

API'S STANDARD T&CS FOR THE SALE OF GOODS AND SERVICES

1. DEFINITIONS AND INTERPRETATION

1.1 In these standard terms and conditions the following definitions apply:

"API" means API Foils Limited a company registered in England with registered number 00202034 and whose main place of business is at Firth Road, Houstoun Industrial Estate, Livingston, West Lothian EH54 5DJ and whose registered office is at Second Avenue, Poynton Industrial Estate, Poynton, Stockport, Cheshire SK12 1ND, United Kingdom;
"Applicable Law" means any statute, statutory instrument, bye-law, order, directive, treaty, decree or law (including any common law, judgment, demand, order or decision of any court, regulator or tribunal), rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body and/or legally-binding industry code of conduct or guidelines which relates to the Contract and/or the Goods and/or the Services;
"Business Day" means a day other than a Saturday or Sunday or a day which is a public or bank holiday in England and/or Wales;
"Buyer" means the person whose order for the Goods and/or the Services is accepted by API in accordance with Condition 2.2;
"Confidential Information" means all information in respect of the business of a Party including know-how and other matters connected with the Goods and/or the Services, information concerning that Party's relationships with actual or potential clients, customers or suppliers and the needs and requirements of that Party and of such persons and any other information which, if disclosed, will be liable to cause harm to that Party;
"Contract" means the contract between API and the Buyer for the sale and purchase of the Goods and/or the supply of the Services formed in accordance with Condition 2;
"Delivery Point" means the place where delivery of the Goods is to take place under Condition 6.1;
"Goods" means the goods (or any part of them) set out in an Order Confirmation;
"Force Majeure Event" means an act of God, lightning, earthquake, fire, flood, storm, or extreme weather condition; or war, insurrection, riot, civil commotion, act or threat of terrorism or strike, lockout, industrial action or dispute (whether affecting the workforce of API and/or any other person) or a reduction in or unavailability of raw materials from normal sources of supply; or change in Applicable Law or any event or circumstance beyond the reasonable control of API;
"Insolvent" means the Buyer is insolvent where it (i) proposes or passes a resolution for its winding up or in the case of a limited liability partnership proposes or determines that it will be wound up; or (ii) is subject to an application to or order or notice issued by a court or other authority of competent jurisdiction for its winding up or striking off; or (iii) enters administration or is the subject of an application for administration filed at any court or a notice of intention to appoint an administrator given by any person filed at any court or if any steps or actions are taken in connection with the appointment of an administrator in respect of it; or (iv) proposes, makes or is subject to, a voluntary arrangement or a composition with its creditors generally, an application to a court of competent jurisdiction for protection from its creditors generally or a scheme of arrangement under Part 26 Companies Act 2006, or (v) takes any step in connection with the making of a API voluntary arrangement or a composition with its creditors; or (vi) has a receiver or a provisional liquidator appointed over any of its assets, undertaking or income; or (vii) ceases to trade or appears, in the reasonable opinion of API, to be likely to cease to trade; or (viii) is unable to pay its debts within the meaning of Section 123 Insolvency Act 1986; or (ix) has any distraint, execution or other process levied or enforced on any of its property which is not paid out, settled or discharged within ten (10) Business Days; or (x) is the subject of anything analogous to the foregoing under the laws of any applicable jurisdiction;
"Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, Confidential Information, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
"Order Confirmation" means a written acknowledgement of an order from the Buyer issued by API pursuant to Condition 2.2;
"Party" means a party to the Contract;
"Services" means any services which API provides to the Buyer including the Support Services and any services to be provided by API set out in an Order Confirmation;
"Specification" means each of the following, as set out in the Order Confirmation: in relation to the Goods and/or the Services, the technical specifications of those Goods and/or documents detailing the requirements of the Services; all preparatory, design and development materials which relate to the Goods and/or the Services; all information of any description which explains the structure, design, operation, functionality of the Goods or how the Services will be performed; and all information of any description which relates to the maintenance and/or support of the Goods and/or the Services;
"Support Services" means any support services which API provides in relation to the provision of the Goods; and
"T&Cs" means these standard T&Cs of sale together with any terms in the Order Confirmation issued by API.

1.2 All headings are for reference only and shall not affect the interpretation of these T&Cs.

1.3 Unless the context otherwise requires references to the singular include the plural and vice versa and references to any gender include every gender; and references to a "person" include any individual, body corporate, partnership, firm, trust, organisation, joint venture, government or government agency, local or municipal authority or any other entity.

