

TERMS AND CONDITIONS OF SALES

- 1 **Parties to this Agreement:-**
- (a) Flexdart Limited (English Company Number 02 052 152) of Fairforal Works, Marsh Lane, Water Orton, Birmingham B46 1NS, United Kingdom ("**Flexdart**") whether acting in its own name or in the name of one of its trading divisions; and
 - (b) The legal person or each of the legal persons ("**the Clients**") with whom and/or with which Flexdart has contracted for the sale by Flexdart of any goods and/or services.
- 2 **The terms of the sale of the Products** – Flexdart shall supply and sell to the Clients each of the goods or services (referred to below as "**the Products**") referred to and/or defined in any respective written quotation, confirmation of order and/or sales invoice or other similar document issued by Flexdart, and the Clients shall purchase each of the Products on the terms and conditions set out in this Agreement ("**these Terms and Conditions**") exclusively. For the avoidance of doubt, Flexdart does not contract with anyone for any sale by Flexdart in any circumstances on terms other than these Terms and Conditions.
- 3 **Variation of these Terms and Conditions** – No variation of these Terms and Conditions shall be binding unless agreed in writing by a director of Flexdart.
- 4 **Representations** – The Clients warrant that they have not relied in any way upon any representation made by or on behalf of Flexdart unless the same is in writing and has been specifically signed by a director of Flexdart. For the avoidance of doubt such representations upon which the Clients warrant that they do not rely, include all content (including descriptions, dimensions and illustrations) contained in any document issued by Flexdart (including any brochure, catalogue or pamphlet), and/or any website of Flexdart.
- 5 **Delivery** –
- (a) Flexdart reserves the right to deliver or supply the Products in instalments and/or at such time or times as Flexdart shall (at its own absolute discretion) choose. The Clients shall not be entitled at any time to refuse delivery of the Products.
 - (b) The Clients shall bear all the risk of any loss or damage to the Products during transit and at all other times when the Products are not (1) within the possession of Flexdart at its premises, as aforesaid, and/or (2) in transit to the premises of the Clients under arrangements made and paid for by Flexdart.
- 6 **Payment** –
- (a) The Clients will pay to Flexdart the full price of the Products, as defined in the respective quotation, confirmation of order and/or sales invoice (whether issued by Flexdart or 'self-billed' by the Clients), to include any sum representing value added tax due upon such transaction, by cleared funds received by Flexdart within, unless otherwise agreed in writing between Flexdart and the Clients, three working days from the date of delivery or supply of the Products. If a declaration to the London Metal Exchange is necessary for the relevant transaction, the Clients will pay the price of the Products within, unless otherwise agreed in writing between Flexdart and the Clients, three working days of the date of notification by Flexdart of such declaration.
 - (b) Without prejudice to the generality of the foregoing, the above provisions will apply to the processing by Flexdart of drosses (being mixtures of materials from which are extracted by Flexdart one or more of those materials) with the following changes. In those circumstances (1) Flexdart will be entitled to retain possession of the drosses and all the extracted materials until after payment in full for the same, inclusive of value added tax and in cleared funds, and (2) the Clients will pay the respective sums due within, unless otherwise agreed in writing between Flexdart and the Clients, three working days of the delivery of the invoice therefor.
 - (c) The Clients will not have any right of set off, counterclaim, discount or deduction on the said price for any reason.
 - (d) Flexdart is permitted under these Terms and Conditions to claim for and sue for payment for the Products before title in the Products has passed to the Clients.
 - (e) In the event of late payment by the Clients, Flexdart will be entitled to charge interest on any outstanding sums at a rate of 2% per month calculated on a daily basis, subject to a minimum of £10, until payment is received. The Clients agree that in those circumstances and in addition to such interest, Flexdart will be entitled to claim commercial debt recovery costs under the provisions of Late Payment of Commercial Debts (Interest) Act 1998.
 - (f) Payment of each invoice from Flexdart to the Clients on the due date is a condition precedent to further deliveries by Flexdart.
- 7 **Implied Terms** – To the full extent allowed by law, all warranties, conditions or other terms implied by statute or common law are excluded from these Terms and Conditions. For the avoidance of doubt Flexdart does not give any warranty, either express or implied as to quality and fitness for purpose of products supplied by Flexdart.
- 8 **Force Majeure** – Flexdart shall have the right to cancel, reduce or delay delivery or supply of the Products if it is prevented from, hindered or delayed in delivering or supplying the Products by reason of any circumstances anywhere in the world which are beyond the control of Flexdart, including strikes, lock outs, labour disputes, Acts of God, accidents, war, riots, revolutions, fire, storms, reduction in the availability of power at the premises of Flexdart, breakdown of plant, and/or shortage of necessary consumables and/or raw materials.

- 9 **Limitation of liability –**
- (a) The liability of Flexdart in respect of any claim by the Clients arising from or relating to any delivery or supply of Products shall be limited to the price paid for the respective of the Products.
 - (b) Without prejudice to the foregoing Flexdart shall have no liability whatsoever in any circumstances for any losses or damage claimed by the Clients which are indirect and/or consequential, including loss of profits and/or economic loss.
 - (c) In any event no claim can be made by the Clients against Flexdart unless a director of Flexdart is notified in writing of such claim within twenty four hours of the delivery or supply to the Clients of the respective Products.
 - (d) Further in any event Flexdart shall not be liable in any way for any claim by the Clients for any shortages, late delivery or non-delivery of the Products.

- 10 **Retention of title and risk –**
- (a) Title to any of the Products supplied under these Terms and Conditions shall not pass from Flexdart to the Clients until payment in full (including interest, delivery charges and any other associated liabilities of the Clients) by the Clients for those respective Products and all other Products previously supplied to the Clients by Flexdart.
 - (b) Whilst (1) the Clients are in possession of any of the Products supplied under these Terms and Conditions, and (2) before title therein passes to the Clients, the Clients shall:-
 - (i) be the bailee of Flexdart for such of the Products,
 - (ii) store such of the Products separately from any others products or good so that they are easily identifiable as the property of Flexdart, and
 - (iii) store, protect and insure all such of the Products with reasonable skill care and diligence.
 - (c) If (1) payment of any sums due under these Terms and Conditions is overdue in whole or in part, and/or (2) the Clients become insolvent or commit an act of bankruptcy or liquidation, or suffer execution, administration or receivership, then Flexdart (through its employees or agents) may enter on any premises controlled by the Clients and then recover and resell the Products. For the avoidance of doubt the Clients hereby grant to Flexdart an unrestricted licence for that purpose.
 - (d) If before title has passed, any of the Products become mixed or incorporated with any other goods, then the resultant products shall be treated as owned by Flexdart and the owner(s) of the said other goods as tenants in common in the resultant products (by value) until title in the respective of the Products would otherwise have passed to the Clients under these Terms and Conditions.

- 11 **General –**
- (a) Nothing in this Agreement shall be construed as granting any rights to any third party.
 - (b) This Agreement is not transferable by any party and none of the rights or obligations under this Agreement can be assigned by any party.
 - (c) These Terms and Conditions together with in any respective written quotation and/or confirmation of order and/or other similar document issued by Flexdart, constitute the entire agreement between Flexdart and the Clients in relation to the relevant transactions.
 - (d) Flexdart and the Clients agree that no other prior arrangements, understandings or agreements of whatsoever nature have any enforceability or relevance to the transaction(s) covered by these Terms and Conditions.
 - (e) The Clients have no right or authority (1) to bind Flexdart in any way, nor (2) to assume on behalf of Flexdart any obligation.
 - (f) This Agreement is governed by, and shall be construed in accordance with, English law and each party hereto submits to the sole and exclusive jurisdiction of the courts of England.
 - (g) Time is of the essence in this Agreement.
 - (h) If any part of any provision of these Terms and Conditions prove to be unenforceable for any reason, the remainder of these Terms and Conditions shall continue in full force and power.