

The Supplier Standard conditions for the supply of goods Systems Distributors LLC (“the Company”) TERMS AND CONDITIONS OF SALE (Effective September 2015)

1 GENERAL

- 1.1 In these terms and conditions “Goods” means the goods and/or services to be supplied by the Company pursuant to an Order, and “Order” means the Buyer’s order for the Goods which constitutes an offer to purchase the Goods in accordance with these terms and conditions. “Buyer” means the person or firm who purchases the Goods from the Company. “Contract” means the contract between the Buyer and the Company for the sale and purchase of the Goods in accordance with these terms and conditions. No Order will become effective or be deemed to be accepted until either it is accepted by the Company in writing, or the Goods specified in such Order are delivered by the Company, whichever occurs first, at which point and on which date the Contract shall come into existence.
- 1.2 Estimates or quotations comprise an invitation to treat only and are valid for 30 days unless otherwise specified. The Contract comprises the entire agreement between the parties and the Buyer acknowledges that it has not relied on any statement, promise or representation given by or on behalf of the Company which is not set out in the Contract.
- 1.3 These terms and conditions apply to the Contract to the exclusion of any other terms and conditions inconsistent herewith which are implied by trade, custom, practice or course of dealing or which the Buyer might seek to impose or incorporate even though such other terms and conditions may be submitted in a later document and/or purport to exclude or supersede any terms or conditions inconsistent with them or may be contained in any offer acceptance or counter offer made by the Buyer.
- 1.4 The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.
- 1.5 Any samples, drawings, descriptive matter or advertising issued by the Company, and any descriptions or illustrations contained in the Company’s catalogs or brochures, are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2 AMENDMENTS TO ORDER

Any variation or amendment to a Contract requested by the Buyer will only be valid and binding on the Company if it is agreed in writing signed by a duly authorized representative of the Company and subject to an appropriate adjustment in price, delivery dates and other matters.

3 DELIVERY

- 3.1 Where the Buyer has not been authorized by the Company to purchase the Goods on credit, the Company will not dispatch the Goods until the price of the Goods has been paid in full and in cleared funds. When payment has been made, the Company will use its reasonable endeavors to deliver the Goods within a reasonable period. Subject to the foregoing the Company will use its reasonable endeavors to deliver the Goods at the time and in the manner specified in the Contract but any delivery date given is an estimate only and in no circumstances shall time be or be capable of being made of the essence of the contract.
- 3.2 Unless specified in the Contract or otherwise agreed delivery of Goods shall be at the Company’s factory gate.
- 3.3 The Company shall have the right whether before or after the date of the Order to alter the specification of the Goods or any part thereof without notice to the Buyer provided that such alteration does not adversely affect the performance of the Goods.
- 3.4 If the Company fails to deliver the Goods, its liability (if any) shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by any circumstance or circumstances beyond the reasonable control of the Company or the Buyer’s failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 3.5 The Company may deliver the Goods by installments, which shall be invoiced and paid for separately. Each installment shall constitute a separate Contract. Any delay in delivery or defect in an installment shall not entitle the Buyer to cancel any other installment.
- 3.6 If the Buyer fails to take delivery of the goods within three business days of the Company notifying the Buyer that the Goods are ready, then, except where such failure or delay is caused by circumstances outside the reasonable control of the Buyer or the Company’s failure to comply with its obligations under the Contract delivery of the Goods shall be deemed to have been completed on the third business day after the day on which the Company notified the Buyer the Goods were ready and the Company may store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

3.7 The Buyer shall not be entitled to reject the Goods if the Company delivers up to 5% more or less than the quantity of Goods ordered but a pro rated adjustment shall be made to the Order invoice on receipt of notice from the Buyer that the wrong quantity of Goods was delivered.

