

Mayphil (UK) Ltd – Terms and Conditions for supply of Goods

The customer's attention is drawn in particular to the provisions of term 9.

1. Interpretation

1.1 **Definitions.** In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Contract: the Contract between Mayphil and the Customer for the sale and purchase of the Goods in accordance with these terms and conditions.

Customer: the company or other person who purchases the Goods from Mayphil.

Goods: the goods (or any part of them) set out in the Order.

Mayphil: Mayphil (UK) Ltd, Company number 01158616, of Mayphil Industrial Estate, Goatmill Road, Dowlais, Merthyr Tydfil, CF48 3TF, United Kingdom

Order: the Customer's order for the Goods, whether set out in the Customer's purchase order or in the Customer's written or verbal acceptance (however that may be communicated) of Mayphil's quotation, as the case may be.

2. Basis of Contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate in the course of placing the Order, or which are implied by trade, custom, practice or course of dealing.

2.2 Mayphil is a trade supplier and all Customers are assumed to be trade purchasers.

2.3 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.

2.4 The Order shall only be deemed to be accepted when Mayphil either: issues a written acceptance of the Order, (or if earlier) commences fulfilment of the order, at which point the Contract shall come into existence.

2.5 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Mayphil which is not set out in the Contract.

2.6 Any samples, drawings, descriptive matter, or advertising produced and distributed by Mayphil or its suppliers and any descriptions or illustrations contained in such catalogues, brochures or websites are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract, nor have any contractual force.

2.7 The Contract is for the supply of Goods only and not a contract for the supply of services. Any advice or recommendations given by Mayphil are given on a non-reliance basis and the Customer shall be responsible for all decisions concerning the suitability of any Goods for the Customer's purposes.

2.8 A quotation for the Goods given by Mayphil shall not constitute an offer. A quotation shall only be valid for a period of 10 (ten) Business Days from its date of issue.

2.9 Once an Order is placed, cancellation and/or return of Goods shall be at Mayphil's sole and absolute discretion and shall be subject to terms Mayphil may specify as a condition of accepting a cancellation or any return including charging a handling fee and any other costs incurred by Mayphil.

3. Goods

3.1 The quantity and description of the Goods are as set out in Mayphil's quotation or acceptance of order.

3.2 To the extent that the Goods are to be manufactured in accordance with a specification supplied by the Customer, the Customer shall indemnify Mayphil against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Mayphil in connection with any claim made against Mayphil for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Mayphil's use of that specification. This term 3.2 shall survive termination of the Contract.

3.3 Nothing in the Contract for the supply of Goods shall serve to transfer ownership of any intellectual property rights in or relating to the Goods to the Customer.

3.4 Mayphil reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

3.5 If the Goods require testing, whether at Customer request or if Mayphil regards it as reasonably necessary (whether prior to or after delivery), Mayphil may charge the Customer the cost of such tests.

4. Delivery

- 4.1 Delivery of the Goods shall be Ex-Works (EXW, Incoterms 2010) at the loading bay of Mayphil's Merthyr Tydfil premises. Risk in the Goods shall pass at delivery.
- 4.2 Mayphil shall use all reasonable endeavours to meet stated delivery dates but time shall not be of the essence for delivery.
- 4.3 Unless otherwise agreed in writing, the Customer shall be responsible for arranging collection, loading and shipment of the Goods from the place of delivery. The Customer shall further be responsible for insuring the Goods in transit.
- 4.4 If Mayphil arranges any shipping and/or loading of the Goods, the Customer acknowledges that this shall be at the risk of the Customer and Mayphil assumes no liability for loss or damage to Goods in transit.
- 4.5 If Goods are not collected by the Customer within 1 (one) week of the date Mayphil confirms for delivery, Mayphil reserves the right to levy a storage charge of £2.00 per square foot (or part thereof) per week for the Goods. Goods stored beyond the date specified by Mayphil for delivery are at the risk of the Customer.
- 4.6 Mayphil shall not be liable for any shortfall in the quantity of Goods delivered unless the Customer gives written notice of the same within 5 (five) Business Days of delivery and the Customer's sole remedy shall be (at Mayphil's sole discretion) making up the shortfall of Goods with a further delivery or a pro-rata adjustment to the Order invoice by way of a credit note or refund.
- 4.7 The Customer shall be solely responsible for the safe and lawful disposal of any packaging relating to the Goods unless any such packaging is stated in the delivery note as being returnable. The Customer hereby indemnifies and holds harmless Mayphil against any claims, costs or expenses incurred by Mayphil in relation to any non-returnable packaging supplied with the Goods.
- 4.8 Mayphil may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or discrepancy in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.9 If Mayphil fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Mayphil shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Mayphil with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods. For the avoidance of doubt, if Mayphil's supplier is unable to supply the Goods or part of them, this shall be a Force Majeure Event for Mayphil.

