



# CONDITIONS OF SALE

## Effective from 7 February 2013

### GENERAL

- 1.1 All quotations are made and all orders are accepted subject to the following conditions. All other terms conditions or warranties whatsoever are excluded from the contract or any variation thereof unless expressly accepted by the relevant member Klarius (the "Company") in writing. In placing an order with the Company the purchaser of products from the Company (the "Customer") accepts to be bound by these terms and conditions to the exclusion of its own terms and conditions and other terms, conditions or customs which may otherwise apply.
- 1.2 Quotations shall be available for acceptance for a maximum period of 14 days from the date thereof and may be withdrawn by the Company within such period at any time by written or oral notice.
- 1.3 Quotations, offers and tenders are for the whole of the Goods for which the same are given by the Company and the Company reserves the right to refuse acceptance of any order which constitutes part only of the Goods forming the subject of the quotation, offer or tender.
- 1.4 If, following the issue by the Company of a quotation, offer or tender, an order is not placed; the Customer is liable to reimburse any expenses incurred by the Company at the Customer's request.
- 1.5 If any statement or representation has been made to the Customer by the Company its servants or agents upon which the Customer relies other than in the documents enclosed with the Company's quotation or acknowledgement of order then the Customer must set out that statement or representation in a document to be attached to or endorsed on the order and in any such case the Company may confirm reject or clarify the point and submit a new quotation.
- 1.6 The Company reserves the right to correct at any time any clerical or typographical errors made by its servants, employees or agents.

### DELIVERY

- 2.1 Delivery times quoted are subject to confirmation after receipt of order and while the Company will be as accurate as possible on the issue of such times the same cannot be guaranteed. The Customer shall have no right to damages or to cancel the order for failure for any cause to meet any delivery time stated.
- 2.2 The date of delivery shall in every case be dependent upon prompt receipt of all necessary information final instructions or approvals from the Customer. Alterations by the Customer in design specifications or quantities required may result in delay in delivery.
- 2.3 Failure by the Customer to take delivery of or to make payment in respect of any one or more instalments of Goods delivered hereunder shall entitle the Company to treat the whole contract as repudiated by the Customer.
- 2.4 The Company will endeavour to comply with reasonable requests by the Customer for postponement of delivery but shall be under no obligation to do so. Where delivery is postponed otherwise than due to default by the Company the Customer shall pay all costs and expenses including a reasonable charge for storage and transportation occasioned thereby and payment for the Goods shall be made in accordance with these conditions.
- 2.5 Packaging (if any) supplied by the Company unless otherwise expressly agreed is intended to provide adequate protection throughout normal conditions of transit of usual duration.
- 2.6 The Company will not be liable for unloading of Goods or for placing the same in position on site, except by prior arrangement in writing.
- 2.7 The Company reserves the right to charge the Customer for any demurrage costs incurred in the event of vehicles being unduly delayed at the Customer's works when delivering.

### RISK AND TITLE

- 3.1 Risk shall pass to the Customer so that the Customer is responsible for all loss damage or deterioration to the Goods:-
- 3.1.1 if the Company delivers the Goods by its own transport or in accordance with a specific contractual obligation arranges transport for the Goods, at the time when the Goods or a relevant part thereof arrive at the place of delivery; or
- 3.1.2 in all other circumstances at the time when the Goods or a consignment or other part thereof leave the premises of the Company.
- 3.2 Title to the Goods or any relevant part thereof shall only pass to the Customer upon the happening of any one of the following events:-
- 3.2.1 the Customer has paid to the Company all sums due and payable by it to the Company under this contract and all other prior contracts between the Company and the Customer; or
- 3.2.2 when the Company serves on the Customer notice in writing specifying that title in the Goods or such part thereof has passed.
- 3.3 The Company may recover Goods in respect of which title has not passed to the Customer at any time and the Customer hereby licences the Company, its officers, employees and agents to enter upon any premises of the Customer for the purpose either of satisfying itself that condition 3.4 below is being complied with by the Customer or of recovering any Goods in respect of which property has not passed to the Customer. In the event of the Goods being at the premises of a third party by the direction of the Customer then the Customer shall if so required by the Company remove the Goods from such premises and return them to the Company forthwith. Where any Goods are so recovered, the Company shall credit the value of the same to the

Customer's account less 20% to cover administration and handling charges in respect of the Goods.

