

ALTHON LIMITED TERMS AND CONDITIONS OF BUSINESS – SALE OF GOODS/SUPPLY OF SERVICES

1. DEFINITIONS:

Althon Althon Limited together with its assigns or successors whose address is Vulcan Road South Norwich Norfolk NR6 6AF England

Conditions the terms and conditions set out in this document and any special terms and conditions agreed in writing between Althon and the Customer

Contract the contract for the provision of Goods and/or Services

Customer the person firm or company purchasing or agreeing to purchase Goods and/or Services from Althon in accordance with the Conditions

Deposit the sum as set out in the Order Confirmation or as may be agreed in writing by Althon from time to time

Goods all goods materials or any part thereof being the subject of any contract to which the Conditions apply (whether or not in performance of the Services as defined below) particulars of which are in the Order Confirmation or otherwise specified in writing to the Customer

Order Confirmation Althon's written confirmation of order as provided to the Customer

Price the price of the Goods as set out in the Order Confirmation or calculated in accordance with Althon's prices as set out in its price lists or in any quotation (or where no price has been quoted a reasonable price) which unless otherwise specified shall be on an ex-works basis and plus VAT (if applicable)

Services the services particulars of which are set out in the Order Confirmation or otherwise specified in writing to the Customer which Althon is to carry out in accordance with these Conditions

2. CONDITIONS APPLICABLE:

2.1 The Conditions shall apply to the Contract to the exclusion of all other terms and conditions

2.2 No variation to these Conditions (including any special terms and conditions agreed between the parties) shall be binding unless agreed in writing between the authorised representatives of Althon and the Customer

2.3 Any representations made by Althon's employees or agents concerning the Goods or Services shall not be incorporated into the Contract unless confirmed in writing by Althon and in entering into the Contract the Customer acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed

2.4 Any quotation given by Althon may be withdrawn at any time prior to any Order Confirmation being provided by Althon and in any event shall lapse after 30 days

2.5 Any brochures and photographs are intended as a general guide only and any typographical clerical or other error or omission in any sales literature quotation price list acceptance of offer invoice or other documentation issued or displayed on any website by Althon shall be subject to correction without any liability on the part of Althon

2.6 Where applicable (and unless otherwise provided in the Conditions) any terms referred to in any Order Confirmation or other documentation issued by Althon relating to the rights and obligations of the parties to the Contract with respect to the delivery of the Goods shall have the meaning set out in "Incoterms 2000"

3. ORDERS SPECIFICATIONS AND DELIVERY/PERFORMANCE:

3.1 No order shall be deemed to be accepted by Althon unless accepted in writing by Althon's authorised representative. By placing an order the Customer is offering to buy Services from Althon on these Conditions. Althon will have no obligation to provide the Customer with the Goods and/or Services until the Contract is formed. The Contract will not be deemed formed until Althon issues an Order Confirmation. The Customer must ensure that the terms of the Customer's order are complete and accurate.

3.2 Where the Customer requires (subject as expressly provided in these Conditions) the Goods and/or Services to be supplied in accordance with the Customer's specific instructions such instructions shall be supplied to Althon at the time of order and Althon shall be deemed to accept such instructions only if confirmed in writing by Althon

3.3 Althon reserves the right to make changes in the specification of the Goods and/or Services which are required to conform with any applicable safety or other statutory requirements or which do not materially affect their quality or performance

3.4 Any dates quoted for delivery of the Goods and/or performance of the Services are approximate only and Althon shall not be liable for any reasonable delay in delivery/performance and time for delivery/performance shall not be of the essence of the Contract unless previously agreed in writing by Althon

3.5 Any alteration to the Contract specification required by the Customer must be notified to Althon promptly in which case Althon may accept such alteration (subject to any increase in the Price to reflect the alteration) at its sole discretion

3.6 Except as otherwise provided no order which has been accepted by Althon may be cancelled by the customer except with the agreement in writing of Althon on the terms that the Customer shall at Althon's discretion either:

(a) indemnify Althon in full against all loss (including loss of profit) costs (including the costs of all labour and materials used) damages charges and expenses incurred by Althon as a result of the cancellation or

(b) pay a handling charge on the Goods equal to 25% of the Price

3.7 The Customer acknowledges that the disposition shape dimensions materials weights and any other particulars of the Goods (and as appear in any leaflets drawings illustrations or advertisements relating to the Goods) are subject to change to reflect improvements and modifications to the Goods and that such changes which do not materially affect the performance (or intended performance) of the Goods shall not be deemed as a change to the Contract specification

3.8 The Customer acknowledges that it shall be the Customer's responsibility to notify Althon of all governmental statutory local authority requirements (or any other requirements) relating to the supply of the Goods of which the Customer is aware (or in respect of which it is reasonable to expect the Customer to be aware)

3.9 If the Customer fails to take delivery of the Goods or fails to give Althon adequate delivery instructions at the time stated for delivery (otherwise than by reason of Althon's fault) then without prejudice to any other right or remedy available to it Althon may:

