

# Victrex Manufacturing Limited - General Conditions of Sale (June 2009 Edition)

## 1. DEFINITIONS - In these Conditions:

"VML" means Victrex Manufacturing Ltd (registered in England under number 2845018) whose registered office is Victrex Technology Centre, Hillhouse International, Thornton Cleveleys, Lancashire FY5 4QD

"Buyer" refers to the individual firm or company to whom a quotation is addressed or whose order is accepted by the VML.

"Conditions" means these standard terms and conditions of sale;

"Contract" means the particular individual contract for the supply of the Materials by VML to the Buyer.

"Materials" means goods and/or materials as specified in a Sales Order Acknowledgement which VML supplies to a Buyer pursuant to a Contract;

"Sales Order Acknowledgement" means the document entitled Sales Order Acknowledgement generated by VML and sent by post, fax or e-mail by VML to the Buyer.

"Incoterms" means Incoterms 2000 as published by International Chamber of Commerce 1999 or such other edition in force at the date when the Contract is made.

The headings are for convenience only and shall not affect the interpretation of this document.

"Special Conditions" means such additional terms agreed from time to time in writing between VML and the Buyer.

All references to prices, goods and services contained in these conditions shall be taken to mean the prices, goods and services detailed in the relevant order form issued by you ("Purchase Order") as subsequently amended by our acknowledgement of order form ("Acknowledgement of Order").

## 2. APPLICATION

a) These Conditions shall govern and be incorporated in every Contract made by or on behalf of VML with a Buyer and unless otherwise agreed in writing between VML and Buyer shall prevail over any terms and conditions contained or referred to in any documentation submitted by the Buyer or in correspondence or elsewhere or implied by trade custom, practice or course of dealing.

b) VML's quotation is not to be taken as an offer and no Contract shall take effect unless and until a Sales Order Acknowledgement has been despatched by VML to the Buyer.

c) VML is prepared to receive the Buyer's order by telephone, by fax or by e-mail but will accept no responsibility whatsoever for any error or omission in the transmission of the Buyer's order.

d) VML shall be entitled to rely in all respect and in all circumstances on the contents of the Sales Order Acknowledgement as stating the quantity and grade of the goods to be supplied. Accordingly it shall be the Buyer's sole responsibility to check Sales Order Acknowledgement and to notify VML forthwith after the receipt of the same where the goods are not properly stated in the Sales Order Acknowledgement.

e) The Buyer acknowledges that these conditions shall prevail over any qualification or condition purported to be imposed by the Buyer on any previous course of dealing between the Buyer and VML.

f) The Contract shall be based solely on these conditions and any Special Conditions.

g) The Buyer expressly agrees that these Conditions and any Special Conditions shall take precedent over any contractual provisions proffered by the Buyer. VML shall not be bound by and does not agree to any contractual provisions proffered by the Buyer save to the extent, if any, that VML expressly agrees to the same in writing. The Buyer agrees that no actions take by VML shall be interpreted as VML accepting any contractual provisions proffered by the Buyer.

## 3. ORDERS

VML shall, as soon as reasonably practicable after receipt of an order, notify Buyer of whether it accepts such order and the anticipated delivery date for that order. Each order which is so accepted shall constitute an individually binding Contract.

## 4. DELIVERY

a) Time for delivery of the goods and completion of the services is given as accurately as possible but is not guaranteed. Except where otherwise agreed, VML shall deliver to the Buyers premises stated in the Buyers order(s).

b) The Buyer shall have no right to cancel the contract for failure to meet any delivery or completion time stated.

c) All Materials delivered to Buyer shall be CIP (Incoterms 2000) at the Buyer's named delivery point and upon delivery to the proper carrier, title and risk of loss and delay shall pass to Buyer.

