of the Products or the conditions or environment in which the Products are to be used or the other Products or materials with which the Products are to be used) which may or might reasonably be expected to affect adversely the performance or durability of the Products (and in any case of doubt) the Customer should notify the Company in writing at the time of placing the order. If the Customer fails to do so the Company shall have no liability arising in respect of any unsuitability of the Products connected to such factors.

3. Variation/Cancellation

(a) The Customer may only cancel an order placed by the Customer which has been accepted by the Company where expressly agreed by a director of the Company in writing. The Customer agrees to indemnify and keep indemnified the Company against all costs, expenses and losses incurred by the Company and arising as a result of the cancellation or purported cancellation of any order by the Customer. The Company shall in any event also be entitled in its discretion to make a charge not exceeding ten percent (10%) of the contract price in respect of compensation and administrative costs in respect of the cancellation to be paid by the Customer to the Company forthwith on demand.

(b) Any variation to an order requested by the Customer which is accepted by the Company shall entitle the Company to make an appropriate variation in prices and delivery times, which shall bind the Customer. The Company shall notify the varied price and delivery time to the Customer as soon as practicable in the circumstances.

(c) The Company shall be entitled to make minor changes to the description and specification of the Products and Services to be supplied as it considers appropriate from time to time. The Company may make such changes without prior notice to the Customer even after acceptance of the Customer order provided in this case that such change shall not materially affect the essential features or performance of the Products. Any such changes to the Products and the Contract shall bind the Customer and shall not constitute a breach of contract.

4. Price

(a) Unless otherwise stated by the Company all prices quoted are the price for the cost of the Products only. Unless otherwise agreed for the Company in writing, the price shall be the price of the Products as set out in the Company's price list in force at the date of acceptance of the order. Carriage, postage and packing are not included and will be the subject of an additional charge. Prices quoted exclude Value Added Tax which will be charged where applicable.

(b) The Company reserves the right at any time prior to delivery of the Products to adjust the price to take account of any increase in the cost of raw materials, labour or services or any currency fluctuations affecting the cost of imported materials, or any request by the Customer to change the delivery date, quantity, description or specification of the Products or any delay caused by any instruction of the Customer or failure by the Customer to provide adequate or timely information or instruction.

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5. Terms of Payment

- (a) Unless otherwise specified by the Company, from the price payable by the Customer for Products ordered by customers located in the United Kingdom or Ireland becomes payable 30 days after date of invoice. Time for payment shall be of the essence. The Company may in its discretion whether in its order acknowledgement or otherwise require payment at the time an order is placed or prior to despatch of the Products.
- (b) For orders for delivery to locations outside of the United Kingdom and Ireland the Company shall be entitled to specify separate terms of payment, details of which are available on application.
- (c) Without prejudice to any other right of the Company, the Company shall be entitled to charge interest at two and a half per cent (2.5%) per annum above the base lending rate of Lloyds TSB Bank plc from time to time on all overdue accounts, such interest being deemed to accrue on a day to day basis from the due date for payment under Clause 5(a).
- (d) If the Customer suffers distress or execution against its property, goes into liquidation, has a petition presented for its winding up or passes a resolution for voluntary winding-up otherwise than for the purpose of a bona fide amalgamation or reconstruction or compounds or makes a voluntary arrangement with its creditors or has a receiver or administrative receiver appointed over all or any part of its assets or (being an individual) becomes bankrupt or insolvent or enters into any composition or scheme of arrangement with its creditors (or carries out or suffers any analogous act or event under foreign law) or commits a material or serious breach of the Contract (and in the case of such a breach being remediable fails to remedy it within seven (7) days of receiving notice to do so) it will be deemed to have repudiated the Contract.
- (e) Notwithstanding clause 5(a), the Company reserves the right at any time to demand security for payment before continuing with or delivery of any order.
- (f) Payment will not be effected until the Company is in receipt of cleared funds.