(a) store the Goods until actual delivery and charge the Customer the reasonable costs (including transportation and insurance) of storage or

(b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the Price or charge the Customer for any shortfall below the Price

3.10 Althon shall be entitled to deliver the Goods by instalments of any size and in any order

3.11 The Customer shall inspect the Goods on delivery and shall within 72 hours of delivery notify Althon of any alleged defect damage or failure to comply with description or sample. The Customer shall afford Althon an opportunity to inspect the Goods within a reasonable time following delivery and before any use is made of them. If the Customer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the Contract free from any defect or damage which will be apparent on a reasonable examination of the Goods and the Customer shall be deemed to have accepted the Goods

3.12 The Customer shall be responsible for obtaining all necessary licences and permissions for the import of the Goods into the country of destination

4. PRICE AND PAYMENT:

4.1 Unless otherwise agreed the Price is exclusive of transportation delivery VAT sales tax duties or other imposition

4.2 Althon shall be entitled to invoice the Customer for:

(a) the Deposit and VAT at the rate prevailing on the date of Althon's invoice on or at any time after acceptance of the order

(b) the balance of the Price and VAT (or instalments thereof by way of interim invoices) at the rate prevailing on the date of Althon's invoice before on or at any time after delivery of the Goods/performance of the Services

4.3 If at any time before delivery of the Goods/performance of the Services Althon deems it necessary to increase the Price to give effect to any increase in the cost to Althon it shall have the right to give written notice of any such increase to the Customer increasing the Price and in the event such increase does not exceed 5% of the Price the Customer shall not have the right to cancel the Contract

4.4 Notwithstanding the provisions of clause 4.3 above any increase in the cost to Althon necessitating an increase in the Price which is a result of any change in specification of the Goods and/or Services which is requested by the Customer or as a result of any delay caused by any instructions of the Customer or failure of the Customer to give to Althon adequate information or instructions shall not entitle the Customer to cancel the Contract on receipt of a written notice of such increase in the Price

4.5 The Customer shall pay Althon's invoices as may be rendered from time to time either on receipt of the said invoice or (if specifically notified by Althon) within 30 days of the date of the said invoice (the "Due Date"). Time of payment of Althon's invoices shall be of the essence of the Contract

4.6 If the Customer fails to make payment by the Due Date then without prejudice to any other right or remedy available to it Althon shall be entitled to:

(a) cancel the Contract and/or suspend any further deliveries of the Goods to the Customer or performance of the Services (whether under this Contract or any other contract with the Customer)

(b) charge the Customer interest (before and after any judgment) at the rate of 5% per annum above National Westminster 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)

5. WARRANTIES AND LIABILITIES:

5.1 Subject as expressly provided in these Conditions Althon warrants that the Services will be performed with reasonable skill and care and in accordance with the Contract

5.2 Althon warrants that:-

(a) the Goods will conform to the Contract specification and

(b) shall be free from all defects in workmanship for a period of 6 months from the date of delivery

5.3 Any defects in the Goods or failure to conform to the Contract specification which should be apparent upon reasonable inspection to the Customer on delivery of the Goods must be detailed on the delivery note by the Customer or Customer's representative. Althon shall have no liability to the Customer in respect of any such alleged defects or failure unless so detailed

5.4 Any warranty given by Althon in respect of the Goods and/or Services supplied shall be subject to the following conditions:

(a) Althon shall be under no liability in respect of any defect in the Goods and/or Services arising from any drawing design or specification supplied by the Customer

(b) Althon shall be under no liability in respect of any defects arising from fair wear and tear the Customer's negligence abnormal working conditions failure to follow Althon's instructions (whether oral or in writing) misuse or alteration or repair of the Goods without Althon's approval

(c) no warranty given by Althon extends to Goods not manufactured by Althon in respect of which the Customer shall only be entitled to benefit of any such warranty or guarantee as is given by the manufacturer to Althon

(d) unless agreed in writing Althon shall be under no liability in respect of any alleged defects in respect of any failure of the Goods to comply with any governmental statutory or other provisions relating to the Goods in the country of destination of the Goods and the Customer acknowledges that it shall be the Customer's responsibility to ensure that the Goods comply with such provisions as may apply to the Goods

(e) Althon shall be under no liability under any warranty condition or guarantee if the Price and VAT has not been paid by the Due Date

5.5 Except in respect of death or personal injury caused by Althon's negligence Althon shall not be liable to the Customer by reason of any representation or any implied warranty condition or other term or any duty at common law or under the express terms of the Contract for any consequential loss or damage (whether for loss of profit or otherwise) costs expenses or other claims for consequential compensation whatsoever (and whether caused by Althon's negligence or that of Althon's employees or agents or otherwise) which arise out of or in connection with the supply of Goods and/or Services or their use or resale by the Customer except as expressly provided in these Conditions

5.6 Any liability of Althon hereunder (except in respect of death or personal injury caused by Althon's negligence) for any delay in performing or any failure to perform any of Althon's obligations in relation to the Goods or Services shall be limited to the excess (if any) of the cost to the Customer in the cheapest available market of similar Goods or Services to replace those not delivered/performed over the Price