5. Quality

- 5.1 The Customer acknowledges that Mayphil is not the manufacturer of the Goods and any warranty in respect of freedom from defective design, materials and workmanship shall be as given by the manufacturer of the Goods. The sole warranty given by Mayphil is that at the time of delivery the Goods will be free from material defects in materials and workmanship.
- 5.2 The Customer shall inspect the Goods as soon as reasonably possible after in delivery and in any case within [5 (five) Business Days of delivery and where not discoverable by inspection on delivery, within 5 Business Days of discovery, to a maximum time of 12 months from delivery and notify Mayphil in writing that some or all of the Goods do not comply with the warranty set out in term 5.1.
- 5.3 Mayphil shall, subject to the provisions of term 5.4 below, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full (subject always to the return of the defective Goods) and this shall be the entire liability of Mayphil in respect of failure of the Goods to comply with the foregoing warranty.
- 5.4 Mayphil shall not be liable for Goods' failure to comply with the warranty set out in term 5.1 in any of the following events:
- (a) Mayphil is not given a reasonable opportunity, on request, of examining the claimed defective Goods, including where if requested by Mayphil that the Customer returns the Goods to Mayphil at the Customer's cost;
 - (b) the Customer makes any further use of such Goods after giving notice in accordance with term 5.2;
 - (c) the defect arises because the Customer failed to follow Mayphil's or any manufacturer's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are no such instructions) good trade practice regarding the same;
 - (d) the defect arises as a result of Mayphil following any drawing, design or specification supplied by the Customer;
 - (e) the Customer alters or attempts repairs of the Goods without the written consent of Mayphil;
 - (f) the defect arises as a result of: fair wear and tear; wilful damage; negligence; abnormal or incorrect storage, use, installation, commissioning or maintenance; or abnormal working conditions; or
 - (g) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.5 Except as provided in this term 5, Mayphil shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in term 5.1.

- 5.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.7 These Conditions shall apply to any repaired or replacement Goods supplied by Mayphil.
- 6. Title to the Goods**
- 6.1 Title to the Goods shall not pass to the Customer until Mayphil receives payment in full (in cash or cleared funds) for the Goods, in which case title to the Goods shall pass at the time of payment.
- 6.2 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Mayphil's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (d) notify Mayphil immediately if it becomes subject to any of the events listed in term 8.2; and
 - (e) give Mayphil such information relating to the Goods as Mayphil may require from time to time.
- 6.3 Where the Customer is authorised by Mayphil as a re-seller of the Goods, subject to term 6.4, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Mayphil receives payment for the Goods. However, if the Customer resells the Goods before that time:
- (a) it does so as principal and not as Mayphil's agent;
 - (b) title to the Goods shall pass from Mayphil to the Customer immediately before the time at which resale by the Customer occurs; and
 - (c) the Customer shall hold the proceeds of sale of the Goods on trust for Mayphil absolutely.
- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in term 8.2, then, without limiting any other right or remedy Mayphil may have:
- (a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
 - (b) Mayphil may at any time:
 - (i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 7. Price and payment**
- 7.1 The price of the Goods shall be as quoted to the Customer by Mayphil, or, if no price is quoted, the price set out in Mayphil's published price list in force as at the date of delivery. All prices are quoted and payable in UK Pounds Sterling unless otherwise agreed in writing by Mayphil.
- 7.2 Mayphil may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond Mayphil's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by the Customer to change the delivery date(s), quantities, specification or types of Goods ordered; or
 - (c) any delay caused by any instructions of the Customer or failure of the Customer to give Mayphil adequate or accurate information or instructions.
- 7.3 The price of the Goods is exclusive of VAT and any other sales taxes or duties which may be levied on the sale and/or delivery of the Goods.
- 7.4 Mayphil may invoice the Customer for the Goods on or at any time after acceptance of the Order.
- 7.5 Mayphil's standard payment terms are pro-forma invoice (which shall be deemed delivered on the second Business Day after its date) which shall be payable prior to delivery of the Goods.
- 7.6 The provision of extended payment terms or a credit account facility to Customers is entirely at Mayphil's sole and absolute discretion and Mayphil may set credit account limits on, suspend or terminate a Customer's credit account facility at any time. Unless otherwise specified by Mayphil in writing, each Order will be subject to its own invoice and payable on the terms set out therein. Time of payment is of the essence.