6 Delivery

- (a) Delivery will be effected when the Products are delivered or made available to the Customer or to the Customer's agent and will be deemed to have been effected in the circumstances set out in clause 6(d).
- (b) Any delivery date for the Products specified by the Company is an indication only, without commitment on the part of the Company. The Company will endeavour to deliver on the specified date and otherwise on the earliest practicable date reasonably achievable, but time of delivery is not of the essence and the Customer shall not be entitled to cancel the order for a failure by the Company to deliver or make Products ready to collect on the delivery date specified or on any date within the period of 3 months thereafter.
- (c) The Company reserves the right to make delivery by instalments and to tender a separate invoice in respect of each instalment and such invoice shall be payable as in Clause 5(a). Where delivery is made in instalments, clause 6(b) shall apply in respect of every delivery made in instalments.
- (d) Where the delivery is refused by the Customer or is delayed, suspended or made in instalments in each case at the request of the Customer, or where the Customer is to collect the Products and has failed to do so at the time or during the period notified by the Company for collection or where the Company is unable to deliver the Products due to circumstances beyond its control, the Company on giving notification of readiness to deliver or of availability for collection shall be entitled to treat the contract as fulfilled and to place the Products remaining in its possession into store and for the purposes of invoicing and payment and the passing of risk delivery will be deemed to have taken place at the time of notification by the Company. In such circumstances, the Company in its discretion or at the Customer's request may arrange storage and insurance covering the major perils endorsing its own interest and the cost of such storage and insurance of the Products shall be for the Customer's account.
- (e) Where the Company agrees to arrange for transportation of the Products the Customer shall be responsible for providing proper unloading facilities (including adequate plant and labour) and storage facilities. If the Company (or its agent) tenders the Products at any time between the hours of 8.00am and 6.00 pm local time Monday to Friday or at any other time agreed by the parties or notified by the Company for delivery at the place specified in the Contract for delivery and the Customer fails to do so, such failure shall constitute a refusal of delivery by the Customer for the purpose of clause 6(d).

7. Risk and Passing of Title

- (a) Products supplied by the Company shall be at the Customer's risk immediately on delivery (or deemed delivery) in accordance with clauses 6(a) and 6(d) and the Customer should therefore insure such risk accordingly.
- (b) Ownership of and title to the Products supplied hereunder will pass to the Customer only when payment for the Products (and any interest properly due to the Company in respect of the Products) has been received by the Company in full.
- (c) Until full payment has been received by the Company, the Customer shall hold the Products in a fiduciary capacity for the Company in a manner which enables them to be identified as the Products of the Company and the Customer shall immediately return the Products to the Company on request from any authorised representative of the Company. The Customer shall be subject to and comply with all the normal duties and responsibilities associated with a fiduciary relationship.
- (d) The Customer's right to possession of the Products shall cease if it does anything or fails to do anything which would entitle an administrator or administrative receiver (or the like) to take possession of any assets or would entitle any person to present a petition for winding up against the Customer. The Customer shall promptly notify the Company of the occurrence of any such event or of any of the events specified in clause 5(d) in relation to the Customer or upon it becoming apparent that such an event is likely to occur in relation to the Customer.
- (e) The Customer grants the Company an irrevocable licence to enter at any time any vehicles or premises owned or occupied or used by the Customer for the purpose of repossessing and removing any such Products the property in which has remained in the Company under this Clause 7. The Company shall not be responsible to the Customer for and the Customer will indemnify and keep indemnified the Company against liability in respect of damage caused to such vehicles or premises in such repossession and removal.
- (f) If Products which are the property of the Company are attached to or incorporated within Products which are the property of any person other than the Customer ("Combined Products") and are capable of being separated from such third party property, then at the Company's option the Customer shall on request procure that the Products are separated from the third party property or the Customer shall permit and assist the Company to separate the Products and shall make the Combined Products available to the Company for such purpose. If the Products and the property of the third party are not capable of being separated, the product thereof shall be deemed to be owned jointly in common with that other person.
- (g) The Customer shall not be entitled to pledge or charge by way of security for any indebtedness any of the Products which remain the property of the Company but if it does so all moneys owing to the Company shall become immediately due and payable. Provided that it has accepted the Products, the Customer may sell the Products in the ordinary course of its business.

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8. Lien and Stoppage

- (a) Until the title in the Products has passed to the Customer the Company has the right to withhold delivery in any of the circumstances mentioned in Clause 5(d).
- (b) At any time before payment for them is received by the Company then the Company has a lien on the Products for so long as the Company is in possession of them and a right of stoppage in transit and a right of resale.
- (c) Nothing in this Clause shall affect the rights given to the Company by Sections 38-40 of the Sale of Products Act 1979.