4 INTELLECTUAL PROPERTY

- 4.1 The Buyer shall forthwith notify the Company of any allegation of infringement of any patent, registered design, trade mark, copyright or other intellectual property right enjoyed by the Company or by the manufacturer of the Goods or any part thereof.
- 4.2 To the extent that the Goods are to be manufactured in accordance with a specification supplied by the Buyer, the Buyer shall indemnify the Company against all liabilities, costs, expenses damages, and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Company in connection with any claim made against the Company for actual or alleged infringement of a third party’s intellectual property rights arising out of or in connection with the Company’s use of that specification. This Clause shall survive termination of the Contract.

5 WARRANTIES AND QUALITY

- 5.1 The Company warrants that subject to the following provisions of this clause 5 the Goods supplied under the Contract will be free from material defects in workmanship and material for the period set out in the attached statement of warranty. Goods sold subject to a “Limited Lifetime Warranty” shall be governed by the terms of such Limited Lifetime Warranty and these terms and conditions (and where there is any conflict or inconsistency the terms of the Limited Lifetime Warranty shall prevail) In relation to services the Company shall perform such services with reasonable skill and care.
- 5.2 Notwithstanding clause 5.1 the Company shall have no liability in respect of any shortage in delivery or defective goods unless:
 - 5.2.1 In the case of any shortage in delivery or defect which is readily apparent on inspection the Buyer notifies the Company in accordance with clause 5.2.3 within seven days of delivery; or
 - 5.2.2 In the case of any other defect the Buyer notifies the Company during the period of the warranty referred to in clause 5.1; and, in either case:
- 5.2.3 Such notice is in writing and includes full details of the defect and/or shortage and includes part/ or serial/batch numbers and the date of purchase of the goods; and
- 5.2.4 The Buyer, if authorized and requested by the Company and having been provided by the Company with a Return Material Authorization (RMA) number, returns the defective Goods to the Company (or to such other person specified by the Company) prepaid either by Parcel Post or recognized parcel courier. The Buyer will not return any defective Goods unless so authorized and requested by the Company.
- 5.3 On return of defective Goods to the Company the Buyer will, in its entire discretion, repair or replace such Goods or credit to the Buyer the price at which the Goods were sold by the Company to the Buyer.
- 5.4 The warranties and liability of the Company set out in this clause 5 shall constitute the entire warranties and liability of the Company in respect of the Goods failure to comply with the warranty referred to in clause 5.1, and all other warranties and liabilities, whether implied or otherwise, are expressly excluded to the extent permitted by law.
- 5.5 Without prejudice to clause 5.4, and subject to Clause 6.1, the Company shall in no circumstances be liable for any defects in Goods, or non-compliance with the warranty set out in Clause 5.1, in any of the following events:
 - 5.5.1 The Buyer making any further use of the relevant defective Goods after giving notice in accordance with clause 5.2.3;
 - 5.5.2 The defect arising because the Buyer failed to follow the Company’s oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - 5.5.3 The defect arising as a result of the Company following any drawing, design or specification supplied by the Buyer;
 - 5.5.4 The Buyer altering or repairing the relevant Goods without the written consent of the Company;
 - 5.5.5 The defect arising as a result of fair wear and tear, accidental damage, mishandling, misuse, abuse, negligence, improper care, , abnormal storage or working conditions or repair by unauthorized persons;
 - 5.5.6 Default on the part of the Buyer including any non-compliance with any obligation imposed by these terms and conditions or any delay, wrong information or lack of required information; or
 - 5.5.7 The relevant defective Goods differing from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.7 In the event that any Goods alleged to be defective by the Buyer are not defective, the Company may charge and the Buyer agrees to pay the Company’s reasonable costs in connection with the inspection of such Goods.
- 5.8 Until the expiry of the warranty referred to in Clause 5.1 above:
 - 5.8.1 The Company’s representative shall have a full and free right of access to the Goods;
 - 5.8.2 The Buyer shall only permit duly authorised representatives of the Company to effect replacement of parts, maintenance and repairs to the Goods;
 - 5.8.3 The Buyer shall properly maintain the installation and environment for the Goods so as to comply with the Company’s specifications;
 - 5.8.4 The Buyer shall permit operation of the Goods only by such operators as shall be competent and conversant with the Goods and the Buyer shall not permit any addition or attachment to or movement of any item or part of the Goods or purport to assign or transfer its interest under any agreement between the Buyer and the Company.
 - 5.9 The Buyer shall conform with all instructions and labelling prescribed by the Company in relation to the Consumer Protection Act 1987 and all other relevant legislation including without limitation relevant health and safety legislation.
 - 5.10 The Buyer shall supply the Company with full written details of all legal requirements of any territory (other than the United States) in which the Goods will be used or sold by the Buyer relating to the design construction composition and quality of the Goods. It is the responsibility of the Buyer to satisfy itself that the Goods comply with all relevant legal and regulatory requirements in the territory in which the Buyer wishes to use or re-sell the Goods. The Company provides no warranty that the Goods will comply with all such relevant legal and regulatory requirements.
 - 5.11 The warranties referred to in this Clause cover the Buyer only and are non-transferable.
 - 5.12 Where the Company replaces any Goods pursuant to this Clause 5, the Company reserves the right to replace any Goods that have been discontinued with Goods from the Company’s product line of comparable value and function.