1.4 References to any statute or statutory provision shall include any subordinate legislation made under it and shall be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time.

2. FORMATION AND INCORPORATION

2.1 Subject to any variation under Condition 2.6, the Contract will be upon these T&Cs to the exclusion of all other terms and conditions, including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order or similar document, whether or not such document is referred to in the Contract or which are implied by trade, custom, practice or course of dealing. These T&Cs, in their applicable version at the relevant time, shall apply to each future order without API having to issue a copy for each order. API will notify the Buyer about any changes to these T&Cs.

2.2 Each order or approval of a quotation for Goods and/or the Services will be deemed to be an offer by the Buyer to purchase Goods and/or the Services upon these T&Cs. The Contract is formed when the Buyer's order or approval of quotation is confirmed by API, by way of an Order Confirmation. Each Order Confirmation will contain a purchase order number which shall be quoted in all correspondence.

2.3 Any quotation provided by API is valid for a period of thirty (30) days only from its date of issue, provided API has not previously withdrawn it.

2.4 The Buyer must ensure that the terms of its order or approval of quotation and any applicable Specification are complete and accurate and are reflected within the Order Confirmation.

2.5 Subject to Condition 7.4, the Buyer may not cancel the Contract unless it has the written consent of API.

2.6 No variation to the T&Cs shall be effective unless it is in writing and signed by a duly authorised representative on behalf of API.

3. THE GOODS

3.1 The quantity and description of the Goods and/or the Services will be as set out in the Order Confirmation.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by API (or the manufacturer of the Goods) and any descriptions or illustrations contained in API's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or the Services represented by or described in them. They will not form part of the Contract or have any contractual force and this is not a sale by sample.

3.3 API may make any changes to the Specification, design, materials or finishes of the Goods and/or provision of the Services which are required to conform with any Applicable Laws or do not materially affect their quality or performance.

3.4 API may deliver to the Buyer Goods up to ten per cent. (10%) more or ten per cent. (10%) less than the quantity ordered without any adjustment in the price, and such quantity delivered will be deemed to be the quantity ordered.

3.5 Where the Goods will be used with or incorporated into any other goods, the Buyer shall satisfy itself that the Goods will not adversely affect, or be adversely affected by those goods. The Buyer shall satisfy itself that the Goods ordered are suitable for any manufacturing or packaging process which they may undergo.

3.6 Should the Buyer send its own material to API for processing, the Buyer shall ensure such materials are suitable for such processing. API accepts no liability for any loss incurred by the Buyer should its materials be found unsuitable for the processing specified.

3.7 API may, at its option, provide Support Services, the nature, extent, duration and cost of which shall be agreed with the Buyer on an order by order basis.

3.8 Subject to Condition 8.6, where and to the extent that any Support Services are provided (whether set out in an Order Confirmation or not), they are performed at the Buyer's risk and no liability shall fall on API as a consequence of performing the Support Services.

4. **PRICE**

- 4.1 The price for the Goods and/or the Services will be the price set out in the Order Confirmation, or if not set out in the Order Confirmation, in API's published price list current at the date of delivery. Unless otherwise agreed, the price is inclusive of any costs of packaging and delivery of the goods and exclusive of any value added tax or other applicable sales tax. In the case of duty, Incoterms 2010 (as may be amended from time to time) shall be deemed to apply to a Contract.
- 4.2 API will be entitled to increase the price of the Goods following any changes in the Specification made at the request of the Buyer and agreed by API, or to cover any extra expense as a result of the Buyer's instructions (or lack of instructions), or to comply with the requirements of Condition 3.3.

5. **PAYMENT**

- 5.1 API may invoice the Buyer for the Goods on or at any time after delivery and for the Services on or at any time after performance commences and, subject to Condition 5.3, payment is due in sterling in cleared funds thirty (30) days after the date of such invoice.
- 5.2 Time shall be of the essence in respect of the payment dates set out in Condition 5.1 and any dates which may be substituted for them by the agreement in writing of the Parties.
- 5.3 All sums payable to API under the Contract will become due immediately upon termination of the Contract.
- 5.4 All payments to be made by the Buyer under the Contract will be made in full without any set-off, restriction or condition and without any deduction or withholding of any nature, unless the Buyer is required by law to make any such deduction or withholding.
- 5.5 API may allocate any payment made by the Buyer to API to such of the invoices for the Goods and/or the Services as API thinks fit.
- 5.6 If any sum payable under the Contract is not paid when due then, without prejudice to API's other rights under the Contract, that sum will bear interest from the due date until payment is made in full, both before and after any judgment, at three per cent. (3%) per annum over HSBC Bank plc base rate from time to time and API will be entitled to suspend deliveries of the Goods and/or performance of the Services until the outstanding amount has been received in cleared funds by API from the Buyer.