- 3.4 Until title to the Goods has passed to the Customer pursuant to the terms hereof it shall possess the Goods as a bailee of the Company on the terms of this contract. If the Company so requires the Customer shall store the Goods separately from other goods and shall ensure that they are clearly identifiable as belonging to the Company.
- 3.5 Should the Customer refuse to allow access to its premises in breach of this clause 3, the Customer shall be liable on an indemnity basis for all costs incurred by the Company in attempting to exercise its rights (including, without limitation, the cost of staff time, vehicle hire and petrol).

### CANCELLATION AND RETURNS

- 4.1 Cancellation will only be agreed to by the Company on condition that all costs and expenses incurred by the Company up to the time of cancellation and all loss of profits and other loss or damage resulting to the Company by reason of such cancellation will be paid forthwith by the Customer to the Company.
- 4.2 Any Goods which have been supplied in accordance with the Customer's order but which are subsequently returned will only be credited in accordance with sub-clause 4.3 below provided that:-
- 4.2.1 the Company's prior written agreement has been obtained;
- 4.2.2 the Goods are fit in every respect for immediate re-sale; and
- 4.3.2 The Company's policy on returns has been followed in all respects (a copy of this policy is available from Klarius directly or from its website at [www.klarius.eu](http://www.klarius.eu) in the Warranty section).
- 4.3 To cover administration and handling charges the amount credited shall be 20% less than the net value at which the goods were originally invoiced by the Company.
- 4.4 Goods returned without the Company's consent will not be accepted for credit and will remain in the Company's possession entirely at the Customer's risk. If the Customer fails to collect the Goods within 7 days, the Good shall revert to the Company without compensation being paid to the Customer.
- 4.5 Where the Company agrees to any return of Goods under this clause 4, any credit awarded shall be applied against the oldest debt owed by that Customer to the Company.

### PRICES

- 5.1 All prices are unless otherwise stated quoted net exclusive of VAT.
- 5.2 Unless otherwise agreed Goods will be invoiced by the Company on the basis of the Company's standard prices ruling as at the date of despatch.
- 5.3 Excluding the Channel Islands, Scottish Islands, Isle of Man and Northern Ireland, where carriage will be paid to the nearest UK mainland port, carriage will be paid by the Company on all orders for despatch to points within the United Kingdom by the Company's usual mode of conveyance but net carriage may be debited to the Customer where the value of a consignment is less than £500.00 (or €500.00).
- 5.4 On orders for dispatch to points outside the United Kingdom, net carriage may be charged to the Customer by the Company (at the Company's absolute discretion) and such charge shall be in addition to the price quoted for the Goods.
- 5.5 Where consignments at the request of the Customer are forwarded by any conveyance involving a higher carriage charge than would be incurred by the Company's usual mode of conveyance any excess charge will be debited to the Customer.
- 5.6 In the event of any alteration being requested by the Customer and agreed by the Company in design or specification the Company shall be entitled to make an adjustment of the contract price corresponding to such alteration.
- 5.7 Unless otherwise agreed in writing cases and other packing materials, when charged for, will be credited if returned to the Company's works within two months, carriage paid and in good condition.
- 5.8 Where a Customer has agreed enhanced trading terms with Klarius as compared to these terms and conditions (e.g. extended credit terms, volume based rebates, marketing support etc.) ("**Enhanced Terms**"), these Enhanced Terms are, unless agreed in writing and signed on behalf of both the Company and the Customer, extended at the sole discretion of the Company and may be immediately removed at any time by the Company giving notice of the same to the Customer. No contract for such Enhanced Terms shall exist simply as a result of the course of dealing. Where any Customer is late in making a payment to the Company, all Enhanced Terms shall be immediately cancelled without notice.

### TERMS OF PAYMENT

- 6.1 Unless otherwise agreed by the Company in writing the terms of payment shall be net cash monthly account due and payable on the last day of the month following the month in which the Goods were despatched or would have been despatched save for postponement otherwise than due to default on the part of the Company. The Company shall be entitled to submit its invoice with its delivery advice note or at any time thereafter save that where delivery has been postponed at the request of or by the default of the Customer then the Company may submit its invoice at any time after the Goods are ready