- 7.7 Mayphil reserves the right to charge interest on overdue amount at the rate of 6% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Mayphil may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Mayphil to the Customer.

8. Termination and suspension

8.1 If the Customer becomes subject to any of the events listed in term 8.2, Mayphil may terminate the Contract with immediate effect by giving written notice to the Customer.

8.2 For the purposes of term 8.1, the relevant events are that the Customer may:

- (a) suspend, or threaten to suspend, payment of its debts, or is unable to pay its debts as they fall due; or admits inability to pay its debts;
- (b) make an arrangement to rescheduling or compromise any of its debts with creditors due to insolvency;
- (c) file a petition, pass a resolution or otherwise be subject to an order for insolvent winding up;
- (d) commence appointment of a receiver, administrator or administrative receiver;
- (e) become subject to the holder of a qualifying floating charge commencing appointment of an administrator or administrative receiver;
- (f) become subject of a bankruptcy petition or order;
- (g) be subject to any event or proceeding taken in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above; or
- (h) suspend or cease, threaten to suspend or cease any substantial part of its business;

8.3 Without limiting its other rights or remedies, Mayphil may suspend provision of the Goods under the Contract or any other contract between the Customer and Mayphil if the Customer becomes subject to any of the events listed in term 8.2 above or Mayphil reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

8.4 On termination of the Contract for any reason the Customer shall immediately pay to Mayphil all outstanding unpaid invoices and interest.

8.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

8.6 Terms which expressly or by implication survive termination of the Contract shall continue in full force and effect.

9. Limitation of liability

9.1 Nothing in these Conditions shall limit or exclude Mayphil's liability for:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation; or
- (c) any matter in respect of which it would be unlawful for Mayphil to exclude or restrict liability.

9.2 Subject to term 9.1:

- (a) Mayphil shall under no circumstances whatever be liable to the Customer, whether in Contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract or supply of the Goods; and
- (b) Mayphil's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in Contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

9.3 The Goods may be dangerous or pose a health and safety risk if not used in accordance with their proper purpose or any manufacturer's instructions or guidelines. It is the Customer's responsibility to ensure that any person handling, using, installing or maintaining the Goods is properly qualified and as required certified to do so and that all applicable health and safety legislation and guidelines are complied with. The Customer agrees to indemnify and hold Mayphil harmless in respect of any loss, liability or claim arising out of a breach of this term.

10. Force majeure

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen (including as may apply to any suppliers or contractors).