6. **DELIVERY**

- 6.1 Delivery of the Goods and provision of the Services (if any) will be made by API to the location specified in any Order Confirmation or as otherwise subsequently agreed by the Parties in writing.
- 6.2 The Buyer shall, except as otherwise agreed, be responsible for obtaining all export and import licences and authorisations relating to the Goods, and for the payment of all customs and excise duties, taxes and charges, including clearing and brokerage charges, paid or payable for or in respect of the exportation and importation of the Goods. The Buyer shall be liable for, and shall indemnify API from and against, all claims, liabilities, costs and expenses of any nature suffered or incurred by API as a result of or by reason of any such importation or exportation.
- 6.3 The Buyer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for off-loading the Goods.
- 6.4 API will use reasonable endeavours to deliver or perform each of the Buyer's orders for the Goods and/or the Services on the delivery date specified in the Order Confirmation and, if no time is agreed, then within a reasonable time, but, in any event, the time of delivery or performance is approximate and will not be of the essence.
- 6.5 If the Buyer fails to accept delivery of any of the Goods or to provide any instructions, documents, licences or authorisations required to enable the Goods to be delivered and/or the Services to be performed on time (except solely on account of API's default), the Goods and/or the Services will be deemed to have been delivered or performed on the due date and (without prejudice to its other rights) API may store or arrange for storage of the Goods until actual delivery or sale in accordance with this Condition 6.5 and charge the Buyer for all related costs and expenses (including storage and insurance) and/or following written notice to the Buyer, sell any of the Goods at the best price reasonably obtainable and charge the Buyer for any shortfall below the price under the Contract or account to the Buyer for any excess achieved over the price under the Contract, in both cases having taken into account any charges related to the sale.

7. **RISK / OWNERSHIP**

- 7.1 Risk of damage to or loss of the Goods will pass to the Buyer in accordance with whichever of the Incoterms 2010 which have been agreed by the Parties or in the absence of Incoterms 2010 the Delivery Point.
- 7.2 Subject to Condition 7.5 and Condition 7.8 below, legal and beneficial ownership of the Goods will not pass to the Buyer until API has received in full (in cash or cleared funds) all sums due to it in respect of the Goods; and all other sums which are or become due to API from the Buyer on any account.
- 7.3 Until ownership of the Goods has passed to the Buyer, the Buyer must hold the Goods on a fiduciary basis as API's bailee, store the Goods (at no cost to API) separately from all other Goods of the Buyer or any third party in such a way that they remain readily identifiable as API's property, not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and maintain the Goods in satisfactory condition insured on API's behalf for their full price against all risks to the reasonable satisfaction of API, and will whenever requested by API produce a copy of the policy of insurance.
- 7.4 The Buyer's right to possession of the Goods and to use them in the ordinary course of its business will terminate immediately if the Buyer becomes Insolvent or, without limiting any other right or remedy API, if API serves notice to terminate the Contract.
- 7.5 API may, by giving written notice to the Buyer (such notice to have immediate effect), pass legal and beneficial ownership of the Goods (or any of them) to the Buyer at any time before such ownership would otherwise have passed to the Buyer.
- 7.6 The Buyer grants to API, its sub-contractors, agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 7.7 Where API is unable to determine whether any goods are the Goods in respect of which the Buyer's right to possession and right to use has terminated, the Buyer will be deemed to have used or incorporated all Goods with other products, or sold all Goods of the kind sold by API to the Buyer, in the order in which they were invoiced to the Buyer.
- 7.8 In the event that the Buyer resells the Goods in the ordinary course of its business, legal and beneficial ownership of the Goods will pass to the Buyer immediately prior to the Buyer entering into a binding contract for the sale of those Goods.
- 7.9 On termination of the Contract, howsoever caused, API's (but not the Buyer's) rights contained in this Condition 7 will remain in effect.

