

## terms and conditions of sale

### 1. INTERPRETATION

“Assemblies” means those items assembled by the Seller and comprising the Goods and additional parts supplied by the buyer for the purpose of any contract

“Buyer” means the person whose order for the Goods is accepted by the Seller

“Seller” means Flexicon Ltd of Roman Way, Coleshill, Birmingham, B46 1HG (Flexicon Ltd is registered in England under Number 3824181)

“Goods” means the Goods and Assemblies (including and instalments of the Goods or any parts for them) which the Seller is to supply in accordance with these Conditions

“Conditions” means the terms and conditions of sale set out below and includes any special terms and conditions agreed in writing between the Buyer and the Seller

“Contract” means the contract for the purchase and sale of the Goods formed in accordance with these conditions

“Writing” including cable, facsimile transmission, e-mail and comparable means of communication

“Working Day” Monday to Friday of each week (except Christmas Day, Boxing Day, New Year's Day and any other Bank or Statutory holiday)

### 2. APPLICATION OF CONDITIONS

2.1 Notwithstanding anything which may be contained in any purchase order or other document of the Buyer, Goods are supplied subject to these Conditions alone

2.2 These Conditions shall prevail over any inconsistent terms implied by trades custom or practice or by previous dealings between the Seller and the Buyer (such inconsistent terms being expressly excluded)

2.3 The Seller reserves the right by notice in writing to the Buyer signed by a director of the Seller to add to amend or vary these conditions at any time before acceptance of delivery of or payment for the Goods whichever is the earlier

2.4 Acceptance of delivery of the Goods or payment for the Goods by the Buyer to the Seller shall of itself constitute an acceptance of these conditions where acceptance has not previously been communicated to the Seller

### 3. QUOTATIONS

Quotations shall be valid for a maximum period of 30 days from the date thereof and may be withdrawn by the Seller within such period at any time by written or oral notice

### 4. FORMATION OF CONTRACT

4.1 The Contract shall be formed at the Seller's address upon the Seller's acceptance of the Buyer's order (which may be evidenced by the Seller's written confirmation of such acceptance or by the Seller processing the Buyer's order and arranging the delivery of Goods without the necessity for written confirmation of acceptance)

4.2 Nothing shall oblige the Seller to accept any order

4.3 The Seller's agents and employees are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract, the Buyer acknowledges that it does not rely on any such representations which are not confirmed

4.4 The Seller's Goods are subject to a continuing process of technical change and development and the Seller accordingly reserves the right to make any changes in the specification or design of the Goods whether described in the Seller's catalogues or elsewhere which do not materially diminish the quality or performance of such Goods and such change will not constitute a breach of contract or impose any liability upon the Seller

### 5. CALLS-OFFS AND CANCELLATIONS

For the avoidance of any doubt the Buyer may not cancel or suspend (either in whole or part) any order following the Seller's acceptance thereof, but in the event that the Buyer shall purport to cancel or suspend any such order, the Buyer shall without prejudice to any other rights of the Seller indemnify the Seller in full against all loss (including without limitation loss of profit) costs (including without limitation the cost of all labour and materials

used) damages, charges and expenses incurred by the Seller as a result of such purported cancellation or suspension

## 6. PRICE

6.1 The price of the Goods shall be in the edition of the Seller's Trade Price List current at the date of the Contract, subject only to the Seller's Discount and Settlement Terms (if any) agreed with the Buyer and Clause 6.2 below

6.2 If after the date of the Seller's quotation the cost to the Seller of the materials used by the Seller in the manufacture of the Goods is increased then the Seller may give notice of any such increase which the Seller is proposing to pass on to the Buyer and such notice if given shall have the effect of increasing the Seller's quoted price for the Goods. The Buyer may by notice in writing to the Seller within 7 days of the notice of such increase cancel the order and in this event the Contract shall be terminated without any liability whatsoever being incurred by the Seller or the Buyer to the other

6.3 The Seller accepts orders based upon "Minimum Order Value" and "Carriage Paid Order Value". Orders which exceed the "Minimum Order Value" but are below the "Carriage Paid Order Value" are subject to a carriage charge. Overnight and other special delivery requirements can be arranged at the Buyer's expense. Details are available from the Seller's Sales Office.

