

Viega Ltd.

General terms of delivery.



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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 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 11.6;

"Contract" means the contract between Viega and the Customer for the sale and purchase of the Products in accordance with these Conditions;

"Customer" means the person or firm who purchases the Products from Viega; **"Delivery"** has the meaning given to it in clause 4.3;

"Delivery Date" means the date on which Delivery takes place;

"Delivery Location" has the meaning given to it in clause 4.2;

"Force Majeure Event" means to the extent that they are beyond a party's reasonable control, any strikes, lock-outs or other industrial disputes of third parties, act of God, riot, war, civil commotion, malicious damage, fire, explosion, terrorist act, compliance with any law or governmental order, rule, regulation or direction but excludes any weather related event;

"Order" means the Customer's order for the Products, as set out in the Customer's purchase order form, the Customer's written acceptance of Viega's quotation, or overleaf, as the case may be;

"Products" means the goods (or any part of them) set out in the Order;

"Specification" means any specification for the Products, including any related plans and drawings, that is agreed in writing by the Customer and Viega;

"VAT" has the meaning given to it in clause 7.5;

"Viega" means Viega Limited, a company registered in England and Wales with company number 09096150 whose registered office is at Palmerston House, 814 Brighton Road, Purley, Surrey, United Kingdom CR8 2BR; and

"Warranty" has the meaning given to it in clause 5.1.

1.2 Construction.

In these Conditions, the following rules apply:
1.2.1 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.

1.2.2 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.

1.2.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.2.4 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 Products in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.3 The Order shall only be deemed to be accepted when Viega 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, representation, assurance or warranty made or given by or on behalf of Viega which is not set out in the Contract.

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

2.6 A quotation for the Products given by Viega shall not constitute an offer. A quotation shall only be valid for a period of twenty (20) Business Days from its date of issue.

3 Products

3.1 The Products are described in Viega's catalogue as modified by any applicable Specification.

3.2 To the extent that the Products are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify Viega against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Viega in connection with any claim made against Viega for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Viega's use of the Specification. This clause 3.2 shall survive termination of the Contract.

3.3 Viega reserves the right to amend the Specification of any Product(s) if required by any applicable statutory or regulatory requirements.

4 Delivery

4.1 Viega shall ensure that:

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

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

4.2 Viega shall deliver the Products to the location set out in the Order or such other location as the parties may agree (**"Delivery Location"**) at any time after Viega

notifies the Customer that the Products are ready.

4.3 Delivery of the Products shall be completed on the Products' arrival at the Delivery Location (**"Delivery"**).

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

4.5 If Viega fails to deliver the Products, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement Products of similar description and quality in the cheapest market available, less the price of the Products.

4.6 If the Customer fails to accept Delivery of the Products within three (3) Business Days of Viega notifying the Customer that the Products are ready, then, except where such failure or delay is caused by a Force Majeure Event or Viega's failure to comply with its obligations under the Contract:

4.6.1 Delivery shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which Viega notified the Customer that the Products were ready; and

4.6.2 Viega shall store the Products until Delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

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

4.8 The Customer shall not be entitled to reject the Products if Viega delivers up to and including 5% more or less than the quantity of Products ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of written notice from the Customer that the wrong quantity of Products was delivered.

4.9 Viega may deliver the Products 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 Viega warrants that upon Delivery, and for a period of 25 years after the date which is stipulated in the separate warranty documentation accompanying the Products, the Products shall:

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

5.1.2 be free from material defects in design, material and workmanship; (the **"Warranty"**).

5.2 Subject to clause 5.3, if:

5.2.1 the Customer gives notice in writing to Viega within a reasonable time of discovery that some or all of the Products do not comply with the Warranty;

5.2.2 Viega is given a reasonable opportunity of examining such Products; and

5.2.3 the Customer (if asked to do so by Viega) returns such Products to Viega's place of business at Viega's reasonable cost;

Viega shall, at its option, repair or replace the defective Products, or refund the price of the defective Products in full. In addition, provided that the Customer notifies Viega of the defective Products within 6 years of the date stipulated in the separate warranty documentation accompanying the Products, Viega shall also be responsible for reasonable labour costs necessary for the installation of any repaired or replaced product notified to Viega in advance.

5.3 Viega shall not be liable for Products' failure to comply with the Warranty in any of the following events:

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

5.3.2 the defect arises because the Customer failed to follow Viega's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Products or good trade and engineering practice regarding the same;

5.3.3 the Customer, or any intermediary that has directly or indirectly supplied the Products to the Customer, alters or repairs the Products without the written consent of Viega;

5.3.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;

5.3.5 the Products differ from their description and/or Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements; or

5.3.6 the Products have been used or installed outside of the United Kingdom.

5.4 The Warranty sets out Viega's only liability to the Customer (whether in contract, tort (including negligence), breach of statutory duty, or otherwise) in respect of defective or faulty Products.

5.5 The Warranty is for the benefit of the Customer only and it may not be assigned, transferred or dealt with by any other person.

5.6 The Customer shall pass sufficient copies of any warranty documentation that accompanies the Products to its customers so that all members of the supply chain, including the end-user, have a copy of such documentation.

5.7 The terms implied by sections 13 to 15 of the Sale of Products Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.8 These Conditions shall apply to any repaired or replacement Products supplied by Viega.

5.9 If the Customer returns the Products to Viega for examination and it turns out that no warranty claims exists, Viega is entitled to charge the Customer a processing fee in the amount of 25% of the price of the respective Products but not less than 30 GBP before tax.

