



## TERMS AND CONDITIONS OF SALE

### 1. TERMS

1.1 These terms and conditions of sale shall apply in any contract ("Contract") between S-Craft Ltd trading as Spillcraft, company registration number 09518935, registered office Unit 1, Brunel Court, Gadbrook Park, Northwich, Cheshire, CW9 7LP. VAT registration number 874 313 029 ("Spillcraft/We/Us/ Ours") and any person, company, firm or organisation ("Customer/You/Your") for the sale of any product, spare part, machine or related services or any combination of them (including any of them or any part of them) ("Products") to the exclusion of all other terms and conditions and all previous oral or written representations, including without limitation any terms or conditions which You purport to apply under any purchase order, confirmation of order or similar document, whether or not such document is referred to in the Contract.

1.2 Each order, request to buy or acceptance of a quotation for Products by You will be deemed to be an offer by You to purchase Products upon these Terms and Conditions. The Contract is formed when Your offer to purchase the Products is accepted by Us and We send You an order acknowledgment.

### 2. THE PRODUCTS

2.1 The description and specification of the Products will be as set out in the descriptive matter on the quotation We send You.

2.2 You must ensure that any published specifications of the Products intended for purchase meet your specific requirements.

2.3 All samples, drawings, descriptive matter, specifications and advertising issued by Us and any descriptions or illustrations contained on Our website or in Our brochures or other marketing literature, are issued or published for the sole purpose of giving an approximate idea of the Products represented by or described in them. They will not form part of the Contract and this is not a sale by sample.

2.3 We may make any changes to the specification, design, materials or finishes of the Products which are required to conform with any applicable safety or other statutory or regulatory requirements or do not materially affect their quality.

### 3. PAYMENT

3.1 Payment shall be due within 30 days from the end of the month of issue of an invoice by Us. Any credit agreed by Us shall be upon such credit terms and payment dates as We shall specify.

3.2 If payment in respect of any Product, Contract or Order is late, We may require full payment in advance of delivery of any undelivered Product or may suspend delivery of any undelivered Product whether ordered under this Contract or otherwise, or may terminate this Contract or any other contract with You or withdraw credit terms or suspend delivery or any of the above whether in combination or otherwise.

3.3 Where credit terms are withdrawn under clause 3.2, all amounts due to Us under any incomplete contracts will become immediately payable and other Product deliveries pending (if any) will be suspended until all amounts due to Us have been paid in full.

3.4 Interest on any overdue amounts will be charged at the rate of 4% per annum above the base lending rate from time to time of HSBC plc. This 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. You must pay Us interest together with any overdue amount.

3.6 You may not withhold or set off any amounts for any reason against the sums due to Us under any contract.

### 4. DELIVERY

4.1 Delivery shall be to the Site specified by You in the Order or other such location as agreed in writing by Us.

4.2 Any date given for delivery shall be an estimate only and We shall not be liable for any damage, loss or inconvenience sustained by the You as a result of any delay in delivery. Time shall not be of the essence in relation to any date for delivery given by Us to You.

4.3 We may deliver the Products by separate instalments. Each separate instalment will be invoiced and paid for in accordance with the provisions of the Contract. Each instalment will be a separate Contract and no cancellation or termination of any one Contract relating to an instalment will entitle You to repudiate or cancel any other Contract or instalment.

4.4 If, having paid for the Product, You fail to take delivery of the Product or fail to give Us adequate delivery instructions then, without prejudice to any other right or remedy available to Us, We may store the Product until actual delivery takes place and We may charge You for the reasonable costs associated with the storage. If You do not take delivery within 14 days after any failed delivery, the Contract relating to the relevant Product shall be deemed to have been terminated by You and title in the relevant Product shall revert to Us and We may sell the Product at the best price readily available. After deducting all reasonable sale costs incurred, failed delivery costs and storage charges from the Contract price, We shall account to You for the excess. In the event of any shortfall, this shall be paid immediately by You.