11. Compliance with law

- 11.1 In placing any Order or in any way dealing with the Goods, the Customer shall comply with all applicable statutory laws, regulations and directives relating to bribery, money laundering, corrupt practices and export control including without limitation the UK Bribery Act 2010, all controls and sanctions administered by the UK Export Control Organisation (or any successor body), the US Export Administration Regulations, International Traffic in Arms Regulations and Laws administered by the UK Department for Innovation, Business and Skills (BIS) and the U.S. Treasury Department Office of Foreign Assets Control.
- 11.2 The Customer further agrees that it has not and will not cause Mayphil or any other Company or entity organized under U.S. or U. K. law, or any U.S. or U. K. persons employed by Mayphil, to violate the Laws. The Customer agrees not to export, re-export, transmit, transfer, or divert the Goods, technology, software or services to any country in violation of the Laws. If Mayphil has reason to believe that the Customer is not in compliance with the Laws or this paragraph, Mayphil reserves the right to audit, or to have the Mayphil's authorized representatives conduct audits, to ascertain the extent of the Customer's non-compliance with the Laws and this paragraph.
- 11.3 Upon Mayphil's request, the Customer shall at its expense provide to Mayphil in a timely manner any and all material, documentation, information, data, or certification(s) regarding the Customer's compliance with the Laws and this paragraph. The Customer agrees to indemnify, defend, and hold harmless Mayphil, Mayphil's affiliates, and Mayphil's and Mayphil's affiliates' respective directors, officers, employees, agents, successors, and assigns, against demands, liabilities, fines, penalties, losses, and damages (including costs, investigation and litigation expenses and counsel fees incurred in connection therewith) arising out of or related to the Customer's obligations under this paragraph. In the event of any enforcement action against the Customer relating to the customer's non-compliance with the Laws that reasonably relate to the Customer's performance under the Contract, the Customer shall provide to Mayphil written notice of such enforcement action prior to any publication or disclosure of such enforcement action, and in no event later than ten (10) business days following such enforcement action.
- 11.4 Notwithstanding the foregoing, the Customer agrees not to export, re-export, transmit transfer, or divert the Goods, technology, software, or services to Iran or the Government of Iran, Crimea territory, Syria, Cuba, North Korea or any other sanctioned country.
- 11.5 Customer represents and warrants that neither it nor any of its directors, officers, employees, or representatives have engaged or will engage in Bribery in connection in with its performance under this Contract or any other agreement with Mayphil. "Bribery" means the offering, promising, giving, or authorising of any payment or transfer of anything of value, directly or indirectly through third parties, to any person for the purpose of influencing any act or decision of such person or securing an improper advantage to assist Mayphil in obtaining, retaining or conducting business.
- 11.6 In the event the Goods are sold to a sanctioned party or to a prohibited destination (or Goods are located in one of these destinations), Mayphil will not be in a position to provide any service or support for such Goods, unless all required licences have been obtained and copies of those licences have been provided to Mayphil. Without all required licences, any warranty claims in connection with such sales or placement will not be paid. Should Mayphil identify any violations of such policies, action may be taken up to and including suspending of pending or future orders and termination of the business relationship. Customer agrees to indemnify, defend, and hold harmless Mayphil against all demands, liabilities, fines, penalties, losses, and damages (including costs, investigation and litigation expenses and counsel fees incurred in connection therewith) arising out of or related to Customer's obligations herein.
- 11.7 The Customer shall indemnify and hold Mayphil harmless in relation to any loss or expense incurred by breach of the obligation in terms 11.1, 11.2, 11.3, 11.4, 11.5 and 11.6 above.

12. General

- 12.1 Mayphil may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Customer may only do so with the prior written consent of Mayphil.
- 12.2 Any notice or other communication given in connection with the Contract shall be in writing to the registered office or its principal place of business and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service or commercial courier only. Delivery shall be deemed two Business Days after posting. Notices may not be given by fax or email.
- 12.3 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this term shall not affect the validity and enforceability of the rest of the Contract.
- 12.4 A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default nor of any right or remedy.
- 12.5 Except for a company who may be in the group of Mayphil, no person who is not a party to the Contract shall derive any benefit under it nor have any rights to enforce its terms.
- 12.6 No variation of the Contract shall be effective unless it is in writing and signed by Mayphil.
- 12.7 The Contract, and any dispute or claim arising out of or in connection with it shall be governed by, and construed in accordance with the law of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim so arising.