d) Upon receipt of each consignment of Materials sold hereunder, Buyer shall examine such Materials for any damage, defects or shortage. No liability can be accepted for damage in transit unless the Buyer notifies the VML within 3 days of receipt of the goods and confirms by notification in writing within 7 days of receipt of the goods. Where VML is notified of the damage to the goods in accordance with this provision, VML shall replace the goods at its sole option. If Buyer fails to give such notice of rejection, it shall be deemed to have accepted the delivery in full.

e) Failure by the Buyer to take delivery of any one or more instalments of goods delivered in accordance with the Contract shall entitle VML to terminate the Contract either in whole or part.

f) VML shall be entitled to deliver the goods by instalments. Each instalment shall be treated as if it constituted a separate and distinct contract between VML and the Buyer.

## 5. PRICE

a) Save as otherwise agreed in writing by VML or as indicated in the Sales Order Acknowledgement or any Special Conditions, the price of the Materials will be that prevailing at the Time of Delivery. Save to the extent that the contrary may be stated in the Sales Order Acknowledgement; the price of the Materials is stated as a price per tonne, litre or kilogram as appropriate. Save to the extent that the contrary may be stated in the Sales Order Acknowledgement, the price of the Materials shall exclude transportation, insurance, delivery and unloading.

b) Save as expressly stated otherwise by VML in writing, prices are quoted by VML exclusive of VAT, which VML shall add at the appropriate prevailing rate.

## 6. RETENTION OF TITLE

a) Risk of damage or loss of the goods shall pass to the Buyer at the time of delivery.

b) Notwithstanding delivery and passing of risk, Materials will remain the property of VML until Buyer pays to VML the price payable for the Materials (together with any accrued interest) and until no further sums whatever are due from Buyer to VML in respect of the Materials.

c) From delivery until property in the Materials passes to Buyer, Buyer should insure the Materials for full value. Buyer shall hold the proceeds of any claim on the insurance policy on trust for VML and shall immediately account to VML for any proceeds.

d) Until such time as the property in the Materials passes to the Buyer the Buyer shall hold the Materials as VML's trustee and shall keep the Materials separate from those of the Buyer and third parties and properly stored, protected and insured and identified as VML property, but shall be entitled to re-sell or use the Materials in the ordinary course of its business.

e) Until such time as the property in the Materials passes to the Buyer, (and provided the Materials are still in separate identifiable existence and have not been re-sold) VML shall be entitled at any time to require the Buyer to deliver up the Materials to VML and if the Buyer fails to do so forthwith to enter upon any premises of the Buyer or any third party where the Materials are stored and reposes the Materials; in the event of any repossession of Materials, VML's issue of a credit note shall evidence that the original sale in respect of which Value Added Tax is chargeable has been cancelled.

f) The Buyer shall not be entitled to pledge or charge by way of security for any indebtedness any of the Materials which remain the property of VML but if the Buyer does so all monies owing by the Buyer to VML shall (without prejudice to any other right or remedy of VML) forthwith become due and payable.

## 7. PAYMENT

a) VML shall, on the date of despatch of a consignment of the Materials, invoice Buyer for that consignment.

b) Buyer shall pay each invoice in full in accordance with the payment terms as set out on the invoice. Time shall be of the essence for payment of Invoices.

c) Notwithstanding the provisions of Clauses 7a and 7b VML reserves the right (in VML's absolute discretion) to require payment in full for the Materials on or before the Time of Delivery or otherwise to change any credit facility from time to time given to the Buyer.

d) Interest is payable on overdue amounts at the rate of 1% over Barclays Bank plc base rate from time to time to run from the due date for payment until receipt by VML of the full amount (including any accrued interest) whether before or after judgment.

e) VML may suspend the supply of Materials to Buyer where any amounts are overdue in respect of an order until all such amounts have been paid.

f) All sums payable in respect of an order shall be payable in full by Buyer without deduction of any kind, whether by way of set-off, counterclaim or otherwise howsoever. Buyer shall not be entitled to set-off an amount owing or alleged to be owing to it by VML against amounts owing by it to VML.