5.7 Subject as expressly provided in these Conditions all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by Law

5.8 The Customer shall indemnify Althon against all claims losses costs and expenses made against or suffered by Althon arising from or incurred by reason of any loss injury of damage suffered by a third party and arising out of the Customer's use of the Goods

6. TITLE AND RISK:

6.1 Risk of damage to or loss of the Goods shall pass to the Customer upon delivery of the Goods

6.2 Notwithstanding delivery and the passing of risk in the Goods or any provision of these Conditions the property in the Goods shall not pass to the Customer until Althon has received in actual cleared funds payment in full of the Price and VAT and the price of all other goods agreed to be sold by Althon to the Customer for which payment is then due

6.3 Until such time as the property in the Goods passes to the Customer the Customer shall hold the Goods as Althon's fiduciary agent and bailee and shall keep the Goods separate from those belonging to the Customer and third parties and properly stored protected and insured and identified as Althon's property

6.4 Until such time as the property in the Goods passes to the Customer Althon shall be entitled at any time to require the Customer to deliver up the Goods to Althon and if the Customer fails to do so forthwith to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods

6.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Althon but if Althon does so all monies owing to Althon by the Customer shall (without prejudice to any other right or remedy of Althon) forthwith become due and payable

7. CANCELLATION:

Without prejudice to any other right or remedy available to it Althon shall be entitled to cancel the Contract or suspend any further deliveries or performance under the Contract without any liability on the part of Althon to the Customer and if Goods and materials are in transit Althon shall be entitled to stop those Goods and materials 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 in the event that:

(a) the Customer makes any voluntary arrangement with its creditors or a notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying charge holder (as defined in paragraph 14 of Schedule B1 to the insolvency Act 1986) becomes or (being an individual or a firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or

(b) an encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Customer or

(c) the Customer ceases or threatens to cease to carry on business or

(d) if the Customer breaches any one or more of these Conditions or

(e) Althon reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly

8. FORCE MAJEURE:

Neither party shall be liable for any delay in performing or failure to perform (other than a payment obligation) due to any act of god war strike lock-out industrial action fire flood drought tempest or any other event beyond the reasonable control of either party. Such delay or failure will not constitute a breach of this Contract and time for the performance of the affected obligations will be extended by such period as is reasonable

9. INTELLECTUAL PROPERTY:

9.1 Unless otherwise agreed the Customer will not acquire any rights in any intellectual property in the Goods or Services or in packaging or under labels which include trade marks or logos other than those belonging to the Customer and any such rights which the Customer may by law acquire will be held by the Customer on trust absolutely for Althon

9.2 The Customer warrants that it is the sole owner of all intellectual property rights in all documentation art work and such other materials as may be provided to Althon hereunder in connection with the supply of Goods and/or provision of the services

9.3 The Customer shall keep Althon fully indemnified against all actions claims proceedings costs and damages (including any damages or compensation paid by Althon on the advice of its legal advisors to compromise or settle any claim) arising out of any breaches by the Customer of any of the above warranties in clause 9.2 above

10. DATA PROTECTION:

By requesting a quotation the Customer agrees that Althon shall be entitled to use the Customer's personal details for any one or more of the purposes of delivering Goods and/or performing Services (including passing he/her details on to Althon's employees or agents or otherwise). Althon may retain the Customer's details on its customer database and share those details with any other companies in the same group as Althon from time to time and may contact the Customer by telephone post or (with the Customer's prior consent where required) electronic mail to seek Customer feedback and/or to inform him/her of Althon's new similar goods and/or service offerings which Althon believes may be of interest to the Customer. Otherwise Althon will not use the Customer's details for other purposes without obtaining appropriate consent as required by law. If at any time the Customer no longer wishes to receive marketing communication from Althon the Customer should inform Althon following which the Customer's details will be removed from Althon mailing lists

11. GENERAL:

11.1 The headings in the Conditions are for convenience only and shall not affect their interpretation

11.2 Althon may perform any of its obligations or exercise any of its rights hereunder by itself or through its employees agents sub-contractors or otherwise

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

11.4 No failure of the Customer to exercise any power given to it or to insist upon strict compliance by Althon with any obligation hereunder and no custom or practice of the parties at variance with the terms hereunder shall constitute any waiver of any of the Customer's rights under the Contract

11.5 If any provision(s) of these Conditions is(are) held by any competent authority to be invalid or unenforceable in whole or in part then that provision or provisions deemed wholly or partially invalid or unenforceable shall be severed from the Contract and the validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected thereby

11.6 Any notice given hereunder must be given in writing and delivered or sent by post or facsimile transmission to the residence or principal place of business of the party to whom it is addressed

11.7 Except as otherwise provided nothing in this Contract shall confer on any third party any benefit of the right to enforce any terms of this Contract

11.8 The Contract shall be governed by the laws of England and subject to the non-exclusive jurisdiction of the English courts

11.9 If any dispute arises in connection with any Contract the parties may attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties the Mediator will be nominated by CEDR