9. Inspection/Shortage/Defects

- (a) The Customer shall wherever possible carefully inspect the Products for defects or shortages on delivery or on collection as the case may be which should be apparent from such an inspection.
- (b) Where the Products cannot be inspected by the Customer on delivery or collection (as the case may be), then the carrier's note and/or the Company's delivery note as appropriate should be marked by the Customer "not examined" and the Products should be examined by the Customer within 3 days.
- (c) If the Customer fails to comply with clauses 9(a) or 9(b), the Company shall be under no liability for any defects or shortages that would be apparent on careful inspection and, in any event, will be under no liability if a written complaint is not delivered to the Company within 3 (three) days of delivery detailing the alleged defect or shortage.
- (d) Damage in transit by a carrier must be notified to the Company and the carrier within the time period allowed under the carrier's terms for notification of damage and in any event within forty-eight hours. The Company shall have no liability in respect of damage in transit by a carrier nominated by the Customer.
- (e) Unless otherwise confirmed by the Company in writing and subject to the Customer complying with the procedures in respect of apparent defects, shortages or damage to the Products set out in clauses 9(a) to 9(d) and to the provisions of this clause and clause 2(f), all Products manufactured and supplied by the Company are guaranteed against faults in workmanship or materials for a period of twelve (12) months from delivery. Defective Products will (at the Company's option) be repaired or replaced by it free of charge as soon as reasonably practical provided that the Company shall have no liability or obligation to replace or repair in respect of defects in or damage to Products arising out of any of the following circumstances : work carried out by the Customer or any third party on or to the Products; neglect or misuse of the Products (other than by the Company); fair wear and tear; defective installation; wilful damage or failure to observe any instructions provided by the Company or its agents in any form in relation to the Products.
- (f) The Company accepts no liability for any defect in any Products which it is not given a reasonable opportunity to inspect, repair or replace. Other than as expressly set out in this clause or in the Contract, all warranties, conditions, terms, undertakings or representations of any kind, whether express or implied, statutory or otherwise relating to the provision of the Products or Services under or in connection with the Contract are hereby expressly excluded to the fullest extent permitted by law.
- (g) The return of any Products (defective or otherwise) to the Company must be approved by the Company in writing before such return. The Company will only pay the costs of carriage in respect of the return of any Products where it has expressly agreed to do so in writing. In the case of non-defective Products approved for return, these must be returned to the Company at the Customer's cost and, in addition, the Company reserves the right in respect of such Products to charge a handling fee of twenty per cent (20%) of the cost of the Products subject to a minimum fee of £25.
- (h) Where the Company agrees to carry out work on Products or replaces any Products in the belief that the work is necessitated by some cause covered by the warranty in clause 9(e) and it is discovered that the cause is in fact one not covered by such warranty then the Company shall be entitled to charge the Customer in full for the replacement of the Products or as the case may be for the work carried out by it at the Company's then current rate for the sale of the relevant labour and for the materials used by it in connection with such work, and the Customer shall pay for the same, together with VAT thereon at the applicable rate, forthwith upon demand by the Company.

10. Liability.

(a) Provided that nothing in the Contract shall have the effect of excluding or restricting the liability of the Company in respect of any loss, damage or liability which cannot or must not be excluded or limited under English law, the Company shall not be liable to the Customer for:

- (i) loss of profits**
- (ii) loss of production**
- (iii) loss of turnover**
- (iv) loss of contracts**
- (v) other pure economic loss**
- (vi) any indirect, special or consequential loss and/or damage whatsoever;**
- (vii) costs, expenses, other claims for compensation whatsoever relating in any way to the matters referred to in 10 (a) (i)-(vi) (inclusive) above**

suffered or incurred by the Customer or any third party in any way arising out of any act or omission of the Company or its employees or agents whether for breach of statutory duty or in contract (including any implied term) tort, including negligence, negligent misrepresentation and misstatement or otherwise under or in connection with the Contract the Products and any other agreement relating to the Products or any part of the Products or based on any claim for indemnity or contribution. The foregoing shall not relieve the Company from the obligation to remedy defects in the Products under and subject to the terms of the warranty set out in clause 9(e).

(b) Without prejudice to clause 10(a) the entire liability of the Company to the Customer under or in connection with the Contract or the Products concerned save in respect of any kind of loss damage or liability which cannot or must not be limited under English law shall not exceed the price of the Products concerned, except as and to the extent expressly provided in this Contract.

(c) The Company and the Customer hereby expressly agree that the exclusions and limitations of liability set out in this Contract are fair and reasonable taking into account the nature of the Products supplied or to be supplied by the Company to the Customer, the price payable by the Customer to the Company, the obligations of the Company under the warranty set out in clause 9(e) and the availability and cost of existing and future insurance cover to the parties.

(d) Nothing in this Contract shall be deemed to exclude or limit the Company's liability for death or personal injury caused by negligence or for fraud or fraudulent misrepresentation.