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- for delivery or would have been ready in the ordinary course but for the request or default as aforesaid.
- 6.2 Where Goods are delivered by instalments the Company may invoice each instalment separately and the Customer shall pay such invoices in accordance with these conditions.
- 6.3 No disputes arising under the contract, nor delays beyond the reasonable control of the Company, shall interfere with prompt payment in full by the Customer.
- 6.4 In the event of default in payment by the Customer the Company shall be entitled without prejudice to any other right or remedy to suspend all further deliveries on any contract or contracts between the Company and the Customer without notice and to charge interest on any amount outstanding at the rate of 8% per annum above the Base Rate of Barclays Bank PLC in force at the time when payment was due. In addition, the following flat rate charge will be immediately applied to cover administrative costs of the Company:
- 6.4.1 For amounts owed of up to £ 10,000, a fee of £200; or
- 6.4.2 For amounts owed of £10,000 or more, a fee of £500, in each case such administration fee shall be charged on each monthly anniversary a payment remains overdue.
- 6.5 Invoices may be paid by any of the methods specified on each invoice. Where the Company offers the Customer the ability to pay invoices by debit or credit card, the Customer shall pay an additional fee of £5 for a debit card payment or 2.5% on top of the invoice value for a credit card payment, in each case to cover the fees incurred by the Company in allowing credit card payments.
- 6.6 Where Enhanced Terms have been agreed with a customer which include any rebate (volume based, marketing or otherwise), such rebate shall be paid to the Customer by way of a credit note issued by the Company. The Customer shall not deduct the value of any rebate from any payment prior to such credit note being issued.

### DIMENSIONS

7. The Company reserves the right to alter or change dimensions of the Goods supplied within reasonable limits having regard to the nature of the Goods Dimensions specified by the Company are to be treated as approximate only unless the Customer specifically states in writing that exact measurements are required.

### SHORTAGES

8. Shortages must be brought to the attention of the driver of the delivery vehicle and unless clearly marked on the Customer signed copy of the delivery note and countersigned by the said driver at the time of delivery no responsibility will be accepted by the Company and no claim for shortages will be entertained.

### DEFECTS APPARENT ON INSPECTION

- 9.1 The Customer shall have no claim for defects apparent on visual inspection unless the Company's returns policy is followed in full. A copy of this policy can be obtained from Klarius directly, or from Klarius' website at [www.klarius.eu](http://www.klarius.eu). All returns of any nature whatsoever should be made in accordance with this policy.
- 9.2 If a complaint is not made to the Company as herein provided then the Goods shall be deemed to be in all respects in accordance with the contract and the Customer shall be bound to pay for the same accordingly.

### WARRANTY

- 10.1 Save as otherwise provided by the other conditions of these Conditions, Sections 12 to 15 of the Sale of Goods 1979 are not to be implied into this contract.
- 10.2 All Goods are supplied with the benefit of the Company's product warranty which relates to the specific Goods purchases. A copy of this policy can be obtained from Klarius directly, or from Klarius' website at [www.klarius.eu](http://www.klarius.eu) in the Warranty section. All returns of any nature whatsoever should be made in accordance with this policy.

### LIABILITY

11. Save where the Company is shown to have failed to exercise reasonable care in the manufacture and/or supply of the Goods and such failure results in death or personal injury the Company shall not be liable in respect of claims arising by reason of death or personal injury. Under no circumstances whatsoever shall the Company be liable for any indirect or consequential loss (including removal or rectification work required in connection with the installation of repaired or replacement Goods), loss of profits or damage to property. Save in respect of death or personal injury, as allowed previously in this clause, the Company's liability shall be capped at the actual amount of cash previously paid by the Customer to the Company under the agreement during the previous 3 month period or, if higher, such minimum amount as may be required by law.

### CONSUMER PROTECTION ACT 1987 ('THE ACT')

- 12.1 In circumstances where the Company supplies Goods to the Customer in the form of component parts and products to be fitted to motor vehicles of any type whether by the Customer any subsequent trade purchaser or the end user the Customer shall:-

- 12.1.1 forthwith on demand supply to the Company for inspection full details of all instructions information and warnings as issued by the Customer to its purchasers in relation to the Goods (provided nevertheless that any such inspection or the right to inspect shall not of itself constitute acceptance or approval on the part of the Company of such instructions information and warnings); and
- 12.1.2 indemnify reimburse and compensate the Company for all losses and damages (including costs expenses and charges for legal actions in which the Company may be involved) that the Company may incur in the event that any claim or claims are made against the Company pursuant to the Act in circumstances in which the component part or product supplied by the Company was either:-
- (i) not the defective component part or product; or
  - (ii) was only rendered the defective component part or became a defective product by reason of the actions or omissions of the Customer; or
  - (iii) was only rendered the defective component part or became a defective product by reason of instructions information or warnings given by the Customer.
- 12.2 For the purposes of this clause the word 'defective' shall be Interpreted In accordance with the definition contained in the Act.

