

**KHANSAHEB SYKES
STANDARD TERMS & CONDITIONS OF SALE**

1. INTERPRETATION

In these Conditions the following expressions shall have the following meanings:

"Buyer"	means the person, firm, company or other organisation as detailed in the Order, which is purchasing the Goods;
"Confidential Information"	means any and all communications and all information whether written, visual or oral and all other materials of a confidential nature supplied by one party to the other;
"Contract"	means the contract between KS and the Buyer arising on KS's acceptance of the Order and which incorporates these Conditions and the Order;
"Goods"	means the goods as detailed in the Order to be supplied by KS to the Buyer;
"KS"	means the appropriate Khansaheb Sykes company that is supplying the Goods to the Buyer;
"Order"	means the purchase order(s) containing the details of the Contract;
"Price"	means the price payable by the Buyer to KS for the Goods, as notified by KS; and
"Specification"	means KS's standard specification for the Goods.

- 1.1 The singular in all cases shall imply the plural and vice versa.
- 1.2 The headings in these Conditions are for convenience only and shall not affect the interpretation of the Conditions.

2. GENERAL

- 2.1 These Conditions shall be incorporated into and shall apply to all quotations, offers and all Orders accepted by KS. These Conditions shall apply to all repeat Orders made by the Buyer.
- 2.2 Except as otherwise provided in these Conditions, all other terms, conditions, warranties and representations (whether oral or in writing) are excluded from the Contract between KS and the Buyer and supersede any and all prior promises, representations, undertakings or implications.
- 2.3 These Conditions shall prevail over any and all terms and conditions that the Buyer may purport to apply and in particular shall prevail over the Buyer's terms and conditions of purchase.
- 2.4 No statement, illustration or drawing in any circular, advertisement, trade literature or other such communication shall be deemed to imply any representation, warranty or condition and such statements, illustrations and drawings are for guidance purposes only and shall not form part of the Contract.
- 2.5 Quotations shall be available for acceptance for a maximum period of thirty (30) days from the date of issue but may be withdrawn by KS by written or oral notice to the Buyer at any time prior to KS's acceptance of the Order. The Contract shall become binding on acceptance of the Order by KS (acceptance may be made by a formal written acknowledgement of Order delivered to the Buyer or by email acknowledgement).

3. PRICE

- 3.1 All prices are exclusive of any applicable taxes or duties, which shall be payable by the Buyer at the then prevailing rate. KS has the right to vary the price of the Goods from time to time on reasonable notice to the Buyer.
- 3.2 If KS agrees to deliver the Goods otherwise than at KS's premises the Buyer shall pay all packaging, transportation and insurance costs and other charges incurred by KS in making or arranging such delivery.

4. PAYMENT

- 4.1 Unless otherwise agreed by KS in writing, the Price shall be due and payable thirty (30) days after the date of invoice. The time for payment shall be of the essence of the Contract.
- 4.2 Where Goods are delivered by instalments, KS may invoice each instalment separately and the Buyer shall pay such invoices in accordance with these Conditions.
- 4.3 In the event of default of payment by the Buyer, KS shall be entitled, without prejudice to any other right or remedy:
 - 4.3.1 without notice to suspend or cancel any or all further deliveries under the Contract and under any other contracts between KS and the Buyer then current;
 - 4.3.2 to charge reasonable debt recovery costs and to charge interest on any amount outstanding at the rate of five percent 5% per annum, such interest to accrue on a daily basis from the due date for payment until receipt of payment in full and cleared funds;
 - 4.3.3 to serve notice on the Buyer requiring immediate payment for Goods supplied by KS under the Contract and all other contracts with the Buyer whether or not payment is otherwise due or invoiced; and
 - 4.3.4 to immediately terminate the Contract.
- 4.4 All payments made by the Buyer to KS under the Contract shall be made free from any restriction or condition and without deduction or withholding on account of any other amount and/or claim, whether by way of set-off or otherwise and whether such amount and/or claim is connected to any sale or Order under these Conditions or otherwise. No payment shall be deemed to have been received until KS has received full and cleared funds.

