

Terms and Conditions of Sale

1. Interpretation

1.1 Definitions. In these Conditions, the following definitions apply:

"Business Day" means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

"Conditions" means the terms and conditions set out in this document [as amended from time to time in accordance with clause 12.6].

"Contract" means the contract between the Seller and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

"Customer" means the person or firm who purchases the Goods from the Seller.

"Force Majeure Event" has the meaning given in clause 10.

"Goods" mean the goods (or any part of them) set out in the Order.

"Order" means the Customer's order for the Goods, as set out in the Customer's purchase order form or in the Customer's written acceptance of the Seller's quotation as the case may be.

"Specification" means any specification for the Goods, including any related plans and drawings, which are agreed in writing between the Customer and the Seller.

"Seller" Kemo Limited, Dartford DA2 8DH (registered in England and Wales with company number 3475070).

"Writing" includes manuscript, type-written or printed statement, facsimile transmission and electronic mail.

1.2 Construction. In these Conditions, the following rules apply:

1.2.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns.

1.2.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.4 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.5 A reference to writing or written includes faxes and e-mails.

2. Basis of contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Seller issues a written acceptance of the Order, at which point the Contract shall come into existence.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter, or advertising produced by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2.6 A quotation for the Goods given by the Seller shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

2.7 Any typographical, clerical or other error or omission in any sales literature, proposal, price list, acceptance of order, drawings, specifications, invoice or other document or information by the Seller shall be subject to correction without any liability on the part of the Seller.

3. Goods

3.1 The Goods are described in the Seller's catalogue and on the Seller's website page (www.kemo.com).

3.2 The Seller reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

3.3 When goods are hired the Customer accepts full responsibility for the rental equipment which must be covered for full new product value under the user's insurance and any damage caused to the equipment during use will be chargeable at the cost of a new replacement unit.

4. Delivery

4.1 The Seller shall ensure that:

4.1.1 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Seller reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

4.1.2 if the Seller requires the Customer to return any packaging materials to the Seller, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Seller shall reasonably request. Returns of packaging materials shall be at the Seller's expense.

4.2 The Seller shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("Delivery Location") at any time after the Seller notifies the Customer that the Goods are ready.

4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Seller shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If the Seller fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Seller shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6 If the Customer fails to accept delivery of the Goods within three Business Days of the Seller notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Seller's failure to comply with its obligations under the Contract (and without prejudice to any other remedies available under these Conditions):

4.6.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Seller notified the Customer that the Goods were ready; and

4.6.2 the Seller may effect delivery by whatever means it reasonably thinks appropriate or shall store the Goods until delivery takes place at the Customer's risk, and charge the Customer for all related costs and expenses (including insurance).

4.7 If 10 Business Days after the day on which the Seller notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, the Seller may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.8 The Customer shall not be entitled to reject the Goods by reason only of short delivery.

4.9 The Seller may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. Quality

5.1 The Seller warrants that on delivery, and for a period of 12 months from the date of delivery ("Warranty Period"), the Goods shall:

5.1.1 conform in all material respects with their description and any applicable Specification; and

5.1.2 be free from material defects in design, material and workmanship;

5.2 Subject to clause 5.3, if:

5.2.1 the Customer gives notice in writing to the Seller during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;

5.2.2 the Seller is given a reasonable opportunity of examining such Goods; and

5.2.3 the Customer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Customer's cost,
the Seller shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 The Seller shall not be liable for Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:

5.3.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;

5.3.2 the defect arises because the Customer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

5.3.3 the defect arises as a result of the Seller following any drawing, design or Specification supplied by the Customer;

5.3.4 the Customer alters or repairs such Goods without the written consent of the Seller;

5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, misuse or use other than in accordance with the Seller's and/or manufacturers instructions or abnormal storage or working conditions; or

5.3.6 the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this clause 5, the Seller shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause

5.5 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

5.6 Any repaired or replacement goods supplied by the seller are only covered under the original product warranty period.

6. Title and risk

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the Seller has received payment in full (in cash or cleared funds) for:

6.2.1 the Goods; and

6.2.2 any other goods or services that the Seller has supplied to the Customer in respect of which payment has become due.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

6.3.1 hold the Goods and any proceeds of sale on a fiduciary basis as the Seller's bailee;

6.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Seller's property;

6.3.3 not show the Goods as stock in the accounts of the Customer;

6.3.4 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.3.5 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

6.3.6 notify the Seller immediately if it becomes subject to any of the events listed in clause 8.2; and

6.3.7 give the Seller such information relating to the Goods as the Seller may require from time to time,
but the Customer may subject to clause 7.9 resell or use the Goods in the ordinary course of its business.

6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, or the Seller reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Seller may have, the Seller may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. Price and payment

7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Seller's published price list in force as at the date of delivery.