8. **WARRANTY, EXCLUSION OF LIABILITY AND INDEMNITY**

- 8.1 API will, free of charge, within a period of three (3) months from the date of delivery of Goods which are proved to the reasonable satisfaction of API to not comply with the Specification, or (where there is no Specification) with the requirements in relation to satisfactory quality in Section 14.2 of the Sale of Goods Act 1979, in either case due to defects in materials or workmanship or design (other than a design made, furnished or specified by the Buyer), replace or, at its option, refund the price of such Goods. This obligation will not apply where the Goods have been improperly used or altered in any way by the Buyer; any instructions as to storage or use of the Goods have not been complied with by the Buyer; or the Buyer has failed to notify API of any defect or suspected defect within fourteen (14) days of the delivery where the defect should be apparent on reasonable inspection, or within fourteen (14) days of the same coming to the knowledge of the Buyer where the defect is not one which should be apparent on reasonable inspection, and in any event no later than three (3) months from the date of delivery of the Goods.
- 8.2 API will, free of charge, in relation to Goods which are proved to the reasonable satisfaction of API to be delivered to the Buyer in a damaged condition, replace, or at its option, refund the price of such Goods. This obligation will only apply where the Buyer has notified API of any purported damage to Goods within twenty four (24) hours of delivery specifying the nature of the defect in detail, in order for API to make any necessary counter-claim against any carrier of the Goods.
- 8.3 API will refund to the Buyer the cost of carriage on the return of any Goods where API is reasonably satisfied that such Goods are defective and/or damaged, and will deliver any replacement Goods to the Buyer at API's own expense. Any Goods which have been replaced will belong to and be returned to API.
- 8.4 API will, free of charge, within a period of three (3) months from the date of the performance of the Services which are proved to the reasonable satisfaction of API to have not been provided with reasonable skill and care in accordance with Section 13 of the Supply of Goods and Services Act 1982, re-perform or, at its option, refund the price for such Services. This obligation will not apply to the Support Services and will not apply where the defects in the provision of the Services arise out of the reliance of API on any inaccurate or incomplete information provided by the Buyer; or the failure or delay of the Buyer to perform any of its obligations under this Contract or to do any act or omission necessary for the proper provision of the Services; or any intended use or purpose of the Goods and/or the Services made known to API by the Buyer in relation to the Services is changed by the Buyer.
- 8.5 Without prejudice to Condition 8.7, in the event of any breach of API's express obligations in these T&Cs the remedies of the Buyer will be limited to damages.
- 8.6 API does not exclude its liability (if any) to the Buyer for breach of API's obligations arising under Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; or for personal injury or death resulting from API's negligence; or under Section 2(3) Consumer Protection Act 1987; or for any matter for which it would be illegal for API to exclude or to attempt to exclude its liability; or for fraud or fraudulent misrepresentation.