6 Title and risk

- 6.1 The risk in the Products shall pass to the Customer on Delivery.
- 6.2 Title to the Products shall not pass to the Customer until (the earlier of):
- 6.2.1 Viegia receives payment in full (in cash or cleared funds) for the Products and any other Products that Viegia has supplied to the Customer in respect of which payment has become due, in which case title to the Products shall pass at the time of cleared payment of all such sums; and
- 6.2.2 the Customer resells the Products, in which case title to the Products shall pass to the Customer at the time specified in clause 6.4.
- 6.3 Until title to the Products has passed to the Customer, the Customer shall:
- 6.3.1 store the Products separately from all other Products held by the Customer so that they remain readily identifiable as Viegia's property;
- 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
- 6.3.3 maintain the Products in satisfactory condition and keep them insured against all risks for their full price following Delivery;
- 6.3.4 notify Viegia immediately if it becomes subject to any of the events listed in clauses 8.2.2 or 8.2.3; and
- 6.3.5 give Viegia such information relating to the Products as Viegia may require from time to time.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Products in the ordinary course of its business (but not otherwise) before Viegia receives payment for the Products. However, if the Customer resells the Products before that time:
- 6.4.1 it does so as principal and not as Viegia's agent; and
- 6.4.2 title to the Products shall pass from Viegia to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 If before title to the Products passes to the Customer, the Customer becomes subject to any of the events listed in clauses 8.2.2 and 8.2.3, then, without limiting any other right or remedy Viegia may have:
- 6.5.1 the Customer's right to resell the Products or use them in the ordinary course of its business ceases immediately; and
- 6.5.2 Viegia may at any time:
- (i) require the Customer to deliver up all Products in its possession which have not been resold, or irrevocably incorporated into another Products; and
- (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them.
- 7 Price and payment**
- 7.1 The price of the Products shall be the price set out in the Order, or, if no price is quoted, the price set out in Viegia's published price list in force as at Delivery.
- 7.2 Viegia may, by giving notice to the Customer at any time up to ten (10) Business Days before Delivery, increase the price of the Products to reflect any increase in the cost of the Products that is due to:
- 7.2.1 any factor beyond Viegia'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 date(s) of Delivery, quantities or types of Products ordered, or the Specification; or
- 7.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give Viegia adequate or accurate information or instructions.
- 7.3 The price of the Products is exclusive of the costs and charges of packaging, insurance and transport of the Products, which shall be invoiced to the Customer.
- 7.4 The price of the Products is exclusive of amounts in respect of value added tax ("VAT"). The Customer shall, on receipt of a valid VAT invoice from Viegia, pay to Viegia such additional amounts in respect of VAT as are chargeable on the supply of the Products.
- 7.5 Viegia may invoice the Customer for the Products on or at any time after the completion of delivery.
- 7.6 The Customer shall pay the invoice in full and in cleared funds within twenty (20) Business Days of the date of the invoice. Payment shall be made to the bank account nominated in writing by Viegia. Time of payment is of the essence.
- 7.7 If the Customer fails to make any payment due to Viegia under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until 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 set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Viegia 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 Viegia to the Customer.
- 8 Termination and suspension**
- 8.1 Viegia may terminate the Contract by giving the Customer thirty (30) days' written notice.
- 8.2 Without limiting its other rights or remedies, Viegia may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 8.2.1 the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within fourteen (14) days of the Customer being notified in writing to do so; or
- 8.2.2 an order is made or a resolution is passed for the winding-up of the Customer or an administrator is appointed by order of the Court or by other means to manage the affairs, business and property of the Customer or a receiver and/or manager or administrative receiver is validly appointed in respect of all or any of the Customer's assets or undertaking or circumstances arise which entitle the Court or a creditor to appoint a receiver and/or manager or administrative receiver or which entitle the Court to make a winding-up or bankruptcy order or the Customer takes or suffers any similar or analogous action (in any jurisdiction) in consequence of debt; or
- 8.2.3 the Customer ceases, or threatens to cease, to carry on business; or
- 8.2.4 there is a change of control of the Customer (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 8.3 Termination of the Contract, howsoever arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.
- 8.4 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 9 Limitation of liability**
- 9.1 Nothing in these Conditions shall limit or exclude either party's liability for:
- 9.1.1 death or personal injury caused by its negligence;
- 9.1.2 fraud or fraudulent misrepresentation; or
- 9.1.3 the deliberate default or wilful misconduct of that party, its employees, agents or subcontractors.
- 9.2 Subject to clause 9.1:
- 9.2.1 Viegia shall under no circumstances whatsoever 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;
- 9.2.2 Viegia'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, shall in no circumstances exceed 100% of the sums paid or payable by the Customer under the relevant Contract at the time that the liability arose.
- 10 Force majeure**
- 10.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event.
- 10.2 The Customer shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations under the Contract.
- 10.3 If a Force Majeure Event prevents, hinders or delays the Customer's performance of its obligations under the Contract for a continuous period of more than twenty (20) Business Days, Viegia may terminate the Contract immediately by giving written notice to the Customer.
- 11 General**
- 11.1 Assignment and other dealings.**
- 11.1.1 Viegia may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 11.1.2 The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Viegia.
- 11.2 Notices.**
- 11.2.1 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 or other next working day delivery service, commercial courier, fax or e-mail.
- 11.2.2 A notice or other communication shall be deemed to have been received:
- (i) if delivered personally, when left at the address referred to in clause 11.2.1;
- (ii) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting;
- (iii) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or
- (iv) if sent by fax or e-mail, one Business Day after successful transmission (where no failed transmission report or out of office message is received by the sender within one hour of sending).
- 11.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 11.3 Severance.**
- 11.3.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 11.3.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 11.4 Waiver.** A waiver of any right or remedy under the Contract or law 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 prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 11.5 Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 11.6 Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by Viegia.
- 11.7 Governing law.** 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 the law of England and Wales.
- 11.8 Jurisdiction.** Each party irrevocably agrees that the competent courts at the registered office of Viegia shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).



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