## 8. EXPORT SALES

a) Buyer acknowledges that the export of Materials and any associated technology, including intellectual property as further described in Condition 10, may be subject to UK and/or Hong Kong (Shanghai) export control regulations as may be amended from time to time.

b) Buyer agrees that as a condition of VML's acceptance of any order and therefore any Contract made under these Conditions, that

(i) the Materials and any associated technology will not be used for purposes associated with any chemical, biological, nuclear

weapons or missiles capable of delivering such weapons, or in support of any terrorist activity and

(ii) the Materials and any associated technology will not be re-sold if it is known or suspected that they are intended to be used for such purposes.

In the event that VML is not able to obtain any requisite governmental licence, consent or permit or other authorisation in fulfilment of any order or Contract hereto, VML shall not be liable to Buyer or others in respect of any bond or guarantee or for any loss, damage or other resultant financial penalty.

c) The sales of the Materials are subject to the Incoterm (if any) stated in the Sales Order Acknowledgement. In the event of any conflict between the provisions of Incoterms and these Conditions, then (subject only to Clause 4) these conditions shall prevail.

d) It is hereby agreed between the parties that the United Nations Convention on Contracts for the International Sales of Materials shall not apply to any Contract pursuant to these Conditions.

e) The Buyer shall be responsible for complying with any legislation or regulations governing the importation of Materials into the country of destination and for the payment of any duties on them.

## 9. WARRANTY AND LIABILITY

a) VML warrants that the Materials will, when delivered, comply with VML's standard specification applicable at the time of manufacture.

b) VML is not liable for any defect in the Materials unless it is notified to VML within the time period provided in Condition 3,4 & 5. If VML is liable for breach of warranty under this Condition, VML's only obligation is, at its option, to

(i) replace or repair any quantity of the Materials which is damaged or defective; or  
(ii) refund to Buyer the amount paid by Buyer for the quantity of the Materials the subject of the claim, together with the relevant transportation costs.

c) VML makes no representations and gives no warranties or undertakings

(i) as to the suitability or otherwise of the Materials for use in the manufacture of products by Buyer or any other application or  
(ii) as to the ownership, validity or subsistence of any intellectual property that may subsist in the Materials or in any application or use thereof.

d) It shall be the sole responsibility of Buyer to determine the suitability of the Materials for use in the manufacture of products by Buyer or any other application and any use that Buyer may make of the Materials is at Buyer's own risk.

e) VML has not and will not participate in the design, manufacture, sale or distribution of any of Buyer's products.

f) VML makes no representations and gives no warranties or undertakings to or for the benefit of the Buyer's customers or agents.

g) VML is not liable for any defect in the Materials caused by fair wear and tear, abnormal or unsuitable conditions of storage or use after delivery, or an act, omission or default of the Buyer or a third party.

h) VML is not liable to the Buyer for loss of revenues, loss of contracts or loss of profits, whether direct, indirect or consequential loss, nor for any indirect or consequential loss and whether arising from negligence, breach of contract or otherwise howsoever.

The entire liability of VML under or in connection with the supply of the Materials is limited, in respect of each event or series of connected

events, to an amount equal to the cost of the defective or damaged quantity of the Materials which gives rise to such liability as determined by the net price invoiced to Buyer. Except as set out in this Condition, all conditions, warranties and representations, express or implied by

- (i) statute,
- (ii) common law or
- (iii) otherwise, in relation to

(a) the Materials or

(b) any intellectual property that may subsist in the Materials or in any use or application thereof are excluded to the fullest extent permitted by law.

Nothing in these conditions shall exclude or limit a party's liability for fraud or any other matter, if and to the extent that under English Law, liability for it cannot be excluded, restricted or limited in the context of this Agreement. The invalidity, illegality or unenforceability of any part of this Condition does not affect or impair the continuation in force of the remainder of this Condition.