- 8.7 Except as provided in Conditions 8.1 to 8.6 (inclusive), API will have no liability to the Buyer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any indirect or consequential loss (both of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused arising out of or in connection with any of the Goods and/or the Services, or the manufacture of the Goods or the sale or supply, or failure or delay in supply, of the Goods and/or the Services by API; or any breach by API of any of the express or implied terms of the Contract; or any use or resale by the Buyer of any of the Goods, or of any product using or incorporating any of the Goods; or any statement made or not made, or advice given or not given, by or on behalf of API.
- 8.8 Subject to Condition 8.6, all warranties, conditions and other terms implied by law (whether by statute, common law or otherwise) are excluded from the Contract.
- 8.9 Subject to Condition 8.6, API's total liability to the Buyer in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price payable for the Goods and/or the Services which are the subject of the alleged loss.
- 8.10 The Buyer acknowledges that the above provisions of this Condition 8 are reasonable and reflected in the price of the Goods and/or the Services which would be higher without those provisions, and the Buyer accepts such risk and/or shall insure accordingly.
- 8.11 The Buyer agrees to indemnify, and keep indemnified, API from and against all costs (including legal costs on a full indemnity basis), expenses, liabilities, indirect and consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, and proceedings and judgments which API incurs or suffers in respect of any actual or threatened claim by a third party as a result of any act or omission of the Buyer or as a consequence of any breach or wilful default or negligent performance or failure in performance by the Buyer of the terms of the Contract.
- 8.12 Condition 8 shall survive termination of the Contract.
- 9. FORCE MAJEURE**
- 9.1 API shall not be in breach of the Contract or otherwise liable to the Buyer for any failure to perform or delay in performing its obligations under the Contract to the extent that such failure or delay is due to a Force Majeure Event.
- 9.2 If a Force Majeure Event occurs API shall as soon as reasonably practicable after becoming aware of the Force Majeure Event notify the Buyer that the Force Majeure Event has occurred. The Buyer shall continue to pay the prices for any Goods and/or the Services which the Supplier continues to supply notwithstanding the occurrence of the Force Majeure Event.
- 9.3 If API is unable to deliver or the Buyer is unable to take delivery of a material part of the Goods or API is unable to provide a material part of the Services for a period of more than sixty (60) days due to a Force Majeure Event which gives rise to relief from liability under Condition 9.1, either Party shall be entitled to terminate the Contract by giving not less than thirty (30) days written notice to that effect to the other Party.
- 10. TERMINATION**
- 10.1 If the Buyer commits a breach of the Contract which cannot be remedied; or commits a breach of the Contract which can be remedied but fails to remedy that breach within thirty (30) days of a written notice setting out the breach and requiring it to be remedied being given by API, API may terminate the Contract by giving not less than seven (7) days' written notice to that effect to the Buyer.
- 10.2 API may terminate the Contract immediately by giving written notice to that effect to the Buyer if the Buyer becomes Insolvent.
- 10.3 Notwithstanding Condition 10.1, API may terminate the Contract immediately by giving written notice to that effect to the Buyer if the Buyer fails to make any payment due to API under the Contract or any other contract between the Parties on or before the due date.
- 10.4 Except for Conditions which expressly or by implication have effect after termination of the Contract, following expiry or termination of the Contract all rights and obligations shall immediately cease but without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the date of expiry or termination.
- 11. INTELLECTUAL PROPERTY RIGHTS**
- 11.1 No right or licence is granted to the Buyer in respect of the Intellectual Property Rights of API, except the right to use, or re-sell the Goods or use the Services in the Buyer's ordinary course of business.
- 11.2 Where any Intellectual Property Rights arise from or are generated through the provision of the Goods or performance of the Services by API, such Intellectual Property Rights will vest absolutely in API.
- 12. CONFIDENTIALITY**
- 12.1 Each Party will keep strictly confidential any and all Confidential Information that it may acquire from the other Party.
- 12.2 Each Party will not use the Confidential Information of the other Party for any purpose other than (in the case of API) to perform its obligations under the Contract or (in the case of the Buyer) to receive and use the Goods and the Services. Each Party will ensure that its officers and employees comply with the provisions of this Condition 12.
- 12.3 The obligations on each Party set out in Condition 12.1 and 12.2 will not apply to any information which is publicly available or if that Party is required to disclose by order of a court of competent jurisdiction or due to any law or regulation (but then only to the extent of such required disclosure).
- 13. GENERAL**
- 13.1 API's rights and remedies set out in these T&Cs are in addition to and not exclusive of any rights and remedies provided by law.
- 13.2 If any term of the Contract is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term shall be deemed to be severed from the Contract and this shall not affect the remainder of the Contract which shall continue in full force and effect.
- 13.3 A delay in exercising or failure to exercise a right or remedy under or in connection with the Contract shall not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy.
- 13.4 API, but not the Buyer, shall be entitled to assign, sub-contract, transfer, charge, hold on trust for any person and deal in any other manner with any of its rights under the Contract.
- 13.5 The Parties do not intend that any term of the Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the Parties.
- 13.6 The Contract constitutes the entire agreement between the Parties and supersedes any prior agreement or arrangement in respect of its subject matter. Neither Party has entered into the Contract in reliance upon, and it shall have no remedy in respect of, any assurance, representation, statement or warranty which is not expressly set out in the Contract.
- 14. NOTICE**
- 14.1 Any notice or other communication given under or in connection with the Contract shall be in writing, in the English language and delivered by hand; or sent by pre-paid first class post or airmail, to API at the address stated at Condition 1.1 or to the Buyer at the address detailed in any order or other document received by API from the Buyer (or such other address as may be notified by the relevant Party to the other Party from time to time in accordance with this Condition 14):
- 14.2 Any notice or communication given in accordance with Condition 14.1 shall be deemed to have been served if delivered by hand, at the time of delivery; and if sent by pre-paid first class post at 9.00a.m. on the second Business Day after the date of posting; or if sent by airmail at 9.00a.m. on the fifth Business Day after the date of posting; provided that if a notice or communication is deemed to be served on a day which is not a Business Day or after 5.00p.m. on a Business Day it shall be deemed to be served at 9.00a.m. on the immediately following Business Day. Notice may not be given by email.
- 15. GOVERNING LAW AND JURISDICTION**
- 15.1 The Contract will be governed by English law. The Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales for the determination of any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).