

## Magnaflux Division of ITW Ltd

### STANDARD TERMS AND CONDITIONS OF SALE

#### 1. INTERPRETATION

##### 1.1 Defined Terms

In the Agreement and these terms and conditions:

"**Agreement**" means the contract or contracts for the sale of the Goods entered into between the Seller and the Buyer of which any quotation and these terms and conditions and any Buyer's order if accepted by the Seller form part;

"**the Buyer**" means the person who is to buy the Goods referred to in the Agreement;

"**the Goods**" means any item which is to be sold by the Seller pursuant to the Agreement;

"**the Price**" means the total sum (exclusive of value added tax) payable by the Buyer to the Seller referred to in the Agreement;

"**the Seller**" means [Magnaflux].

1.2 The headings are included for convenience only and shall not affect the interpretation or construction of these terms and conditions.

1.3 In the Agreement, unless the context requires otherwise, any reference to:

(a) a "party" or "the parties" is to a party or the parties (as the case may be) to the Agreement;

(b) a Condition is to a condition of these terms and conditions;

(c) a statute or statutory provision includes any consolidation or re-enactment of the same and any subordinate legislation in force under the same from time to time;

(d) the masculine, feminine or neuter gender respectively includes the other genders, references to the singular include the plural (and vice versa) and references to persons include firms, corporations and unincorporated associations.

#### 2. CONDITIONS TO APPLY TO EVERY CONTRACT

These Conditions shall apply to and form part of every contract between the Seller and the Buyer for the sale and purchase of the Goods. All quotations are made and all orders are accepted on and subject to these Conditions. No terms or conditions specified by the Buyer (whether or not earlier agreed expressly or by conduct between the Seller and the Buyer or submitted in a later document and/or which purport to exclude or supersede any terms or conditions inconsistent with them) shall apply or have effect.

#### 3. QUOTATIONS AND ACCEPTANCE OF ORDERS

3.1 Quotations are not binding on the Seller and may be withdrawn or modified. Any quotations or estimates made by the Seller shall remain open for a period of [60] days and a contract will only be formed when the Buyer has accepted these Conditions either expressly in writing or by implication.

3.2 No order submitted by the Buyer shall be deemed accepted until confirmed in writing by the Seller. Orders are accepted subject to the credit status of the Buyer being satisfactory to the Seller from time to time. The Seller may cancel any Contract at any time if the Buyer's credit references are not satisfactory to the seller.

3.3 The Seller may alter the specification of any Goods if this does not materially and adversely affect their performance or utility.

3.4 If any variation in the Goods or any Agreement is agreed or is required for compliance with any applicable law, regulation or safety recommendation the Buyer shall pay such additional amount as is fair and reasonable and the Seller shall have reasonable additional time to perform any Agreement.

3.5 Any Agreement may only be varied or amended with the Seller's written consent and upon such terms as the Seller may specify.

#### 4. MANUFACTURE AND SALE

The Seller agrees to manufacture and sell the Goods to the Buyer and the Buyer agrees to purchase the Goods for the Price subject to and in accordance with the terms of the Agreement. The Buyer agrees to comply with all laws relating to the Buyer's use of the Goods and to indemnify the Seller in respect of all losses incurred by the Seller arising out of any acts or omissions of the Buyer which infringe any law or regulation.

#### 5. PRICE

5.1 The Price shall be the Seller's quoted price and is calculated on an ex works basis and is exclusive of the costs of packaging, carriage, insurance and unloading.

5.2 The Seller reserves the right to increase the Price at anytime. In addition, the Seller may recover any additional costs arising due to factors outside the control of the Seller including but not limited to foreign exchange fluctuations, increases in duties or a significant increase in the costs of labour, material or supply, or where the Buyer has requested any variation or modification to quantity or specification of the Goods or has requested a particular delivery date or where the delivery of the Goods is suspended, varied or otherwise delayed by reason of an act or omission on the part of the Buyer.

5.3 The Price and all other sums due under the Agreement are exclusive of value added tax (or any successor tax or equivalent local tax) which will be

added and shall be payable to the Seller by the Buyer in accordance with the law applicable from time to time.

#### 6. PAYMENT

6.1 Payment is due in full (without any right of set-off, deduction or withholding whatsoever) within [30] days of the date of the invoice rendered in respect of the Goods. Time for payment shall be of the essence of the Agreement.

6.2 Interest shall be payable by the Buyer on any money which is not paid by it to the Seller by the due date for its payment and shall accrue at the rate of [4] per cent above the base rate from time to time of HSBC Bank plc until payment is received in full.