5. DELIVERY

- 5.1 Time of delivery shall not be of the essence of the Contract. Stated delivery times are an estimate only and, subject to the other provisions of these Conditions, KS will 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 nor will any delay entitle the Buyer to terminate the Contract.
- 5.2 If the Buyer refuses or fails to take delivery of the Goods within the Buyer's normal working hours on the date of delivery, or if KS is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations, KS may, at KS's option:

- 5.2.1 serve notice on the Buyer requiring immediate payment for Goods supplied by KS under the Contract and all other contracts with the Buyer whether or not payment is otherwise due or invoiced; and/or
- 5.2.2 store the Goods and the Buyer shall in addition to the Price pay all related costs and expenses (including without limitation, the costs for storage and insurance) and additional delivery costs incurred by KS and if the Buyer fails to take delivery of or to collect the Goods (as appropriate) after seven (7) days following the date of delivery, KS may terminate the Contract and sell the Goods to a third party if possible or recover damages.
- 5.3 Unless specifically agreed between the parties, delivery of the Goods shall be on an ex works basis.
- 5.4 KS reserves the right, at its sole option, to cancel or withhold the delivery of any Goods, (whether in whole or in part):
 - 5.4.1 until receipt of satisfactory credit reference in respect of any Buyer;
 - 5.4.2 where the supply of such Goods would exceed any credit limit which KS may, in its absolute discretion, have granted to the Buyer; and/or
 - 5.4.3 if the Buyer breaches any term of the Contract.
- 5.5 KS gives no guarantee of the exact quantity of Goods delivered.

6. RISK AND TITLE

- 6.1 Unless stated otherwise, risk in the Goods shall pass to the Buyer (so that the Buyer is then responsible for all loss or deterioration of the Goods or for any damage occurring):
 - 6.1.1 if KS is responsible for delivering or arranging for delivery of the Goods, at the time when the Goods arrive at the place for delivery; or
 - 6.2 in all other circumstances, at the time when the Goods leave the premises of KS.
- 6.3 Title to the Goods shall remain with KS until payment of any and all sums due or payable by the Buyer to KS, under this Contract or under any other contract between the Buyer and KS is made in full and cleared funds.
- 6.4 KS may recover Goods in respect of which title has not passed to the Buyer at any time and the Buyer irrevocably licences KS, its officers, employees and agents to enter upon any premises of the Buyer, with or without vehicles, for the purpose either of satisfying itself that Clause 6.5 below is being complied with by the Buyer or of recovering any Goods in respect of which title has not passed to the Buyer.
- 6.5 Until title to the Goods has passed to the Buyer under these Conditions it shall possess the Goods on behalf of KS and KS shall retain full ownership of those Goods. If KS so requires, the Buyer shall store the Goods separately from other goods and shall ensure that they are clearly identifiable as belonging to KS. The Buyer shall not sell, pledge, assign, charge or otherwise dispose of the Goods until title has passed to the Buyer.

7. VARIATIONS

- 7.1 No variations to the Goods required by the Buyer shall be binding on KS unless agreed by KS in writing.
- 7.2 KS reserves the right to alter the dimensions or composition of the Goods supplied within reasonable limits.

8. DEFECTS APPARENT ON INSPECTION

- 8.1 The Buyer shall only be entitled to claim (subject to Clauses 10 and 11) in relation to defects or discrepancies in the Goods as supplied which are apparent on visual inspection if the Buyer inspects the Goods and a written complaint specifying the defect is made to KS within three (3) days of delivery (notwithstanding that a complaint may have been made verbally), and KS is given an opportunity to inspect the Goods and investigate any complaint before any use of or alteration to or interference with the Goods.
- 8.2 If a complaint is not made to KS in accordance with this Clause 8, the Goods shall be deemed to be in all respects in accordance with the Contract (subject only to Clause 9) and the Buyer shall be bound to pay the Price for such Goods.

