



HILL & SMITH INC.

STANDARD TERMS OF SALE

1. DEFINITIONS

In these Standard Terms of Sale (“**Terms**”), the following words shall have the following meanings (unless the context otherwise requires): “**Company**” means Hill & Smith Inc., a Delaware corporation; “**Contract**” means any purchase order, distributor or sales agreement, or other agreement for the sale of Goods between Company and Customer to which these Terms apply; “**Customer**” means the person, firm or company who has placed an order for Goods from Company; “**Delivery Point**” means Company’s address or such other address as Company may specify to Customer; and “**Goods**” means all goods and/or services to be supplied under the Contract to Customer by Company. The following words are defined in the sections below: “**Delivery**” (Section 5.1); “**HS ABC Policy**” (Section 13.2); “**HS Code of Conduct**” (Section 13.2); “**Orders**” (Section 2.1); “**Warranty**” (Section 7.1); and “**Warranty Period**” (Section 7.3).

2. GENERAL

- 2.1 Any quotation is not an offer to sell Goods. All orders by Customer for the Goods (“**Orders**”), if accepted by Company in its sole discretion, will be accepted subject only to these Terms. DIFFERENT OR ADDITIONAL TERMS PROPOSED BY CUSTOMER ON OR IN CONNECTION WITH CUSTOMER’S PURCHASE ORDER FORMS OR OTHER DOCUMENTATION, SHALL NOT APPLY TO THE PURCHASE OF GOODS HEREUNDER AND ARE HEREBY EXPRESSLY REJECTED AND SHALL NOT BECOME PART OF THE CONTRACT. COMPANY’S AGREEMENT TO SELL GOODS TO CUSTOMER IS EXPRESSLY LIMITED TO THESE TERMS AND, IF APPLICABLE, A WRITTEN AND SIGNED DISTRIBUTOR OR SALES AGREEMENT BETWEEN CUSTOMER AND COMPANY TO WHICH THESE TERMS ARE ATTACHED.
- 2.2 If, subsequent to this Contract, any sale is concluded with the same Customer by fax, telegram, electronically or orally, or by any combination of these, without express reference to these Terms, these Terms shall apply unless expressly modified in a writing signed by both Company and Customer.
- 2.3 Any statement or representation by Company or its employees or agents upon which Customer intends to rely must be set out in a writing and signed by both parties. Any statement or representation which is not so confirmed in a writing is followed or acted upon entirely at Customer’s own risk. For the avoidance of doubt, illustrations, weights, measures, performance capabilities, application suitability information and other data set out in the sales literature of Company are statements of opinion and are provided for information only and form no part of the Contract.
- 2.4 All quotations shall automatically expire on the expiration date listed in the quotation, if any, but in no event later than sixty (60) days from issuance, and are subject to withdrawal by written or oral notice to Customer at any time.
- 2.5 Verbal, telephone, fax, or email Orders will be executed at Customer’s sole risk and must be confirmed in writing received by Company within 72 hours. No Order shall be deemed to have been accepted by Company until written acknowledgement of its acceptance is received by Customer from Company.
- 2.6 No Order which has been accepted by Company may be cancelled by Customer except with the agreement in writing of Company and Customer shall indemnify Company in full against all loss (including loss of profit), costs (including the cost of all labor and materials used), damages, charges and expenses incurred by Company as a result of cancellation.
- 2.7 Company may cancel an Order at any time by serving notice in writing on Customer if it does not receive, on request, satisfactory (in Company’s sole opinion) credit references in relation to Customer. If Company cancels an Order pursuant to this Section it shall have no liability whatsoever for any liabilities, losses, damages, costs or expenses whatsoever incurred, suffered or paid by Customer as a result of or in connection with such cancellation.

3. PRICES

- 3.1 In the supply of Goods, prices do not include the cost of Delivery or of any import or customs duties or any other applicable taxes or governmental impositions unless otherwise stated in writing by Company, which taxes, impositions and duties shall be the sole responsibility of Customer. All prices are subject to the addition of any applicable sales tax.
- 3.2 Company reserves the right at any time prior to Delivery, to increase the price of the Goods to reflect any increase in the cost to Company which is due to any factor beyond the control of Company (including but not limited to, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labor, materials or any other costs of manufacture), any change in Delivery dates, quantities or specifications for the Goods which is requested by Customer, or any delay caused by any instructions of Customer or failure of Customer to give Company adequate information or instructions.