6 LIMITATION OF LIABILITY

- 6.1.1 The Buyer accepts that he is not relying upon the Company’s judgment as to the fitness of the Goods for any specific purpose of the Buyer;
 - 6.1.2 The Buyer accepts that he is not placing an Order in reliance upon any promise, representation or inducement on the part of the Company;
 - 6.1.3 The Company shall not be liable for any loss or expense or damage howsoever arising (including by negligence) to any property of or furnished by the Buyer or any third party and the Buyer must insure its own property arising out of or in connection with this Agreement.
- ## 7 CHARGES AND PAYMENT
- 7.1 Unless otherwise agreed in writing, and subject to clause 1.2, the price of the Goods shall be the price stipulated in the Company’s published price list current at the date of delivery. All prices quoted are exclusive of Value Added Tax and all other duties and levies which will be payable in addition to the price. Where any taxable supply for VAT purposes is made under the Contract by the Company to the Buyer, the Buyer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Goods at the same time as payment is due for the supply of the Goods.
 - 7.2 Unless otherwise agreed in writing, the Buyer will not be entitled to receive any discounts other than those listed in the Company’s current price list.
 - Any sums paid to the Company by way of deposit or prepayments are not refundable to the effect that any claims for reimbursement of such sums will be at the absolute discretion of the Company.
 - 7.3 Where the Company has agreed in writing that the Buyer is permitted to purchase the Goods on credit then payment in full is due to the Company in full and cleared funds not more than 30 days after the date of the Company’s invoice. Such time of payment is of the essence of the contract. Where the Buyer is so authorized to purchase the Goods on credit the Company may invoice the Buyer for the Goods on or at any time after completion of delivery. In all other cases the Company may invoice the Buyer at any time after the Contract comes into existence in accordance with these terms and conditions.
 - 7.4 If the Buyer (being a company) enters into administration liquidation or receivership or (being an individual) becomes bankrupt or in either case makes any arrangement with his creditors or commits a material or serious breach of this agreement (and in the case of such a breach being remediable fails to remedy it within 7 days of receiving notice to do so) he will be deemed to have repudiated the Contract.
 - 7.5 The Company reserves the right at any time at its discretion to demand security for payment before continuing with or delivering any Order.
 - 7.6 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 Company in order to justify withholding payment of any such amount in whole or in part.