## 10. TERMINATION

a) The Buyer may terminate this contract at any time not less than twenty four (24) hours before the time the goods are scheduled to leave VML's premises provided always that where the Buyer exercises this right, the Buyer shall be liable to compensate VML for costs incurred prior to receipt by VML of notice of such termination. VML may issue an invoice for such costs at any time after such notice of termination has been received.

b) Either party shall be entitled to terminate the Contract giving written notice to the other if:

- i) the other party commits a breach of any of the terms and conditions of the Contract and in the case of a breach capable of remedy, fails to do so within thirty (30) days of written notice being received;
- ii) any distress, execution or other process is levied upon any of the assets of the other party;
- iii) the other party enters into any arrangement with its creditors, commits any act of bankruptcy or if an order is made or an effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction as a solvent company) or if a petition is presented to court, or if a receiver and/or manager, receiver, administrative receiver or administrator is appointed in respect of the whole or any part of the parties undertakings or assets;
- iv) the other party ceases or threatens to cease to carry on its business;
- v) the financial position of the other party deteriorates to such an extent that in the opinion of the party the capability of the other party adequately to fulfill its obligations under the Contract has been placed in jeopardy.

c) The termination of the Contract, however arising, will be without prejudice to the rights and duties of VML accrued prior to termination. The Conditions that expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

## 11. INTELLECTUAL PROPERTY

All intellectual property (including but not limited to patents, trade marks, service marks, rights in designs, copyrights, database rights (whether or not any of these is registered and including applications for registration of the foregoing) and all rights and forms of protection of a similar nature or which have equivalent or similar effect to any of the foregoing which may subsist anywhere in the world) rights in or to the

Materials which vest in VML shall remain vested in VML. Buyer acknowledges that these Conditions or any Contract do not operate to vest in Buyer any right, title or interest in or to any such rights. Buyer shall not at any time assert any rights in the goodwill attaching to any of VML's trademarks, and all such rights shall vest in and ensure exclusively for the benefit of VML. If Buyer challenges the validity of VML's rights in or to, or the validity of any of VML's trademarks (or any applications or registrations thereof) or any other intellectual property of VML, then VML shall be entitled to terminate an order or Contract immediately.

## 12. FORCE MAJEURE

If VML is prevented, hindered or delayed from or in supplying Materials by an event or circumstance beyond the reasonable control of VML including, without limitation, strikes, lockouts and other industrial disputes relating to VML's workforce, accidents, act of God, war, riot, civil commotion, malicious damage, compliance with a law or governmental order, rule, regulation or direction, reductions in or unavailability of power at manufacturing plant, breakdown of plant or machinery, or shortage or unavailability of raw materials from normal sources or routes of supply; VML may, at its option and without any liability for any loss or damage suffered by Buyer

(a) suspend deliveries while the Force Majeure Event (or its effects) continues (or continue); or  
(b) terminate any order or Contract so affected with immediate effect by written notice to Buyer.

## 13. REMEDIES AND WAIVERS

No delay or omission by either party in exercising any right, power or remedy provided by law or under these Conditions shall

(a) affect that right, power or remedy; or  
(b) operate as a waiver of it.

The single or partial exercise of any right, power or remedy provided by law or under these Conditions shall not preclude any other or further exercise of it or the exercise of any other right, power or remedy. The rights, powers and remedies provided in these conditions are cumulative and not exclusive of any rights, powers and remedies provided by law.

## 14. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

VML and Buyer do not intend that these Conditions or any Contract made under them should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person other than VML and Buyer.

## 15. NO PARTNERSHIP

Nothing in these Conditions and no action taken by the parties pursuant to these Conditions and any Contract made under them shall constitute a partnership, association, joint venture or other co-operative entity between the parties.

## 16. GOVERNING LAW

These Conditions and any Contract made under them are governed by, and shall be construed in accordance with, English law. The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with these Conditions or any Contract made under them. Any proceeding, suit or action arising out of or in connection with these Conditions and any Contract made under them shall be brought in the English courts.