4. PAYMENT

- 4.1 Subject to Section 4.2 below, payment of the price for the Goods is due in U.S. Dollars in cash, wire or ACH funds no later than thirty (30) days following Delivery of the Goods, unless otherwise agreed in writing.
- 4.2 If Customer wrongfully fails to take Delivery of the Goods, Company shall be entitled to invoice Customer for the price at any time after Company has tendered Delivery.
- 4.3 No payment shall be deemed to have been received by Company until Company has received cleared funds.
- 4.4 In the event of default in payment by Customer, Company shall be entitled (without prejudice to any other right or remedy it may have under these Terms or otherwise) to charge interest on a daily basis (after as well as before judgment) on any amount outstanding at the annual rate of four percent (4%) above the prime rate published by JPMorgan Chase Bank from time to time.
- 4.5 In the event of any dispute, Customer shall not be entitled to withhold payment of the price of the Goods or any agreed payments or to any right of set-off, deduction, counterclaim, abatement or otherwise against any payment due to Company under any Contract.
- 4.6 In respect of Goods sold for export, unless otherwise agreed in writing, payment shall be made (a) by irrevocable letter of credit confirmed with a clearing bank approved by Company or (b) prior to manufacture / fabrication.
- 4.7 Time for payment shall be of the essence of the Contract.
- 4.8 All payments payable to Company under the Contract shall become due immediately on its termination.

5. DELIVERY

- 5.1 Unless otherwise agreed in writing by Company, delivery shall be deemed to take place when the Goods are made available by Company at the Delivery Point, for collection by Customer or its carrier ("**Delivery**").
- 5.2 Any and all dates and periods specified by Company for Delivery are estimates only and do not constitute fixed times for Delivery. Delivery shall not be of the essence of the Contract and shall not be made of the essence by notice. Company shall have no liability for any damages, losses, costs or expenses whatsoever or in connection with the failure by Company to meet any Delivery times specified in the Order. Customer shall have no right to cancel an Order for a failure of Company to meet any Delivery times.
- 5.3 Company will endeavor to comply with any reasonable request by Customer for postponement of Delivery but shall be under no obligation to do so and Customer is obliged to take Delivery at such date and time as specified by Company. Where postponement is agreed by Company in writing Customer shall, if required, pay all costs and expenses including a reasonable charge for storage occasioned thereby and any costs incurred by Company in relation to any insurance payments reasonably made by it. Company reserves the right to deliver the Goods to Customer in installments. Where the Goods are delivered in installments, each Delivery shall constitute a separate contract and failure by Company to deliver any one or more of the installments in accordance with these Terms or any claim by Customer in respect of any one or more installments shall not entitle Customer to treat the Contract as a whole as repudiated.
- 5.4 The date for Delivery shall in every case be dependent upon prompt receipt of all necessary information, final instructions or approvals from Customer.
- 5.5 If Customer is ordering Goods for Delivery outside of the country of manufacture by Company, such Goods may be subject to import duties and taxes which are levied when the Goods reach the specified destination. Customer will be responsible for payment of such import duties and taxes. Customer will comply with all laws and regulations of the country for which the Goods are destined and Company will not be liable for any breach of those laws.
- 5.6 Customer shall (and shall procure that its sub-contractors and agents shall):
- (a) observe the work rules and safety regulations of Company while on Company's premises; and

- (b) strictly follow all instructions and installation materials related to the Goods and not make any alteration, modification or addition to the Goods or packaging (and any alteration of the Goods, or use of non-approved parts, products or packaging with the Goods, shall be a material breach of these Terms and voids any warranties made by Company for the Goods).