9. DEFECTS NOT APPARENT ON INSPECTION

- 9.1 The Buyer shall only be entitled to claim (subject to Clauses 10 and 11) in respect of defects in the Goods supplied which are not apparent on visual inspection at the time of delivery if:
 - 9.1.1 a written complaint is sent to KS as soon as reasonably practicable after the defect is discovered and subsequently no use is made of the Goods or alteration or interference made to or with the Goods before KS is given the opportunity to inspect the Goods in accordance with Clause 9.4 below; and
 - 9.1.2 the complaint is sent within two (2) months of the date of delivery of the Goods.
- 9.2 The Buyer shall not be entitled to claim in respect of any repairs or alterations undertaken by the Buyer with the prior written consent of KS, nor in respect of any defect arising by reason of fair wear and tear or damage due to accident, neglect or misuse.
- 9.3 KS shall not be liable for (and the Buyer shall indemnify and keep indemnified KS against) any and all claims whatsoever arising from loss or damage suffered by reason of use of the Goods after the Buyer becomes aware of any defect or after circumstances have occurred which should reasonably have indicated to the Buyer the existence of a defect.
- 9.4 KS may within fifteen (15) days of receiving a written complaint (or twenty-eight (28) days where the Goods are situated outside the UAE) inspect the Goods and the Buyer if so required by KS shall take all reasonable steps necessary to enable KS to carry out such inspection.

10. GUARANTEE

- 10.1 KS warrants to the Buyer that the Goods conform in all material respects with the Specification.
- 10.2 Any and all warranties (including without limitation, relating to fitness for a particular purpose, satisfactory quality, and description) whether oral or written, express or implied by any applicable law, trade custom and industry practice are excluded to the fullest extent possible.
- 10.3 If the condition of the Goods delivered is such as might or would (subject to these Conditions) entitle the Buyer to claim damages or terminate the Contract or reject the Goods the Buyer shall not then do so but shall notify KS and KS will, at its sole option, either:
 - 10.3.1 repair or supply satisfactory substitute Goods free of cost and within a reasonable time; or
 - 10.3.2 repay the Price of the Goods in respect of which the complaint has been made.

10.4 If KS does so repair the Goods or supply satisfactory substitute goods or effect repayment under Clause 10.3, the Buyer shall be bound to accept such repaired or substituted goods, or repayment and KS shall be under no liability in respect of any loss or damage of whatever nature arising from the initial delivery of the defective Goods.

10.5 In the case of Goods not manufactured by KS:

10.5.1 KS gives no assurance or guarantee that the sale or use of the Goods will not infringe the patent, copyright or other intellectual property right of any third party; and

10.5.2 the obligations of KS relating to defects in such Goods are limited to the guarantee (if any) which KS receives from the manufacturer or supplier of such Goods.

11. LIMITATION OF LIABILITY

11.1 Nothing in these Conditions excludes or limits the liability of KS for death or personal injury caused by KS's negligence or for fraudulent misrepresentation or any other liability or loss in respect of which liability cannot by applicable law be limited.

11.2 Subject to Clause 11.1, KS's aggregate liability to the Buyer in respect of any occurrence or series of occurrences whether for negligence, breach of contract, misrepresentation or otherwise shall in no circumstances exceed the cost of the defective, damaged or undelivered Goods which give rise to such liability as determined by the net price invoiced to the Buyer.

11.3 KS shall not be liable for the following losses, whether arising from breach of contract, tort (including negligence), or otherwise, and whether or not flowing directly, indirectly, or as a consequence of such breach, tort or other cause:

11.3.1 loss of profit;

11.3.2 loss of anticipated savings;

11.3.3 loss of anticipated profits;

11.3.4 loss of anticipated contracts;

11.3.5 loss of reputation or goodwill;

11.3.6 any wasted expenditure; or

11.3.7 economic loss.

11.4 The sub-clauses of Clause 11.3 are intended by the Buyer and KS to be severable and both parties agree that such limitations of liability are reasonable in all the circumstances.

12. ATTENDANCE ON SITE

12.1 If KS attends, or arranges for an attendance to be made, at the Buyer's premises or the premises of any third party for any reason connected with the Contract, the Buyer shall indemnify KS in respect of all claims made or proceedings taken against KS (and associated legal costs incurred by KS) by any person, firm or company, including employees of KS, or of the Buyer or of any contractor employed by the Buyer (or their personal representatives), whether in respect of death, personal injury or damage to property arising directly or indirectly from the attendance at such premises.