## **5. RISK AND TITLE**

5.1 Risk of damage to or loss of the Product shall pass to You upon delivery to You or to Your carrier and if You fail to take delivery of the Product then risk or damage or loss of the Product shall pass at the time when We or Our carrier have tendered delivery.

5.2 Notwithstanding delivery and the passing of risk in the Product or any other provision, the title in the Product shall not pass to You until We have received in cleared funds payment in full of the price of the Product and for any other Product agreed to be sold by Us to You and for any costs, expenses and charges payable by You pursuant to these terms and conditions.

5.3 Your right to possession of the Product in which title has not passed shall cease if the Contract is terminated by an event described in clause 7.

5.4 If We have retained title and have requested that the Product be immediately returned to Us and You do not comply, You hereby grant Us the right to enter upon any of Your premises where the Product is stored so as to enable Us or Our agent to repossess the Product. If the Product is stored on third party premises, You hereby authorise Us to exercise the right to recover the Product on Your behalf and in Your name.

5.5 In the event of re-collection of the Product from Your premises or elsewhere, We shall be entitled to charge the cost of re-collection to You and recover that cost as if it were a debt due under the Contract.

## **6. WARRANTY AND LIABILITY**

6.1 Where We are not the manufacturer of the Product and the Product is sold by the manufacturer with a warranty, We will use Our reasonable endeavours to pass on the benefit of this warranty to You if You prove that You have purchased a Product which is damaged or defective.

6.2 The obligations contained in Condition 6.1 will not apply where:

6.2.1 the Products have been improperly altered in any way whatsoever, or have been subject to misuse or unauthorised repair;

6.2.2 the Products have been improperly installed or connected;

6.2.3 any maintenance requirements relating to the Products have not been complied with;

6.2.4 any instructions as to storage or use of the Products have not been complied with in all respects;

or

6.2.5 You have failed to notify Us of any defect or suspected defect within 7 days of Your receipt of the Product where the defect should be apparent on reasonable inspection, or within 7 days of the same coming to Your knowledge where the defect is not one which should be apparent on reasonable inspection.

6.3 Any Products which have been replaced will belong to Us. Any repaired or replacement Products will be liable to repair or replacement under the terms specified in Condition 6.1 for the unexpired portion of the relevant warranty period.

6.4 There shall be excluded from the Contract all terms express or implied whether by statute or otherwise except as expressly provided herein, so far as it is legal to do so in the context of the Contract.

6.5 The extent of Our liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 6.

6.5 Subject to clause 6.7 Our liability shall not exceed the sum of ten thousand pounds (£10,000).

6.6 Subject to clause 6.7 We shall be liable for consequential, indirect or special losses.

6.7 Our liability shall not be limited in any way in respect of:

6.7.1 death or personal injury caused by negligence;

6.7.2 fraud or fraudulent misrepresentation; and

6.7.3 any other losses which cannot be excluded or limited by applicable law.

6.8 We do not accept any liability in respect of any losses, fines or other costs attributable to any pollution caused by Your use of the Equipment. It is Your responsibility to ensure that you meet all legal obligations in respect of such matters.

## 7. TERMINATION

7.1 Either party may terminate this Contract at any time by giving notice in writing to the other party if that other party:

- 7.1.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
- 7.1.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the non-defaulting party reasonably believes that to be the case;
- 7.1.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
- 7.1.4 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
- 7.1.5 has a resolution passed for its winding up;
- 7.1.6 has a petition presented to any court for its winding up or an application made for an administration order, or any winding up or administration order is made against it; or
- 7.1.7 has a freezing order made against it.

7.2 Where either party suspends performance or fails to diligently perform any of its obligations under this Contract in a manner which is capable of being remedied within 14 days, the other party shall give to the party in default, notice in writing requiring compliance of its obligations within 14 days of the date of communication of notice and in default of compliance this Contract shall terminate immediately.

## 8. GENERAL

8.1 This Contract shall be binding on the parties to it and their respective successors and permitted assigns provided that, save as herein provided, You shall not be entitled to assign the Contract without Our written consent.

8.2 No exercise or failure to exercise or delay in exercising any right, power or remedy of either party under this Contract shall constitute a waiver by that party.