6. RISK AND TITLE

- 6.1 Title to the Goods will pass to Customer upon Company's Delivery of the Goods.
- 6.2 Unless otherwise agreed between Company and Customer in writing, risk of damage to or loss of the Goods shall pass to Customer upon Delivery. When Goods are transported by Company's own vehicles, Delivery shall be deemed to take place at the moment the Goods are lifted from Company's vehicle.
- 6.3 No claim for Goods damaged in transit will be considered by Company unless Company used its own transport for Delivery and unless:
 - (a) an appropriately qualified signature, e.g. "Goods received damaged, (signed)" is clearly made by Customer on the delivery note;
 - (b) Company is advised in writing per motor carrier rules; or
 - (c) Company is advised in writing within three days of Delivery.
- 6.4 No allowance for claims for short deliveries will be made unless (a) notice is provided to Company within three days of Delivery and (b) Company is given an opportunity to verify the same.
- 6.5 For the avoidance of doubt, where Customer collects the Goods from the Delivery Point or where a third party collects the Goods for transport to Customer, Company shall have no liability to Customer for any Goods damaged in transit.

7. WARRANTY AND LIABILITY

- 7.1 Company warrants only that the Goods will be free from material defects in material or workmanship during the Warranty Period (as defined below) ("**Warranty**").
- 7.2 Company has tested the impact performance of its Goods under controlled conditions; however, Company does not represent or warrant that the results of those controlled conditions would necessarily avoid injury to persons or property. Company expressly disclaims any warranty or liability for claims arising by reasons of death or personal injury or damage to property resulting from any impact, collision or contact with the Goods or nearby hazards or objects by any vehicle, object or person, or failure of Customer to strictly comply with Section 5.6.
- 7.3 **THE FOREGOING WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES NOT EXPRESSLY SET FORTH HEREIN, WHETHER EXPRESS OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
- 7.4 Any claim for defect with respect to the Goods sold hereunder shall be deemed waived by Customer unless Company is notified in writing, in the case of defects apparent on visual inspection, within sixty (60) days from Delivery, or, in the case of defects not apparent on visual inspection, within twelve (12) months from Delivery (such 60 days or 12 months, as applicable, the "**Warranty Period**"). All Goods claimed to be defective shall be held subject to Company's inspection, and Company shall not be liable for the cost of any repairs performed without its express written consent. The Goods claimed to be defective may be returned prepaid to Company's plant for inspection in accordance with return shipping instructions that Company shall furnish to Customer upon receipt of Customer's notice of claim. If the claim is established, Company will reimburse Customer for all shipping costs incurred in connection with such return.
- 7.5 For defects reported during the Warranty Period, Company will, at Company's sole election, refund, repair or replace free of charge the Goods that contain(s) such a defect. Company's liability is expressly limited to replacement free of charge (in the form and under the terms originally shipped), or to repair or to manufacture/remanufacture by Company, the Goods that contain(s) a defect, or, at Company's election, to the repayment of an amount equal to the purchase price of the Goods found to be defective, whether such claims for defect are for breach of warranty or negligence. COMPANY SHALL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL LOSSES, DAMAGES OR EXPENSES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY SUCH LOSSES, DAMAGES OR EXPENSES ARISING DIRECTLY OR INDIRECTLY FROM THE SALE, HANDLING OR USE OF THE GOODS OR FROM ANY OTHER CAUSE RELATING THERETO, OR FOR PERSONAL INJURY OR LOSS OF PROFIT OR REPUTATION.
- 7.6 This Warranty is made to Customer and does not extend to any other person or entity and is not assignable, except that this Warranty will transfer to a commercial buyer buying directly from Customer provided that (a)

Customer is an authorized distributor of Company and (b) Customer is a party to a distributor agreement with Company.