13. INTELLECTUAL PROPERTY

13.1 The Buyer acknowledges and agrees that all patents, copyright, moral rights, business and trade names, trade marks (registered or unregistered), design rights (registered or unregistered), know-how and any and all other intellectual property rights in the Goods and any documentation relating to the Goods, together with any enhancements or improvements shall vest in KS and/or its licensors, free of charge. The Buyer shall have no rights in respect of any intellectual property rights belonging to KS nor any goodwill associated therein.

13.2 All claims for alleged infringement of patents, trade marks, registered designs, design right or copyright received by the Buyer relating to the Goods must be notified immediately to KS. If requested by KS, KS shall be entitled to have conduct of any proceedings relating to any such claim in such manner as KS thinks fit and the Buyer will provide to KS such reasonable assistance as KS may request.

14. CONFIDENTIALITY

14.1 Each party shall at all times keep all Confidential Information supplied by the other party confidential and will not disclose any such information to any third party other than in the proper performance of its obligations under this Contract. Each party agrees that this obligation shall continue in force without limit in point of time.

14.2 The restriction imposed by Clause 14.1 shall not apply to the disclosure of any Confidential Information:

14.2.1 to such extent as is necessary for the purposes contemplated by these Conditions and with the other party's prior consent;

14.2.2 as is required by any applicable law or as is requested by any competent court; or

14.2.3 where it is public knowledge at the date of disclosure or can be shown by the disclosing party to have been known prior to such disclosure, provided that such disclosure does not constitute a breach of these Conditions.

15. FORCE MAJEURE

15.1 KS shall not be liable for any failure to perform its obligations under the Contract for any reason whatsoever outside its reasonable control, including without limitation, strikes, riots, lock-outs or other industrial action (whether involving KS's employees or those of a third party) or governmental restrictions of any kind, suspension or loss of means of transport, labour and/or materials shortages, legislation or regulations of any kind, acts of God, fire, flood, or other extraordinarily severe weather conditions, failure (in whole or in part) of any power or energy supply or plant and machinery. Any such failure or delay shall not affect the obligation of the Buyer to pay the Price for Goods already delivered.

16. GOVERNING LAW AND ARBITRATION

16.1 These Conditions and the Contract (and any non-contractual obligations arising out of or in connection with these Conditions and the Contract) shall be governed by and interpreted in accordance with the laws of the United Arab Emirates.

16.2 The parties agree that any dispute or difference arising out of the formation, performance, interpretation, nullification, termination or invalidation of these Conditions or the Contract or related thereto in any manner whatsoever, shall be settled by arbitration in accordance with the provisions set forth under the Dubai International Arbitration Centre Arbitration Rules. The tribunal shall comprise of one or three arbitrators as determined by the party referring the dispute or difference to arbitration. The language of the arbitration shall be

English. The place of arbitration shall be Dubai. The arbitrator shall expressly apply the law of the United Arab Emirates to the exclusion of all other choices of law.

17. MISCELLANEOUS

17.1 The Buyer may not assign, sub-contract or in any way dispose of or transfer its rights or obligations under the Contract without the prior written consent of KS. KS shall be free to assign, sub-contract and/or transfer any of its rights or obligations under the Contract to any of its associated companies or to a third party.

17.2 Any notice required to be served pursuant to these Conditions shall be served at such address as each party may from time to time notify to the other and shall be served by courier, by email or fax. Any such notice served by post shall be deemed to have been served in the case of a destination in the UAE two (2) days after the date of despatch and seven (7) days after the date of despatch to any other destination. In the case of service by fax such notice shall be deemed to have been served when the addressee's machine acknowledges receipt thereof and in the case of email when the email is available to be read in the recipient's in-box.

17.3 Any term of these Conditions which is or may be void or unenforceable shall, to the extent of such invalidity, be severable and shall not affect the other provisions or terms or the remainder of the affected provision of these Conditions.

17.4 Failure by either party to exercise any right to enforce these Conditions or any term of the Contract relating to any breach of these Conditions or the Contract shall not be construed as a waiver of any such breach or any subsequent breach of the same provision or any other provision.

17.5 Except as otherwise provided in these Conditions or the Contract, a person who is not a party to the Contract shall have no rights to enforce any term of these Conditions or the Contract.

17.6 Nothing in these Conditions or the Contract will be construed as constituting or evidencing any partnership, contract of employment or joint venture of any kind between the parties or as authorising either party to act as agent for the other.

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