8.3 Each party shall bear its own costs of or in connection with the preparation and execution of this Contract.

8.4 This Contract and the documents referred to in it constitute the entire Contract between the parties in relation to its subject matter and supersede all prior contracts and understanding whether oral or written in respect of that subject matter.

## 9 NOTICES

9.1 Any notices sent under the Contract must be in writing, delivered by hand or sent by pre-paid first-class post or recorded delivery to the parties at their registered addresses. Any notice or communication given in accordance with clause 9.1 shall be deemed to have been served:

9.1.1 if delivered by hand, at the time of delivery; or

9.1.2 if sent by pre-paid first-class post or recorded delivery at 9.00 a.m. on the second Business Day after the date of posting.

9.2. This clause 9 shall not apply to the service of any proceedings or other documents in a legal action.

## 10 FORCE MAJEURE

10.1 Neither party shall have any liability under or be deemed to be in breach of this Contract for any delays or failures in performance of this Contract which result from any national emergency, war, prohibitive governmental regulations, strike, labour dispute, riot or civil commotion, epidemic, pandemic, fire, flood or other acts of God or if any other cause beyond the reasonable control of the parties renders the performance of the Contract impossible (any of which occurrences shall be referred to as a “**Force Majeure Event**”) whereupon all monies due to Us from You shall be paid immediately and any other terms arising upon termination of the Contract shall come into play. The party the subject of the Force Majeure Event shall promptly notify the other party in writing of the commencement of the Force Majeure Event and of its cessation. If the event continues for a continuous period of 20 business days, either party may terminate this Contract by written notice to the other party. In the event that You terminate this Contract due to a Force Majeure Event all monies

due to Us shall be paid immediately by You and any other terms arising upon termination of the Contract shall take effect.

## **11 SUB-CONTRACTING**

11.1 We may in Our absolute discretion and for the effective and efficient performance of Our obligations under the Contract sub-contract any part of it.

## **12 STATUTORY REQUIREMENTS**

12.1 We shall ensure that all parts of the Product bear CE markings, where necessary, or such other markings in conformity with the requirements of relevant laws and/or regulations.

12.2 You shall notify Us in advance of any legal or regulatory requirements which affect the Product or its functions or operations, whether in existence or anticipated and We and You shall discuss how such requirements shall be addressed and agree such variations of the Contract as may be necessary to accommodate such changes. In the event that We are unable to make any such required amendments, You shall be entitled to terminate this Contract upon payment of any sums incurred by Us up to the date of termination.

## **13 DATA PROTECTION**

13.1 For the purposes of the General Data Protection Regulation, Regulation (EU) 2016/679 as it forms part of UK law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as further amended or modified by the laws of the United Kingdom from time to time, the Data Protection Act 2018 and any successor, secondary legislation or regulations as amended or updated from time to time ("the **Data Protection Laws**"), We are the data controller of any personal data that You supply to Us. We will collect and process such personal data in order to process and fulfil a Purchase Order. We will act in accordance with our Privacy Notice which is available on our website at [www.spillcraft.co.uk/app/uploads/2020/07/Data-Protection-Policy.pdf](http://www.spillcraft.co.uk/app/uploads/2020/07/Data-Protection-Policy.pdf)

## **14 ENTIRE CONTRACT**

14.1 No addition to or modification of any provision of this Contract shall be binding upon the parties unless made in writing and signed by one of Our directors and Your duly authorised representative.

## **15 INVALIDITY**

15.1 The validity or unenforceability for any reason of any clause or part thereof shall not prejudice or affect the validity or enforceability of the remainder of that clause or any other clause in the Contract.

## **16 WAIVER**

16.1 The waiver by either party of a breach or default of any provisions in the contract by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has or may have under this Contract operate as a waiver of any breach or default by the other party.

## **17 THIRD PARTIES**

17.1 This Contract shall not confer upon or operate so as to create any third-party rights or rights enforceable other than by the parties to it. The terms of the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.

## **18 JURISDICTION**

18.1 The parties agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract.