

1.0 Definitions

1.1 In these Conditions of Sale the following terms shall have the following meanings save where the context otherwise requires:

1.2 “I.F.S” means the company (Intelligent Finishing Systems Ltd) named as supplier in the Order

1.3 “Customer” means the company, individual or other entity identified in the Order as the purchaser of Goods or services hereunder

1.4 “Order” means the written order form or other document or agreement (written or oral) which is subject to the Conditions

1.5 “Conditions” means these Conditions of Sale

1.6 “Goods” means the equipment or other goods sold hereunder

2.0 Contract

2.1 All Goods and services (if any) supplied by I.F.S are subject to these Conditions unless varied by written document signed by a director of I.F.S. Howsoever the same may be qualified the placing of an Order with I.F.S shall constitute unqualified acceptance of these Conditions. Any conditions submitted, proposed or stipulated by the Customer in whatever form and at whatever time, whether written or oral are expressly waived and excluded. Unless otherwise stated thereon any offer or tender by I.F.S shall be open for acceptance for thirty days from the date thereof unless previously withdrawn. No change to these Conditions shall be binding unless agreed in writing by I.F.S.

3.0 Delivery

3.1 Dates for delivery are estimated dates only and I.F.S shall incur no liability for any loss or damage whether arising directly or indirectly from late delivery unless caused wholly by the negligence of I.F.S.

3.2 I.F.S shall be entitled to make partial deliveries and receive payment thereof unless otherwise stated in writing on the Order.

3.3 I.F.S shall be deemed to have delivered the Goods (where I.F.S is arranging carriage) when the Goods are delivered to the carrier or (where delivery is ex I.F.S’s works) when I.F.S has notified the Customer that the Goods are ready for collection at I.F.S’s premises, as the case may be, and subsections (1) and (2) of Section 32 of the Sale of Goods Act 1979 shall not apply to any contract to which these Conditions apply.

3.4 The Customer shall check the Goods at the time of delivery and, where possible, indicate any short delivery on the delivery note. I.F.S shall not be liable for any short delivery unless full particulars thereof are given to I.F.S in writing within 3 working days of delivery.

4.0 Price

The following terms shall apply to any prices agreed for the Goods (or services if any) supplied hereunder:

4.1 Unless otherwise stated, prices do not include value added tax or other taxes or duties, which, where appropriate, will be charged separately at the applicable rate. All prices are strictly net.

4.2 Unless otherwise stated any samples submitted to the Customer are the property of I.F.S and shall, if so requested by I.F.S, be returned by the Customer within one month of delivery. In

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the event of nonreturn of the samples these must be paid for by the Customer. No contract to which these Conditions apply shall be a sale by sample.

4.3 Any additional cost to I.F.S of performing the contract arising out of the making, passing or amendment of any law order regulation bye-law or similar matter after the date of the Order may be invoiced by I.F.S to the Customer and payable as an addition to the purchase price (and the Customer shall not be entitled to cancel or otherwise terminate the contract on account thereof).

4.4 Unless otherwise stated in writing by I.F.S prices do not include delivery and are strictly Ex Works.

Where prices are stated to include delivery that does not include off loading, installation or demonstration unless otherwise stated in writing by I.F.S.

4.5 I.F.S shall be entitled to invoice and be paid in addition to the price of the Goods and services (if any) a sum in respect of any variation in the Order or the specifications requested by the Customer after the date of the Order and in respect of any delay or failure by the Customer to give instructions if required.

4.6 Without prejudice to any other right or remedy available to I.F.S, the Customer shall pay to I.F.S sums in respect of storage insurance or demurrage by reason of failure or delay of the Customer to accept delivery, give instructions or make payment for the Goods or services (if any) and in any such case storage shall be undertaken by I.F.S at the sole risk of the Customer and I.F.S shall be entitled (but not obliged) to insure the Goods.

4.7 I.F.S may increase the price of the Goods in the event of any variation in the prices charged by or payable to the suppliers or manufacturers of the Goods (including increases due to currency

fluctuations) where such variation occurs prior to the delivery of the Goods hereunder. I.F.S may also increase the price of the Goods where other direct costs of I.F.S have increased including, but not limited to, increases in insurance rates, customs or other duties or licence fees (wheresoever payable).

I.F.S may invoice the amount of such increase on or at any time after delivery of the Goods.

5.0 Terms of Payment

5.1 Unless otherwise agreed in writing by I.F.S payment in full (and without deduction for any reason

whatsoever) shall be made at I.F.S's offices on notification to the Customer that the Goods are ready for delivery. In these Conditions payment shall mean payment in cash or cleared funds.

5.2 Any sum overdue for payment from the Customer to I.F.S (whether under these Conditions or

otherwise) shall bear interest at the rate of 4% over the then current base rate of Barclays Bank Plc for the period during which the sum remains unpaid (whether before or after judgement in a court of law). The Customer shall indemnify I.F.S against all costs including legal costs and disbursements (on an indemnity basis) which they may incur in recovering any such sum.

5.3 Any credit terms may be reviewed, varied or withdrawn by I.F.S at any time and without giving reason or prior notice.

5.4 If the Customer fails to pay any sum due upon the date on which it is due the Customer shall lose the benefit of any discount granted on the price of the Goods and services (if any) and I.F.S

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may (without prejudice to any right or remedy available to it) suspend all further deliveries until payment in full thereof has been made or (at its option) cancel the contract as regards any Goods which remain to be delivered or services which remain to be provided thereunder.

5.5 The Customer shall pay all invoices in full and shall not seek to exercise any right of set off or counterclaim against such invoices nor shall the Customer seek to delay payment by reason of such set off or counterclaim (without prejudice in each such case to the Customer's right to recover any sum due by way of separate action).

6.0 Title and Risk

6.1 Title to the Goods shall pass to the Customer upon (and not before) payment in full of all sums due from the Customer to I.F.S (whether under these Conditions or otherwise). Risk in the Goods shall pass to the Customer on delivery. The Customer shall thereafter remain in possession of the Goods as bailee for I.F.S and shall (until title to the Goods passes to the Customer) take all reasonable steps to preserve and maintain the Goods and shall insure the Goods for the benefit of I.F.S in their full value against all the usual risks. The Customer shall at the request of I.F.S (made at any time prior to payment therefor) clearly mark the Goods as being the property of I.F.S. Until title to the Goods has passed to the Customer it shall not sell, lease, charge or otherwise confer upon any third party any title or interest in the Goods or any part thereof (provided that the Customer shall be entitled to use any consumables in the ordinary course of the Customer's business). The Customer shall not remove the Goods from the address to which they are delivered or first installed without the prior written consent of I.F.S.

6.2 If the Customer shall purport to sell, lease, charge or otherwise confer upon any third party any title or interest in the Goods or any part thereof then the full amount of any proceeds thereof (or the right to recover the full amount of any proceeds thereof) shall be held by the Customer as trustee for I.F.S to the extent of any sum or sums due from the Customer to I.F.S and to the extent of any prospective or contingent liability of the Customer to I.F.S. I.F.S shall not thereby become obliged to comply with the obligations of the Customer to such third party. In the case of proceeds the Customer shall pay such proceeds into a separate bank account designated for the purpose.

6.3 I.F.S shall be entitled to maintain an action for the price of the Goods, notwithstanding that the title to them has not passed to the Customer.

7.0 Acceptance, Warranty and Performance

7.1 I.F.S will carry out their standard pre delivery tests and inspection of the Goods. The cost of any further tests (whether or not specified in the Order) shall be invoiced to and payable by the Customer.

In the event that the Customer shall not attend within seven days of notification that the Goods are ready for test then such test may be carried out in their absence and the certificate of I.F.S's engineer that the test was satisfactory shall be deemed conclusive. Upon delivery of the Goods the Customer shall immediately carry out its own acceptance tests and shall within 14 days of delivery notify I.F.S in writing of any defect in the Goods. If no such notice shall have been given by the Customer or upon rectification of any defect referred to in such a notice the Goods shall be deemed to have been accepted by the Customer.

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7.2 If, and only if, the Customer has made payment in full to I.F.S therefor I.F.S warrants the Goods (save for secondhand or used goods and goods manufactured otherwise than to the standard specification of the manufacturers thereof and goods which are used in excess of single shift working) to be free from defects caused by faulty design or materials or poor workmanship for a period of 180 days from delivery thereof PROVIDED THAT such warranty shall be conditional upon the following:

7.2.1 that the Customer gives written notice to I.F.S within 7 days of any defect becoming apparent with full details thereof and, if so requested by I.F.S returns the Goods to I.F.S carriage paid at the Customer's risk within a period of 21 days of such request, and

7.2.2 that examination of the items by I.F.S shall disclose to its satisfaction that such defects exist and were caused by faulty design or materials or poor workmanship, and

7.2.3 that the liability of I.F.S hereunder shall be limited to the replacement or repair (at I.F.S's option) of the item and redelivery thereof (free of charge) to the Customer, and

7.2.4 that this warranty is contingent on proper use of the Goods in the application intended and does not apply to any item which has been modified or which has had the original identification marks removed or altered and this warranty will not apply to any Goods which have been subjected to any unusual physical or electrical stress, and

7.2.5 that the Customer shall pay I.F.S the cost of any test, repair and transport of Goods in respect of which I.F.S does not admit liability hereunder.

7.3 I.F.S shall not be liable for failure of the Goods to attain any performance criteria of any particular standard or specification unless I.F.S shall have previously expressly guaranteed attainment of the same in writing.

7.4 I.F.S shall not be liable for the failure of the Goods to be fit for any particular purpose or failure of the Goods to be suitable for use in any particular process or with any particular consumables or materials.

7.5 To the extent permitted by law, all conditions, warranties or obligations whether express or implied by statute, common law or otherwise are excluded and the provisions of these Conditions shall apply in lieu thereof.

8.0 Installation, Commissioning and Demonstration

8.1 The Customer shall be responsible to ensure safe and convenient access for delivery of the Goods

8.2 The Customer shall be responsible for the preparation of the site for the Goods and for ensuring the provision and connection to the Goods of a suitable electrical supply and/or other services required

8.3 The Customer shall at its own cost supply all consumables and materials for the commissioning and demonstration of the Goods but I.F.S's demonstrator shall be entitled to reject those considered unacceptable.

8.4 Where the price of the Goods includes demonstration I.F.S's technician will assist and advise the Customer's nominated skilled operator during normal working hours on the working of the Goods for the agreed period in respect of each item of equipment comprised in the Goods.

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9.0 Default

If the Customer shall cease to carry on business or substantially the whole of his business, make or offer to make any arrangement of composition with creditors or commit any act of bankruptcy or if any petition or receiving order in bankruptcy shall be presented or made against the Customer or if a receiver, manager, trustee or other officer is appointed by any person of all or any part of his property, assets or undertaking or takes any other action in consequence of debt or, if the Customer being a limited company, any resolution or petition to wind-up the Customer (other than for the purposes of reconstruction or amalgamation) shall be passed or presented, or if a receiver, an administrative receiver or similar officer of the property undertaking or assets (or any part thereof) of the Customer shall be appointed or if a distress, execution, sequestration or other process is levied or enforced upon or against any of the assets of the Customer or if the Customer ceases or threatens to cease to carry on business or becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or if any equivalent or similar event arises in relation to the Customer in any jurisdiction, or if the Customer shall commit any breach of its obligations hereunder, then, and in any such case I.F.S may forthwith (and without prejudice to any other right or remedy of I.F.S):

9.1 suspend or determine any contract to which these Conditions apply or any unfulfilled part thereof, and

9.2 stop any Goods in transit, and

9.3 recover any Goods from the Customer title to which has not passed to the Customer and for that purpose the Customer grants I.F.S a licence to enter any premises at which such Goods may be situate and to disconnect, unfix and remove the Goods (I.F.S doing as little damage as may be reasonably necessary in the course thereof but having no liability for such damage).

10.0 Liability

10.1 I.F.S shall not be liable for any loss of profits, loss of contracts, waste of staff time or materials or consequential loss of any sort whatsoever and howsoever caused.

10.2 I.F.S's liability in respect of any defective Goods shall be limited in the aggregate to the value thereof (such value to be deemed to be the sale price of such Goods from I.F.S to the Customer).

10.3 I.F.S shall not be responsible for non-performance in whole or in part of its obligations nor under any liability to the Customer under the Conditions if such non-performance or liability is due to any cause beyond the control of I.F.S including, without limitation, Act of God, war, insurrection, riot, civil commotion, Government regulation, embargo, explosion, strike, labour dispute, illness, flood, fire, tempest or failure of its subcontractors to honour their obligations to I.F.S or any other circumstances (whether of a nature similar to those specified or not) regardless of whether or not the circumstances in question could have been foreseen at any time.

10.4 The provisions of this Condition shall operate to protect every servant, agent and subcontractor of I.F.S and I.F.S shall be deemed to be trustee for itself and such servants, agents and subcontractors so as to make them parties to any contract to which these Conditions apply for the purpose of this Condition only.

10.5 I.F.S shall have no liability for any defect in the Goods nor for any other matter under these Conditions unless such liability is imposed by these Conditions or by statute (and not excluded

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by these Conditions). The Customer shall indemnify I.F.S against any claim action or demand by any third party in respect of any matter for which I.F.S is not liable under these Conditions (including, but not limited to, statutory liability to third parties). Nothing in these Conditions shall exclude or restrict any liability for death or personal injury resulting from I.F.S's negligence, as that expression is defined in Section 1 of the Unfair Contract Terms Act 1977.

11.0 Miscellaneous

11.1 All pre-contract representations including (but not limited to) catalogues and advertising material (unless specifically incorporated into any contract to which these Conditions apply) made by or on behalf of I.F.S are hereby excluded from such contract and the Customer warrants that no reliance has been placed upon them in entering into such contract.

11.2 Any advice of recommendation made by I.F.S or its employees or agents as to the storage, use or application for the Goods shall not be binding upon I.F.S unless confirmed in writing signed by a Director of I.F.S. The Customer should rely upon manufacturers' manuals for all instructions and advice.

11.3 I.F.S reserves the right to deliver goods of a different specification to those ordered if the differences in the specification do not adversely affect the performance of the Goods to any significant degree.

11.4 No Order which has been accepted by I.F.S may be cancelled by the Customer without the consent in writing of I.F.S. If I.F.S shall consent to such cancellation or if the contract shall otherwise be terminated (except solely as a result of breach by I.F.S) then the Customer shall pay to I.F.S its losses (including loss of profit, loss of staff time and all charges and expenses incurred by I.F.S).

11.5 Where the Customer consists of more than one person or company then their liability hereunder shall be joint and several.

11.6 No failure or delay by I.F.S in exercising any right under these Conditions shall operate as a waiver.

11.7 The Customer shall not assign or transfer or purport to assign or transfer the contract or the benefit thereof to any other person.

11.8 If any Condition or part of any Condition shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity or unenforceability shall in no way impair or affect any other Condition or part of any Condition all of which shall remain in full force and effect.

11.9 Any notice to be given under these Conditions may be delivered or be sent by first class pre-paid post addressed to the party to be served at the address for such party last known to the party giving the notice. Notices delivered personally shall be deemed served at the time of delivery and notices served by post shall be deemed served 48 hours after posting.

11.10 These Conditions shall be construed according to the law of England and any disputes in connection therewith shall be tried in the courts of England.

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