7.2 The Seller may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

7.2.1 any factor beyond the Seller's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

7.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods

ordered, or the Specification; or

7.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Seller adequate or accurate information or instructions.

7.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

7.4 The price of the Goods is exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from the Seller, pay to the Seller such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

7.5 The Seller may invoice the Customer for the Goods on or at any time after the completion of delivery.

7.6 The Customer shall pay the invoice in full and in cleared funds by their agreed payment terms from the date of invoice. Payment shall be made to the bank account nominated in writing by the Seller. Time of payment is of the essence.

7.6.1 The Seller, under the contract, shall only be paid in Pounds Sterling (£).

7.7 If the Customer fails to make any payment due to the Seller under the Contract under the agreed payment terms (due date), then the Customer shall pay a late payment charge of £75 and interest on the overdue amount at the rate of 8% per annum above the base lending rate. Such interest shall accrue on a daily basis from

the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

7.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Seller in order to justify withholding payment of any such amount in whole or in part. The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Seller to the Customer.

7.9 Without prejudice to any other rights or remedies of the Seller, any default by the Customer in making payment of the full amount becoming payable on the due day shall entitle the Seller to suspend any deliveries under this or any contract and suspend or revoke the right to resell any Goods so long as the default continues and to treat the Contract as repudiated by the Customer and determined if the Customer shall not within 14 days of receiving written notice from the Seller have paid all sums due to the Seller under this Contract.

8. Customer's insolvency or incapacity

8.1 If the Customer becomes subject to any of the events listed in clause 8.2, or the Seller reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Seller, the Seller may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Seller without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

8.2 For the purposes of clause 8.1, the relevant events are:

8.2.1 the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

8.2.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

8.2.3 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

8.2.4 (being an individual) the Customer is the subject of a bankruptcy petition or order;

8.2.5 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

8.2.6 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;

8.2.7 (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;

- 8.2.8 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- 8.2.9 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2.1 to clause 8.2.8 (inclusive);
- 8.2.10 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
- 8.2.11 the Customer's financial position deteriorates to such an extent that in the Seller's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- 8.2.12 (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 8.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

9. Limitation of liability

THE CUSTOMER'S ATTENTION IS DRAWN TO THE PROVISIONS OF THIS CLAUSE

- 9.1 Nothing in these Conditions shall limit or exclude the Seller's liability for:
- 9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 9.1.2 fraud or fraudulent misrepresentation;
- 9.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- 9.1.4 defective products under the Consumer Protection Act 1987; or
- 9.1.5 any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.
- 9.2 Subject to clause 9.1:
- 9.2.1 the Seller shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract [(including any losses that may result from [the Seller's deliberate personal repudiatory breach of the Contract OR a deliberate breach of the Contract by the Seller, its employees, agents or subcontractors])]; and
- 9.2.2 the Seller's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, [including losses caused by [the Seller's deliberate personal repudiatory breach OR a deliberate breach of the Contract by the Seller, its employees, agents or subcontractors]] shall not exceed [£[AMOUNT] OR [[PERCENT]% of] the price of the Goods].

10. Force majeure

Neither party shall be liable for any failure or delay in performing its obligations or reduction in volume of goods in the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of Sellers or subcontractors.

11. Termination

- 11.1 Either party may terminate the Contract immediately:
- 11.1.1 by notice in Writing to the other if the other commits any material breach of these Conditions which is capable of remedy and fails to remedy the same within 30 days after being required by Written notice to do so (for the avoidance of doubt, late or no payment will be material breach of condition); or
- 11.1.2 without notice if the other party has a bankruptcy order made against him or make an arrangement or composition with his creditors, or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors or being corporate convenes a meeting of creditors or enters into liquidation or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to

any court for the winding up of the other party or for the granting of an administration order in respect of the other party, or any proceedings are commenced relating to the insolvency or possible insolvency of the other party or if the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

11.1.3 Upon the termination of the Contract for any reason, subject to any rights or obligations which have accrued prior to termination (including the Customer's obligation to pay), neither party shall have any further obligation to the other under the Contract.

12. General

12.1 Assignment and subcontracting.

12.1.1 The Seller may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

12.1.2 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Seller.

12.2 Notices.

12.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.

12.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2.1; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

12.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

12.3 Severance.

12.3.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

12.3.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

12.4 Waiver. A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

12.5 Third party rights. A person who is not a party to the Contract shall not have any rights under or in connection with it.

12.6 Variation. Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Seller.

12.7 Governing law and jurisdiction. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

12.8 **Confidentiality.** Both parties shall keep confidential and shall not without prior consent in Writing of the other disclose to any third party any technical or commercial information which it has acquired from the other relating to the Goods and/or Specifications or the Contract.