6.4 All prices are stated exclusive of VAT which will be charged at the rate prevailing at the date of the despatch of the Goods. When required, the Buyer will notify the Seller of its VAT registration number

## 7. PAYMENT

7.1 Subject only to any special terms agreed in writing between the Buyer and the Seller (including the Seller's Discount and Settlement Terms if applicable) the Buyer shall pay the price of the Goods by the end of the calendar month immediately following the date of the Seller's invoice, and the time of payment shall be of the essence

7.2 Payment shall be made in Sterling and the Seller shall be entitled to add any bank charges incurred in connection with any currency conversion or clearance of any cheques, money orders or the like drawn on an account outside Great Britain

7.3 If the Buyer fails to make any payment on the due date, then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:-

7.3.1 Cancel the Contract or suspend any further deliveries to the Buyer;

7.3.2 Charge the Buyer interest (both before and after any judgement the unpaid amount at the rate of 4 per cent per annum above Lloyds TSB Bank plc base rate from time to time, until payment is made in full

7.4 In respect of all amounts outstanding and due to the Seller and without prejudice to any other remedies the Seller may have the Seller shall have a general lien on all Goods and property of the Buyer in the possession of the Seller (whether worked on or not) and shall be entitled on the expiration of 14 days' notice to the Buyer of its intention to do so to dispose of or deal with such Goods and property in such manner at such price as the Seller in its sole discretion thinks fit and to apply any proceeds towards such outstanding amounts

7.5 No payment shall be deemed to have been received until the Seller has received cleared funds

7.6 All payments payable to the Seller under this Contract shall become due immediately upon termination of this Contract

7.7 The Buyer shall make all payments due under this Contract without any deduction whether by way of set-off, counterclaim or otherwise unless the Buyer has a valid Court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer

7.8 The Seller may appropriate any payment by the Buyer to the Seller to such of the Goods as the Seller thinks fit despite any purported appropriation by the Buyer

## 8. PACKING AND DESPATCH

8.1 Goods will be packed by the Seller at the Seller's expense in containers which the Seller deems suitable. In the event, however, that the Buyer requests large or special packaging cases, the Seller will make an additional charge in respect of such packaging

8.2 The Seller will (unless otherwise requested in writing by the Buyer) arrange for the carriage and delivery of all consignments of the Goods. If the value of a consignment exceeds the carriage paid net value and is to be delivered on 2-3 day delivery in Great Britain, such carriage (Goods rate) will be at the expense of the Seller, otherwise the cost of such carriage will be charged by the Seller to the Buyer in addition to the price. Goods will only be delivered on 2-3 day delivery if the Seller has accepted the Buyer's order before 3pm for Goods already held in stock by the Seller (before 2pm on Friday)

8.3 The Seller does not guarantee delivery of the Goods in accordance with any delivery date requested by the Buyer, and unless specifically agreed otherwise in writing by the Seller the delivery date notified to the Buyer is approximate only and the Seller shall not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Seller's negligence)

8.4 Time for delivery shall not be of the essence of the Contract

8.5 Failure by the Buyer to take delivery of or to make payment in respect of the Goods or any one or more instalments of the Goods shall entitle the Seller to treat the whole of the Contract as repudiated by the Buyer

8.6 The Seller shall not be required to fulfil orders in the sequence in which they are placed

8.7 The Goods shall be delivered by such means as the Seller thinks fit unless the Buyer has specified in its order the details of the Contract with a carrier which it reasonably requires having regard to the nature of the Goods and other circumstances of the case

8.8 The Carrier shall be deemed to be the Buyer's agent except for the purposes of Sections 44, 45 and 46 of the Sale of Goods Act 1979 (as amended)

8.9 Delivery of the Goods shall be accepted at any time of day

8.10 The Buyer will provide at its expense adequate and appropriate equipment and manual labour for off-loading the Goods

8.11 Failure by the Seller to deliver any one or more (but not all) instalments in accordance with this Contract or any claim by the Buyer in respect of any one or more (but not all) instalments shall not entitle the Buyer to treat this Contract as repudiated

#### 9. LOSS OR DAMAGE IN TRANSIT OR DISCREPANCY UPON DELIVERY

9.1 The Seller will replace Goods which fail to arrive or which are delivered in a damaged condition provided that the Buyer shall notify the Seller of such non-arrival or damage in transit in writing within 5 working days of the date of delivery (or the anticipated date of delivery in the case of non-arrival). Because of the terms of the Seller's insurance policy, no claim in respect of loss or damage in transit will be accepted if not so notified as above

9.2 It is the responsibility of the Buyer to inspect the Goods upon delivery, and if the Goods do not correspond in nature or number with the Goods ordered the Buyer must notify the Seller in writing of any such discrepancy within 5 working days of the date of such delivery, failing which no claim in respect of any discrepancy will be accepted by the Seller

#### 10. DEFECTIVE GOODS

10.1 The Seller warrants that the Goods will be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as amended)

10.2 It is in every instance for the Buyer to satisfy itself that the Goods ordered are fit and suitable for the purpose for which the Goods are required and no warranty or representation is given or implied as to the quality or fitness of the Goods for any particular purpose (whether or not such purpose is known to the Seller on or prior to the Goods being ordered)

10.3 The warranty contained in clause 10.1 is given subject to the Buyer notifying the Seller in writing of any defect within 5 working days of the date of delivery or where a defect was not apparent on reasonable inspection within a reasonable time after discovery of such defect and in any event within 3 months of delivery

10.4 If the Goods are defective the Buyer shall return them as soon as practicable carriage paid to the Seller's premises. If, after examination by the Seller, it is established that the Goods are defective then the Seller will refund the Buyer the cost of the carriage

10.5 Where any valid claim in respect of any Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is noted to the Seller in accordance with these Conditions, the Seller will refund to the Buyer the price paid or, at the Seller's absolute discretion shall replace the Goods free of charge

10.6 Defects in Goods delivered shall not be ground for cancellation by the Buyer of any Contract or the remainder of any order

10.7 If the Seller complies with Condition 10.5 it shall have no further liabilities for breach of warranty in Condition 10.1 in respect of the quality of the Goods

#### 11. EXTENT OF SELLER'S LIABILITY

11.1 The following provisions and the provisions of Condition 10 set out the entire liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

11.1.1 any breach of these terms and conditions; and

11.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract

11.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by Section 12 of the Sale of Goods Act 1979 (as amended)) are excluded from the Contract

11.3 Nothing in these terms and conditions excludes or limits the liability of the Seller for death or personal injury caused by the Seller's negligence or fraudulent misrepresentation **THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITIONS 11.4**

11.4 Subject to Conditions 11.2 and 11.3:

11.4.1 The Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the price paid for the Goods; and

11.4.2 The Seller shall not be liable to the Buyer by reason of any representation or any implied warranty, condition or other term or any duty at law or under the express terms of this Contract for loss of profit, loss of business, depletion of goodwill or for any indirect or consequential loss, damage, costs, expenses or other claims for consequential compensation whatsoever (whether caused by the negligence of the Seller, its employees, agents or sub-contractors) which arise out of or in connection with the Contract

#### 12. RISK AND TITLE

12.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery to the Buyer's premises or, if the Buyer wrongly fails to take delivery of the Goods, at the time when the Seller has tendered delivery of the Goods

12.2 Notwithstanding delivery and the passing of risk in the Goods, the property in any Goods supplied will not pass to the Buyer until the Seller has received payment in full in cash or cleared funds

12.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods on a fiduciary basis as the Seller's bailee, and shall keep the Goods separate from those of the Buyer. The Buyer shall keep the Goods and any part thereof insured in the amount of the price at which the Goods are sold to the Buyer

against all insurable risks and shall account to the Seller for any monies relating to the Goods and any part thereof received under such policy of insurance forthwith upon receipt of the same and pending such account shall hold such monies on trust for the Seller and pay them into a separate bank account designated as a trust account for the Seller. Any account of monies by the Buyer in accordance with the terms of this sub-condition received by the Seller shall not discharge the Buyer's liability to pay the price for the Goods plus any interest accrued in accordance with sub-condition 7.3.2 above but shall be set off against such liability

12.4 Until such time as the property in the Goods passes to the Buyer, the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business. Any sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale

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

### 13. FORCE MAJEURE

The Seller shall have the right to cancel or delay delivery or to reduce the amount delivered if it is prevented from or hindered in or delayed in delivery by normal route or means of delivery of the Goods of the description covered by this Contract through any circumstances beyond its reasonable control including but not limited to strikes, lock-outs, accidents, war, act of God, fire, reduction in or unavailability of power at manufacturing, plant, break-down of plant or machinery or shortage or unavailability of raw materials from normal sources or routes of supply

### 14. MISCELLANEOUS

14.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business 14.2 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions or the remainder of the provision in question shall not be affected thereby

### 15. LAW

The Contract shall be governed by and construed in all respects in accordance with English Law and the Seller and the Buyer irrevocably submit themselves to the exclusive jurisdiction of the English Courts

### 16. DIMENSIONS

Dimensions specified by the Seller are to be treated as approximate only unless the Buyer specifically states in writing that exact measurements are required. Conduit is measured under light tension and reels have a tolerance of +/- 2%. For length tolerances of cut lengths contact Flexicon. Tolerance on quantity of Fittings is +/- 2%.

### 17. SAMPLE/DESCRIPTION

Unless otherwise agreed in writing signed by a director of the Seller any contract hereunder shall not be a sale by sample or samples submitted and descriptions or illustrations in trade literature or catalogues or examples of the Goods shall be treated as showing type, class and general character only and not as importing conditions or warranties as to substance, quality, performance, colour or size and any failure of the Goods to conform with such descriptions, illustrations or examples shall not constitute any breach of contract on the part of the Seller

### 18. CONFIDENTIAL INFORMATION

All drawings, documents, confidential records, computer software and other information supplied by the Seller are supplied on the express understanding copyright is reserved to the Seller and that the Buyer will not without the prior written consent of the Seller either give away, loan, exhibit, sell, exchange or deal with any such drawings, documents, records, software or other information or extracts therefrom or copies thereof or use them in any way except in connection with the Goods in respect of which they are supplied

### 19. CUSTOMER'S DRAWINGS

19.1 The Buyer shall be solely responsible for ensuring that all drawings, information, advice and recommendations given to the Seller either directly or indirectly by the Buyer or by the Buyer's agents, servants, consultants or advisers are accurate, correct and suitable. Examination or consideration by the Seller of such drawings, information, advice or recommendations shall in no way limit the Seller's responsibility hereunder unless the Seller specifically agrees in writing to accept responsibility

19.2 The Buyer shall indemnify the Seller from and against all actions, claims, costs, damages and proceedings which arise due to the manufacture of the Goods and the drawings or specifications of the Buyer where such drawings or specifications are at fault or where it is alleged that they involve an infringement of patent copyright registered design copyright or any other intellectual property right

### 20. DATA AND TECHNICAL INFORMATION

The information contained in the advertising sales and technical literature issued by the Seller may be relied upon to be accurate in the exact circumstances in which it is expressed otherwise any illustrations, performance details, examples of installations and methods of assembly and all other technical data in such literature are based on experience and upon trials under test conditions and are provided for general guidance only

### 21. SUB-CONTRACTORS

The Seller shall be entitled without the prior consent of the Buyer to sub-contract the whole or any part of the Contract or to employ any independent contractor to perform its obligations under the Contract and in so doing none of the obligations accepted hereunder by or the rights conferred on the Buyer shall in any way be negative or varied

## 22. QUANTUM MERUIT

Where from any cause whether arising under the Contract or otherwise and whether due to the Seller's breach of contract or otherwise the Contract is only partly performed then the Seller shall be entitled to payment on a quantum meruit basis in respect of all work done without prejudice to the Seller's other rights and remedies should non-performance be occasioned by default of the Buyer

## 23. INSOLVENCY

If the Buyer shall become bankrupt or unable to pay its debts as prescribed by Section 123 Insolvency Act 1986 or enters into compound with its creditors or in the event of a resolution being passed or proceedings commenced for the administration or liquidation of the Buyer (other than for a voluntary winding up for the purpose of reconstruction or amalgamation) or if a Receiver Manager Administrator or Administrative Receiver is appointed of all or any part of its assets or undertaking the Seller shall be entitled to cancel the Contract in whole or in part by notice in writing without prejudice to any right or remedy accrued or accruing to the Seller

## 24. Errors, omissions and amendments excepted

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