8 CONFIDENTIALITY

- 8.1 Information supplied by the Company in any form (other than information in the public domain or information required to be disclosed by law or anybody of competent jurisdiction) is supplied in confidence and must not be used by the Buyer for any other purpose than the performance of the Contract and must not be disclosed to any other party without the Company’s express written consent and then only on conditions equivalent to this condition and with an express notification that the information was provided for the Buyer only and is not intended to be relied upon by any other party.
 - 8.2 The Company may use its connection with the Buyer in its advertising of its Goods and services.
- ## 9 ASSIGNMENT AND SUB-CONTRACTING
- The Company may assign or sub-contract such part or parts of any Contract as it sees fit. The Buyer may not assign its rights hereunder.
- ## 10 TITLE AND RISK IN GOODS
- 10.1 The title in the Goods shall not pass from the Company to the Buyer until the later of delivery and receipt by the Company of payment in full of all sums due or owing from the Buyer to the Company on any account.
 - 10.2 The risk in the Goods shall pass to the Buyer on delivery.
 - 10.3 If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 11 or the Company reasonably believes that any such event is about to happen and notifies the Buyer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and that the Buyer or remedy the Company may have, the Company may at any time require the Buyer to deliver up the Goods and, if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

11 BUYER’S INSOLVENCY OR INCAPACITY

- 11.1 If the Buyer becomes subject to any of the events listed in this clause or the Company reasonably believes that the Buyer is about to become subject to any of them, then, without limiting any other right or remedy available to the Company, the Company may cancel or suspend all further deliveries and/or performance under the Contract or under any other contract between the Buyer and the Company without incurring any liability to the Buyer, and all outstanding sums in respect of Goods delivered to the Buyer shall become immediately due.
- 11.2 For the purposes of this clause, the relevant events are:
 - 11.2.1 The Buyer commences negotiations with all or any class of its creditors with a view to restructing any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
 - 11.2.2 (Being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Buyer, other than for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
 - 11.2.3 (Being an individual) the Buyer is the subject of a bankruptcy petition or order;
 - 11.2.4 A creditor or encumbrance of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 11.2.5 (Being a company) a floating charge holder over the Buyer’s assets has become entitled to appoint or has appointed an administrative receiver;
 - 11.2.6 A person becomes entitled to appoint a receiver over the Buyer’s assets or a receiver is appointed over the Buyer’s assets;
 - 11.2.7 Any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in the above clauses
 - 11.2.8 The Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
 - 11.2.9 The Buyer’s financial position deteriorates to such an extent that in the Company’s opinion the Buyer’s capability to adequately fulfill its obligations under the Contract has been placed in jeopardy; and
 - 11.2.10 (Being an individual) the Buyer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 11.3 Termination of the Contract, however arising, shall not affect any of the parties’ rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

12 MATTERS BEYOND COMPANY’S CONTROL

The Company shall not be liable for any loss damage or expense howsoever arising from any delay or failure of performance arising from circumstances beyond its control including, but not limited to, earthquake, flood, storm, act of God or of public enemies, national emergency, invasion, insurrection, riots, strikes, picketing, boycott, interruption of services rendered by any public utility or interference from any government agency or official.

13 RETURN OF GOODS

It is the Company’s policy not to accept back any goods that have been ordered in error or in excess of requirements. In exceptional circumstances, with the approval of the Company, where the Company does accept goods back on this basis a 25% handling charge (i.e. 25% of the price of the Goods returned) will be applicable.

14. GENERAL

- 14.1 Notices.
 - 14.1.1 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, recorded delivery, commercial courier, fax or e-mail.
 - 14.1.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2(a); if sent by pre-paid first class post or recorded delivery, at 9:00am on the second working 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 working day after transmission.
 - 14.1.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
 - 14.2 Severance.
 - 14.2.1 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.
 - 14.2.2 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.
- 14.3 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.
- 14.4 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 LAW

This agreement shall in all respects be governed by and construed in accordance with the laws of the State of New Jersey, United States of America. The Buyer submits to the exclusive jurisdiction unconditionally of the laws of the state of New Jersey, without giving any effect to principles of conflicts of law.

16 ADDITIONAL

The Terms and Conditions of the Company shall be updated by the Company as needed.