- 7.7 This Warranty shall not apply (a) if the Goods have been subject to improper storage, accident, misuse or unauthorized modifications, alterations, or repairs, or have not been installed, operated, and maintained in accordance with procedures approved by Company, (b) to normal wear and tear, (c) to any components manufactured by Customer or a third party not approved by Company, or (d) if the Goods are used with any unauthorized components.
- 7.8 Customer shall indemnify and keep Company indemnified in full against all and any direct, indirect or consequential liabilities (all three of which terms include without limitation loss of profit, loss of business, depletion of goodwill and like loss), losses, claims, damages, costs and expenses (including all legal and other professional expenses) awarded against or incurred or paid by Company as a result of or in connection with any breach of the Contract by Customer and death or personal injury to Company's employees or agents while such employees or agents are on any premises of Customer in connection with the Contract. Without limiting the foregoing, Customer shall indemnify Company against all claims by any third parties for any claims, loss, damage or expense resulting from the breach by Customer of any of its obligations under these Terms, including without limitation, any modification, misuse, or unapproved alteration of, or use of non-approved components with, the Goods.
- 7.9 To the fullest extent permitted by law, under no circumstances will Company be liable to Customer for an amount in excess of the price paid, or to be paid, for the Goods for any claims, losses, liens, costs, liabilities, causes of action, suits, demands, judgments, obligations, fines, penalties, damages, requirements, violations, and expenses (including without limitation, attorneys' fees, court costs, and costs of investigation) of any nature, kind, or description, whether based in contract, warranty, indemnity, or tort (including negligence and strict liability), of any person or entity, directly or indirectly, arising out of, resulting from or related to the Contract or the Goods.

8. TERMINATION

- 8.1 Company shall be entitled, without prejudice to Company's other rights and remedies, either to terminate wholly or in part any or every Contract between Company and Customer and/or to suspend any further deliveries of Goods in any of the following circumstances:
- (a) non-compliance by Customer with Company's terms of payment;
 - (b) if Customer has failed to provide a letter of credit or guarantee, bill of exchange or any other security required by the Contract or reasonably requested by Company;
 - (c) upon Customer's dissolution, insolvency, filing of a voluntary or involuntary petition under any law relating to bankruptcy, appointment by a court of a temporary or permanent receiver, trustee or custodian for Customer's business, or an assignment for the benefit of creditors, of Customer;
 - (d) Customer becomes unable to satisfy its debts as they fall due or ceases or threatens to cease to carry on business;
 - (e) Customer or any connected person commits any breach of this or any other Contract whenever made between Customer and Company; or
 - (f) there has been, or Company suspects that there has been, a breach or there has been a breach of any of the provisions of Section 13 below.

9. CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS

- 9.1 All intellectual property, including without limitation, all drawings, installation instructions, documents, confidential records, computer software and other information supplied by Company or otherwise obtained by Customer, whether produced by itself or a third party, are supplied on the express understanding that all intellectual property rights are reserved to Company (or the third party) and that Customer will not, without the written consent of Company, give away, loan, exhibit or sell any such intellectual property or other information or extracts from them, or copies of them, or use them in any way except in connection with the Goods in respect of which they are issued.
- 9.2 All claims for alleged infringement of patents, trademarks, registered designs, design rights or copyright received by Customer relating to the Goods must be notified immediately to Company. If requested by Company, Company shall be entitled to have conduct of any proceedings relating to any such claim in such manner as Company thinks fit and Customer will provide Company such reasonable assistance as Company may request. The cost of any such proceedings will be borne by Company.

9.3 If any allegations shall be made against Customer to the effect that the supply of the Goods infringes the intellectual property rights of any third party or Company has reason to believe that such allegation is likely to be made, Company may at its option and expense modify or replace the Goods so as to avoid the infringement (but without adversely affecting the overall performance of the Goods), or obtain for the benefit of Customer the right to continue to use the Goods, or repurchase the Goods at the Contract Price as reduced by a reasonable provision for depreciation. If Company pursues any of such options, Customer will have no rights or remedies against Company arising directly or indirectly out of the alleged infringement.

10. FORCE MAJEURE

In the event of the performance of any obligation by Company being prevented, delayed or in any way interfered with by war, riot, civil commotion, strikes, lock-outs, accidents, flood, fire, explosion, or by any other cause beyond its reasonable control (including the delay or failure to supply of any suppliers of Company) Company may suspend or treat as impossible the performance of any obligation to Customer without liability for any loss.

11. HEALTH AND SAFETY

Customer agrees to pay due regard to any information supplied by Company relating to the use for which the Goods are designed or have been tested or concerning conditions necessary to ensure that they will be safe and without risk to health at all times when they are being set, used, cleaned, serviced or maintained by any person and Customer undertakes to take such steps as may be specified by such information or otherwise necessary to ensure that as far as is reasonably practicable the Goods will be safe and without risk to health at all times as mentioned above.

12. TESTING AND INSPECTION

12.1 Testing and inspection if specified by Customer or his agent shall be at Company's desired location (at Customer's expense) and such testing and inspection shall be final and conclusive as to the results thereof.

12.2 Company shall not be obliged to produce test and performance certificates or safety critical certificates unless requested by Customer and accepted by Company in writing.

12.3 In addition to any costs incurred by Company in testing the Goods Customer shall pay for all test pieces which comply with specification.

13. COMPLIANCE

13.1 Customer shall comply with all relevant laws, including any applicable anti-corruption laws in connection with the Contract and Company's business and shall immediately notify Company if it discovers or suspects that any of its officers, directors, employees or representatives are acting or have acted in a way which violates such laws.

13.2 Customer acknowledges that Company has a code of responsible business: The Hill & Smith Holdings PLC Code of Business Conduct ("**HS Code of Conduct**"). The HS Code of Conduct, together with Company's Anti Bribery and Corruption Policy ("**HS ABC Policy**"), are available at www.hsholdings.co.uk and Customer shall, at all times, conduct, and cause its officers, directors, employees and/or representatives to conduct, business ethically and in accordance with the relevant provisions of the HS Code of Conduct and the HS ABC Policy, as each may be updated from time to time. This clause shall apply whether or not Customer is acting pursuant to the Contract or its relationship with Company.

13.3 Customer agrees that it must be able to demonstrate its compliance with the requirements referred to in this Section 13 at the request of and to the satisfaction of Company which includes, but is not limited to, Company having the right to inspect any site involved in work for Company and requiring Customer to sign an annual certificate certifying compliance. If Customer fails to comply with this Section 13, Company shall be entitled, in its sole discretion, to terminate the Contract and any other agreement between Customer and Company without penalty to Company, but with obligations for Customer to remedy any damages suffered by Company as a result of such termination or as a result of the breach of contract.

14. MISCELLANEOUS

14.1 In the case of any Order for the export of Goods, the Schedule to the Uniform Law on International Sales Act 1967 shall not in any circumstances apply to the Contract and neither shall the limits imposed by the Unfair Contract Terms Act 1977 on the extent to which liability can be excluded or limited. The United Nations Convention on Contracts for the International Sale of Goods shall have no application to the purchase of Goods, these Terms or actions hereunder or contemplated hereby.

14.2 Any failure to exercise or any delay by Company in exercising a right or remedy provided by this Contract or at law or in equity will not constitute a waiver of the right or remedy or a waiver of any other rights or remedies. A waiver of a breach of any of the terms of the Contract or of a default under these Terms will not constitute a waiver of any other breach or default and will not affect the other terms of the Contract.

- 14.3 Customer shall not, without the written consent of Company, assign (including by operation of law), transfer, mortgage, or grant a lien on any of its rights under any Contract or purport to do the same.
- 14.4 Company shall be entitled to appoint one or more sub-contractors to carry out all or any of its obligations under any Contract and shall for the avoidance of doubt be entitled to assign any interest or rights that it has in relation to any Contract.
- 14.5 If any provision of these Terms shall be held invalid or unenforceable in whole or in part then the unaffected provisions shall remain in full force and effect. Headings appear for convenience only and shall not affect the construction of these Terms.
- 14.6 The Contract and any non-contractual obligations arising out of or in connection with it shall be governed and interpreted exclusively according to the laws of the State of Ohio. The parties hereby agree to submit to the exclusive jurisdiction of the courts in the State of Ohio provided that Company may at its option file suit in the state in which Customer is organized or located, including action to obtain any remedy (including injunctive relief).
- 14.7 There are no third party beneficiaries to these Terms.