#### 7. DELIVERY

7.1 Save as otherwise agreed in writing by the Seller, delivery shall take place at the time the Goods leave the Seller's premises. The Buyer shall take delivery of the Goods at the Seller's premises and shall pay the costs of any checking or inspection of the Goods and of any packaging requested by the Buyer. The Seller agrees if requested by the Buyer to arrange as the Buyer's agent at the Buyer's expense for the carriage (including loading and unloading) of the Goods. The Seller shall not be responsible or liable in any way for any non-delivery or delay in such carriage, any loss of or damage to the Goods during such carriage or the act or omission (negligent or otherwise) of any third party in connection with any such carriage. The Buyer shall obtain all necessary import and export licences and approvals.

7.2 Delivery shall take place when the Goods are placed at the Buyer's disposal as set out in Condition 7.1. The Seller shall use its reasonable endeavours to meet any estimated or requested dates for delivery but shall not be liable in any way for any failure to meet any such date. The time of delivery shall not be of the essence of the Agreement.

7.3 In the event of the Buyer failing to take delivery of the Goods within 14 days of their becoming available, the Seller shall be free to store the Goods at the risk and expense of the Buyer and/or to re-sell any of them without prejudice to the Seller's rights and remedies against the Buyer.

7.4 The Seller shall be entitled to make partial deliveries of the Goods or deliver the Goods in instalments. Where delivery is to be or may be fulfilled in separate instalments, deliveries or parts, each instalment, delivery or part shall constitute a separate contract. Payment for each instalment, delivery or part shall be made accordingly and any defect or failure in delivery of one or more instalments will not entitle the Buyer to cancel other instalments or to terminate the Agreement.

7.5 The Buyer shall upon delivery of the Goods examine the Goods and shall promptly notify the Seller, and the carrier where relevant, of any damage, defect or shortage reasonably apparent to the Buyer on reasonable examination of the Goods. Claims in respect of any damage, defect or shortage must be made within [14] days following delivery of the Goods.

#### 8. RISK AND PROPERTY

8.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the time the Goods leave the Seller's premises, save as otherwise agreed in writing by the Seller.

8.2 Notwithstanding delivery and the passing of risk in the Goods, title to and ownership of the Goods will not pass to the Buyer until the Seller has received all sums due from the Buyer to the Seller under all contracts between them in full in cash or cleared funds.

8.3 Until such time as property in the Goods passes to the Buyer, the Buyer shall:

(a) hold the Goods as the Seller's fiduciary agent and bailee and the Seller may require return of the Goods. For the purpose of recovery of the Goods, the Buyer grants the Seller an irrevocable licence to enter any premises where the Goods are situated (or are reasonably thought to be situated) to repossess them and the Buyer agrees to pay the costs of repossession;

(b) keep the Goods separate from those belonging to the Buyer and third parties and properly stored, insured and identified as the Seller's property; and

(c) the Seller shall have a lien over any of the Buyer's assets in its possession or control.

#### 9. WARRANTY

9.1 The Seller warrants only that at the time risk passes to the Buyer and for the period of 1 year from that time ("the warranty period") the Goods will conform to the specification set out in the Agreement and be reasonably free from fault due to:

(a) defective materials;

(b) defective workmanship; and

(c) defective design to the extent the design is from the Seller, having regard to the state of the art at the date of such design.

9.2 The Buyer's remedies and the Seller's obligations under this warranty shall be limited to faults which are discovered by the Buyer during the warranty

period and are notified in writing to the Seller within [14] days after discovery of each such fault.

9.3 This warranty shall not extend to:

(a) any fault caused by any accident or normal wear and tear or by any act, default or misuse of the Goods by the Buyer or any third party or by failure to follow any instructions or recommendations supplied orally or in writing with the Goods;

(b) any fault arising out of the use of the Goods in conjunction with equipment or materials not reasonably contemplated by the Seller;

(c) any fault caused by the Goods having been altered, modified or repaired other than at the Seller's premises or by a third party not expressly nominated or approved in writing by the Seller other than in a manner expressly stipulated by the Seller;

(d) any fault arising directly or indirectly from a design made or furnished by the Buyer or from materials or other property supplied by the Buyer or from any parts or items that have not been completely manufactured or supplied by the Seller;

(e) any matter regarded as a fault due to a modification, alteration or replacement required by a change in the requirements of any governmental or regulatory association, society, institute, authority or other body;

(f) any fault arising out of the Goods having been subjected to any type of operation or use in contravention of their specification or their operational limitations or any type of operation or use for which the goods are not manufactured; or

(g) any fault arising from any cause beyond the control of the Seller.

9.4 The sole liability of the Seller under any warranty that may arise to the Buyer under this Condition shall be for the Seller to replace the Goods or repair any faults due to defective design, materials or workmanship by the Seller in the manufacture of the Goods.

10. **EXCLUSIONS AND LIMITATIONS OF LIABILITY**

10.1 All warranties, representations, guarantees, conditions and terms, other than those expressly set out in the Agreement whether express or implied by statute, common law, trade usage or otherwise and whether written or oral are hereby expressly excluded to the fullest extent permissible by law.

10.2 The Seller's maximum aggregate liability under, arising from or in connection with the Agreement shall be limited to a sum equivalent to the Price (exclusive of value added tax or any successor tax or equivalent local tax) of the Goods.

10.3 The Seller shall not be liable for any claim, whether arising in contract, tort (including negligence) or otherwise, for consequential, economic, special or other indirect loss including (without limitation) losses calculated by reference to profits, contracts, business, goodwill, income, production or accruals.

10.4 The Buyer accepts that the limitations and exclusions set out in the Agreement are reasonable having regard to all the circumstances including, without limitation, the Price.

10.5 Notwithstanding anything to the contrary in the Agreement, nothing in the Agreement shall exclude, restrict or limit the Seller's liability for death or personal injury resulting from the Seller's negligence nor affect the Buyer's statutory rights.

10.6 The Seller shall not be liable for any loss, damage or otherwise as a direct or indirect result of the failure to perform or delay in performing any of its obligations nor shall there be a breach of the Agreement as a result of the occurrence of any cause whatsoever beyond its control, including without limitation acts of God, fire, flood, storm, civil disturbance, explosion, power failure or reduction of power supplies, acts, orders or requirements of any governmental or regulatory body, lack or shortage of materials, adverse weather conditions, inability to procure or delay in procuring equipment and materials from its normal suppliers, mechanical breakdown or strike, lock-out or labour dispute.

11. **INSURANCE**

The Buyer shall effect and maintain insurance of the Goods at its own expense at all times after risk in the Goods shall have passed to the Buyer until title in the Goods shall have passed to their full replacement or reinstatement value against all risks (including liability insurance, if appropriate). The Buyer shall ensure that the policy contains an endorsement naming the Seller as sole loss payee in respect of the Goods to the extent of moneys owing but not paid by the Buyer to the Seller and hereby assigns to the Seller all sums which may become due under such insurance to such extent.

12. **SAFETY**

The Buyer shall comply fully with all user instructions and safety recommendations issued by the Seller in relation to the Goods.

13. **INTELLECTUAL PROPERTY RIGHTS**

The Buyer shall indemnify the Seller at all times (both before and after the supply of the Goods) against all claims, proceedings, actions, liabilities, losses, costs (including legal costs), expenses, penalties and damages of whatsoever nature brought against, suffered or incurred by the Seller relating to any infringement or alleged infringement of any intellectual property right, including without limitation any copyright, rights in performances, moral rights, patent, registered design, design right, trade

mark, service mark or know-how or other confidential information arising out of the Seller's manufacture of, or carrying out of any other work in relation to, the Goods in accordance with any instruction, specification, design, drawing or other data supplied by or on behalf of the Buyer or the supply of such Goods to the Buyer.

14. **TERMINATION**

14.1 The Seller shall have the right (but without prejudice to any other rights or remedies they may have in such event) to terminate the Agreement forthwith at any time on giving the Buyer written notice in any of the following events:

(a) if the Buyer commits a material breach of any of the terms of the Agreement including but not limited to failure to make payments as they fall due or is a party to dishonest or fraudulent conduct in relation to the Agreement; or

(b) if the Buyer commits any other breach of its obligations and fails to remedy such breach within 30 days after being given written notice to remedy such default; or

(c) if the Buyer becomes bankrupt, unable to pay its debts as they fall due, enters into any composition or arrangement with his or its creditors or, where the Buyer is a company, if any resolution or petition to wind up the company (other than for the purposes of an amalgamation or reconstruction without insolvency approved in writing by the other) or for the appointment of an administrator or receiver shall be passed or presented or if an administrator or a receiver of the company's undertaking, property or assets or any part thereof shall be appointed; or

(d) if the Buyer shall sell all or substantially all of its undertaking, property or assets or if distress or execution shall be levied upon all or any part thereof; or

(e) if the Seller's premises, plant, machinery or equipment shall be so seriously damaged as to make it impracticable or uneconomic for the Goods to be manufactured.

(f) Other than standard, material cannot be returned for credit. Standard material returned for credit without seller's agreement will be credited at seller's discretion and evaluation. There will be a minimum 25% restocking charge.

14.2 Without prejudice to its other rights under this Agreement, the Seller may terminate this Agreement on [30] days' written notice to the Buyer.

14.3 In the event that the Seller terminates the Agreement at any time in accordance with the provisions of Clauses 4.1 or 4.2 above, the Seller may (a) declare immediately payable any sums owed under the contract; (b) suspend performance of the contract or (c) regain possession of any Goods, title in which has not yet passed to the Buyer and the Buyer shall as liquidated damages reimburse the Seller forthwith after demand all costs and expenses incurred by the Seller in connection with the manufacture of the Goods up to the time of termination.

14.4 Each provision of the Agreement shall continue in full force and effect after the date of termination unless such provision has been fully performed on or before such date and termination, howsoever arising, shall be without prejudice to any Conditions which are to have effect after termination.

14.5 It is agreed that nothing in this Condition shall affect the Seller's lien on the Goods nor the Seller's rights of stoppage in transit and re-sale pursuant to Sections 38-48 Sale of Goods Act 1979, and in particular but without limitation the right to re-sell under Section 48(3) thereof.

15. **GENERAL**

15.1 Each party acknowledges that in entering into the Agreement it places no reliance on any representation or warranty relating to the subject matter of the Agreement.

15.2 The Agreement represents the entire agreement between the parties in relation to the subject matter of the Agreement and supersedes any previous agreement, whether written or oral, between the parties in relation to that subject matter.

15.3 If any part of any provision of the Agreement shall be invalid or unenforceable, then the remainder of such provision and all other provisions of the Agreement shall remain valid and enforceable.

15.4 No amendment or variation of the terms of the Agreement shall be effective unless it is made or confirmed in a written document signed by a duly authorised employee of the Seller and the Buyer.

15.5 No delay in exercising or non-exercise by the Seller of any of its rights under or in connection with the Agreement shall operate as a waiver or release of that right. Rather, any such waiver or release must be specifically granted in writing signed by the Seller.

15.6 The rights and remedies of the Seller under the Agreement are cumulative and not exclusive of any rights or remedies under the general law.

15.7 The Buyer may not assign or sub-contract any of its rights under the Agreement without the prior written consent of the Seller. The Seller may assign all or any of its rights and transfer all or any of its obligations under the Agreement without any requirement to notify or obtain the further consent of the Buyer.

15.8 All communications relating to the Agreement shall be in writing and delivered by hand or sent by post or facsimile to the party concerned at the relevant address shown at the start of the Agreement.

- 15.9 The Agreement shall be construed in accordance with English law and the parties irrevocably submit to the non-exclusive jurisdiction of the English Courts to settle any disputes which may arise in connection with the Agreement.
- 15.10 No term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party.
- 16 **WEEE**

All items, pricing and contractual responsibilities reference any documentation from the Seller, are stated with regard to European Directive 2012/19/EU on Waste Electrical and Electronic Equipment (WEEE).

Equipment reference these documentations, does not fall within the scope of supply of the directive as it specifically is not included in Annex 1A or 1B of the legislation. Disposal of the Equipment, at the end of its life, is the responsibility of the Buyer. If, and in so much as the directive may apply to this Equipment, the Buyer shall exclusively finance and take over the duty of the collection, treatment, recovery and environmentally sound disposal of WEEE as required, by the directive and the applicable national law.

When the EEE is at the end of its life, the Buyer shall provide the Seller, with all relevant information concerning the collection, treatment, recovery and environmentally sound disposal of WEEE.

If the Buyer does not fulfil this obligation, they will be liable for the damage caused to the Seller.

The Buyer must ensure that he will be able to fulfil his obligation, even if he sells on the EEE.

By the extent allowed by law the Buyer shall indemnify and hold no responsibility to the Seller, reference any penalties, damages and claims due for not adhering to these obligations.

If the Equipment in the documentation, is replacing items that are considered historic waste, under the directive, paragraph 2 Article 9, Seller is specifically excluding disposal of the historic waste and responsibility for it from documentation, and any ensuing contract.