### CONFIDENTIAL INFORMATION

13. All drawings documents confidential records computer software and other information supplied by the Company are supplied on the express understanding that copyright is reserved to the Company and that the Customer will not without the written consent of the Company either give away loan exhibit or sell any such drawings documents records software or other information or extracts therefrom or copies thereof or use them in any way except in connection with the Goods in respect of which they are issued.

### CUSTOMER'S DRAWINGS

- 14.1 The Customer shall be solely responsible for ensuring that all drawings information advice and recommendations given to the Company either directly or indirectly by the Customer or by the Customer's agents servants consultants or advisers are accurate correct and suitable. Examination or consideration by the Company of such drawings information advice or recommendations shall in no way limit the Customer's responsibility hereunder unless the Company specifically agrees in writing to accept responsibility.
- 14.2 The Customer shall indemnify the Company from and against all actions claims costs and proceedings which arise due to the manufacture of Goods to the drawings or specifications of the Customer where such drawings or specifications are at fault or where it is alleged that they involve an infringement of a patent copyright registered design or design copyright or other exclusive right.

### DATA AND TECHNICAL INFORMATION

15. The information contained in the advertising sales and technical literature issued by the Company may be relied upon to be accurate in the exact circumstances in which it is expressed otherwise any illustrations performance details examples of installations and methods of assembly and all other technical data in such literature are based on experience and upon trials under test conditions and are provided for general guidance only. No such information or data shall form part of the contract unless the Customer shall have complied with condition 1.5 hereof relating to statements and representations.

### INSOLVENCY

16. If the Customer shall become bankrupt or under the provisions of Section 123 of the Insolvency Act 1986 is deemed to be unable to pay its debts or compounds with creditors or in the event of a resolution being passed or proceedings commenced for the administration or liquidation of the Customer (other than for a voluntary winding up for the purpose of reconstruction or amalgamation) or if a Receiver or Manager is appointed of all or any part of its assets or undertaking, or if the Customer fails to satisfy a statutory demand for payment (whether issued by the Company or otherwise) within the allotted time period, the Company shall be entitled to cancel the contract in whole or in part by notice in writing without prejudice to any right or remedy accrued or accruing to the Company.

### FORCE MAJEURE

- 17.1 Neither party shall be under any liability for any delay loss or damage caused wholly or in part by act of God governmental restriction condition or control or by reason of any act done or not done pursuant to a trade dispute whether such dispute involves its employees or not or by reason of any other act matter or thing beyond its reasonable control including failure by the other party to carry out the provisions of these conditions.
- 17.2 Should the performance of any obligation of the Company be prevented, delayed or in any way interfered with due to any of the aforesaid matters then the Company may at its option suspend performance or cancel its obligations under the contract without any liability whatsoever, such suspension or cancellation being without prejudice to the Company's right to recover all sums owing to it in



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respect of consignments delivered and costs incurred prior to the date of suspension or cancellation.

### ATTENDANCE ON SITE

18. Should the Company attend on the Customer's premises to perform any work in connection with an order then the Customer shall indemnify the Company in respect of all claims made or proceedings taken against the Company (and associated legal costs) by any third party including but not limited to the Company's employees, the Customer's employees or the employees of any contractor employed by the Customer or the personal representatives or dependents of such employees or other third parties in respect of death, personal injury or damage to property (including damages as a result of fire or explosion) caused by or arising out of the work in any manner whatsoever save where the Company is shown to have failed to exercise reasonable care in the performance of the work and such failure results in death or personal injury.

### SPECIALS

- 19.1 The Company can give no guarantee of the suitability of materials or design of goods made especially to the Customer's requirements differing from the Company's standard specifications even if the purpose be known to the Company.
- 19.2 The Company cannot accept responsibility for Customer's samples, drawings, tools and the like while in the Company's possession and the Company will not accept any claim for loss, breakages or damages to the same whatever the cause.

### LEGAL

- 20.1 All contracts are to be construed according to English law, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any conflict of law provisions that would require application of another choice of law.
- 20.2 All disputes arising or in connection with any contract between the Company and the Customer or any related agreement, shall be exclusively settled by the courts of England and Wales or, where orders are made with a Company whose registered office is outside of England and Wales, shall be exclusively settled by the home courts of that Company, who shall have exclusive jurisdiction to resolve any dispute hereunder and the Customer irrevocably submits to the jurisdiction of the English courts, or, where applicable, such other foreign courts, and agrees to indemnify the Company against any expense the Company may incur if the Customer initiates proceedings under the laws of any other jurisdiction.
- 20.3 Where these terms have been translated into any language other than English, in the event of any conflict or discrepancy between that foreign language version and the English language version, the English language version shall prevail.