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(e) The Customer indemnifies and agrees to keep the Company indemnified against all actions, costs, claims and liability arising from faulty or unsuitable instructions given by the Customer or from breach or alleged breach of the Intellectual Property rights of a third party arising out of the Customer's instructions.

(f) Other than to the extent required by law, in the case of Products manufactured by the Company, the Company gives no representation, warranty or condition whatsoever that the sale or use of the Products will not infringe patent, copyright or other Intellectual Property rights of any other person, firm or company.

11. Force Majeure

(a) The Company shall not be liable for any failure to perform or delay in performing any of its obligations under a Contract arising from circumstances outside the Company's reasonable control. Non-exhaustive illustrations of such circumstances would be; act of God, war, riot, terrorism, explosion, epidemics, extreme weather conditions, fire, flood, strikes, lock-outs, or other industrial disputes (whether involving its own workforce or a third party's), breakdown of plant or machinery, failure of energy sources or transport network, local, national or supra-national government action or regulations (UK or otherwise), delay by suppliers, accidents and shortages of materials, labour or manufacturing facilities.

(b) If the circumstances preventing or delaying performance are still continuing three (3) months after the Customer receives the Company's notice, then either party may give written notice to the other cancelling the Contract. If the Contract is cancelled in this way, the Company will refund any payment which the Customer has already made on account of the price (subject to deduction of any amount the Company is entitled to claim from the Customer) but the Company will not be liable to compensate the Customer for any further loss or damage caused by such failure in performance.

12. Documentation

(a) Catalogues, technical circulars, price lists, software and other literature issued by the Company are for the Customer's general guidance only and the particulars contained therein shall not constitute representations by the Company and the Company shall not be bound thereby.

(b) The Customer undertakes with the Company that it will ensure compliance so far as is reasonably practical by its servants, agents, licensee and customers with any instructions given by the Company (including but not limited to instructions relating to product safety set out in literature or documentation supplied by the Company with the Products and/or published from time to time on the website of the Company at www.in-situ-europe.com) or the manufacturer for the purpose of ensuring that the Products will be safe and without risk to health when properly used and will take any other steps or precautions having regard to the nature of the Products as are necessary to preserve the health and safety of persons handling or using them.

13. Protection of Intellectual Property

(a) The rights in intellectual property (including trademarks, trade names, know-how, copyrights, design rights, patents and all other proprietary intellectual property rights) arising out of or existing in or upon the Products or the documentation referred to in clause 12 or out of the performance of the Contract by the Company (Intellectual Property Rights) and all goodwill arising in relation to the same are and remain the property of the Company.

(b) The Customer shall not cause or permit anything which may damage or endanger the Intellectual Property Rights of the Company or the Company's title or claim to title in the Intellectual Property Rights nor assist others to do so and shall maintain as confidential both during the Contract as well as at all times thereafter all confidential information relating to the Company the Products and the Intellectual Property Rights.

(c) The Customer shall promptly notify the Company of any suspected infringement of the Intellectual Property Rights of which it becomes aware.

(d) The Customer shall not tamper with any markings or nameplates or other indications of the source of origin of the Products which may be placed by the Company upon the Products.

(e) In the event that a licence of any Intellectual Property Right is required for the ordinary use of the Products by the Customer, the Company licences the Customer to use the relevant Intellectual Property Right to the extent necessary for such use on a non-exclusive basis provided that such licence shall automatically be revoked on the occurrence of any of the circumstances mentioned in Clause 5(d) in relation to the Customer or in the event that payment due from the Customer is not made in accordance with Clause 5.

14. Notices

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, 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, registered post, courier or fax.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14(a); if sent by registered post at 1.00pm on the first Business day after posting, if sent by pre-paid first class post 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 upon transmission as evidenced by a fax answerback or other evidence of confirmation of receipt.

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

15. Assignment

(a) The Customer shall not assign or transfer or purport to assign or transfer its rights under the Contract or any of them to any other person without the prior consent of the Company.

16. Proper Law and Jurisdiction

(a) The Contract shall be governed and construed in accordance with English Law and all disputes arising in connection with the contract shall be submitted to the jurisdiction the English Courts provided that nothing in this clause shall affect the right of the Company to bring proceedings in any other jurisdiction whether in connection with this Contract or for the purposes of enforcement or execution of any judgement or other award obtained against the Customer in the Courts of England.

(b) The United Nations Convention on Contracts for the International Sale of Goods shall not apply to any Contract.