

GEE GRAPHITE LIMITED

TERMS AND CONDITIONS OF BUSINESS – BUSINESS TO BUSINESS SALES

1. DEFINITIONS & INTERPRETATION

- 1.1 In these conditions, the following words and phrases shall have the meanings ascribed to them below:
“**Contract**” means any contract between Gee Graphite and the Customer relating to the Goods, subject to and incorporating these terms and conditions;
“**Customer**” means the person or party detailed in the Quotation as the customer;
“**Free Issued Goods**” means the goods detailed in the Quotation, belonging to the Customer (or its suppliers) which are profile cut by Gee Graphite using water jet cutting machinery;
“**Gee Graphite**” means Gee Graphite Limited (company number 02306442) whose registered office is at Havelock Street, Dewsbury, West Yorkshire, WF13 3LU;
“**Goods**” means the Graphite Goods and/or Free Issued Goods, as the context permits;
“**Graphite Goods**” means the goods detailed in the Quotation being sold and supplied by Gee Graphite to the Customer;
“**Quotation**” means the quotation to which these terms and conditions are attached;
“**Specification**” means the technical and or performance specification of the Goods, being detailed or referenced in the Quotation;
- 1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Words in the singular include the plural and in the plural include the singular.
- 1.4 A reference to one gender includes a reference to the other gender.
- 1.5 Condition headings do not affect the interpretation of these conditions.

2. CONTRACT FORMATION

- 2.1 Acceptance of the Customer’s order and the completion of the Contract between Gee Graphite and the Customer shall take place upon the happening of: (i) despatch to the Customer of the Goods; or (ii) Gee Graphite issuing an acknowledgement of order to the Customer (whichever the sooner).

3. ENTIRE AGREEMENT AND SCOPE

- 3.1 Subject to any variation under condition 3.3 the Contract shall be on these terms and conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, communication, specification or other document).
- 3.2 No terms or conditions endorsed on, delivered with or contained in the Customer’s purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

4. PRICE AND PAYMENT

- 4.1 The Quotation shall detail the price payable for the Goods, together with the currency in which the price shall be paid. If the Quotation does not state a currency, the price shall be deemed to be in UK £s (pounds sterling) and unless expressly stated otherwise, shall exclude VAT (where applicable) at the applicable current and delivery charges.
- 4.2 Gee Graphite shall issue invoices for payment of the price at the time of delivery of the Goods.
- 4.3 If the Customer has been granted credit account by Gee Graphite, the Customer shall pay the invoice within 30 days of receipt. Time for payment shall be of the essence.
- 4.4 If the Customer has not been granted credit account by Gee Graphite, condition 4.3 shall not be applicable in which case the Goods shall not be supplied unless and until the price specified in the Quotation has been paid for in full
- 4.5 No payment shall be deemed to have been received until Gee Graphite has received cleared funds.
- 4.6 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by Gee Graphite to the Customer.
- 4.7 If the Customer fails to pay Gee Graphite any sum due pursuant to the Contract, the Customer shall be liable to pay interest to Gee Graphite on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of the Bank of England, accruing on a daily basis until payment is made, whether before or after any judgment. Gee Graphite reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

5. RISK & TITLE

- 5.1 The Graphite Goods are at the risk of Gee Graphite, until delivery, whereupon risk shall transfer in full to the Customer.
- 5.2 The Free Issued Goods are at the risk of the Customer at all times.
- 5.3 Full legal and beneficial title and ownership of the Goods shall only pass to the Customer when Gee Graphite has received in full (in cash or cleared funds) all sums due to it in respect of:
- 5.3.1 the Goods; and
- 5.3.2 all other sums which are or which become due to Gee Graphite from the Customer under any other contract or account.

- 5.4 Until title and ownership of the Goods has passed to the Customer, the Customer shall:
- 5.4.1 hold the Goods on a fiduciary basis as Gee Graphite's bailee;
 - 5.4.2 store the Goods (at no cost to Gee Graphite) separately from all other Goods of the Customer or any third party in such a way that they remain readily identifiable as Gee Graphite's property;
 - 5.4.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - 5.4.4 maintain the Goods in satisfactory condition and keep them insured on Gee Graphite's behalf for their full price against all risks to the reasonable satisfaction of Gee Graphite. On request the Customer shall produce the policy of insurance to Gee Graphite.
- 5.5 The Customer's right to possession of the Goods shall terminate immediately if title and ownership of the Goods has not already passed in accordance with condition 5.3 and:
- 5.5.1 the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation of the Customer; or
 - 5.5.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under any contract between Gee Graphite and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
 - 5.5.3 the Customer encumbers or in any way charges any of the Goods.
- 5.6 Gee Graphite shall be entitled to recover payment for the Goods notwithstanding that legal and beneficial ownership and title of any of the Goods has not passed from Gee Graphite.
- 5.7 The Customer grants Gee Graphite, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

6. DELIVERY

- 6.1 Unless otherwise agreed in writing, delivery of the Goods shall be made to the address specified in the Quotation.
- 6.2 Estimated delivery dates for the Goods shall be detailed in the Quotation, but time of delivery shall not be of the essence of the Contract and shall not be made so by notice. If no dates are so specified, delivery shall be within a reasonable time.
- 6.3 If delivery is made at the premises of Gee Graphite (ex works), the Customer shall take delivery of the Goods within 2 days of Gee Graphite giving it notice that the Goods are ready for delivery.
- 6.4 If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or Gee Graphite is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
- 6.4.1 risk in the Goods shall pass to the Customer (including for loss or damage caused by Gee Graphite's negligence);
 - 6.4.2 the Goods shall be deemed to have been delivered; and
 - 6.4.3 Gee Graphite may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 6.5 If Gee Graphite is requested to re-deliver the Goods following a failed delivery in accordance with condition 6.4, Gee Graphite reserves the right to make an additional charge for such re-delivery.
- 6.6 Gee Graphite may deliver the Goods by separate instalments. Each separate instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.
- 6.7 The Customer shall be required to notify Gee Graphite of any delivery shortages within 48 hours of delivery. If the Customer fails to notify Gee Graphite of any such shortages within this time scale, the Customer shall be deemed to have accepted delivery of all the Goods.

7. CANCELLATIONS AND RETURNS

- 7.1 The Customer may not cancel the Contract under any circumstances.
- 7.2 Gee Graphite is under no obligation to accept any returns save in respect of situations where it elects to do so under condition 8.2.2 and 8.4.
- 7.3 In circumstances where Gee Graphite has agreed to refund the price of any of the Goods under condition 8.4 it shall do so by way of either the issue of a credit note (where the Goods have been sold on credit terms) or the refund of moneys actually paid and received by Gee Graphite within 14 days of the agreement to do so.

8. WARRANTIES

- 8.1 Gee Graphite warrants that the Goods shall:
- 8.1.1 on delivery and for a period of 12 months from the date of delivery be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
 - 8.1.2 conform to the Specification.
- 8.2 Gee Graphite shall not be liable for a breach of any of the warranties in condition 8.1 unless:
- 8.2.1 the Customer gives written notice of the defect to Gee Graphite, and, if the defect is as a result of damage in transit by the carrier, within 7 days of the time when the Customer discovers or ought to have discovered the defect; and

- 8.2.2 Gee Graphite is given a reasonable opportunity after receiving the notice of examining such Goods and the Customer (if asked to do so by Gee Graphite) returns such Goods to Gee Graphite's place of business at Gee Graphite's cost for the examination to take place there.
- 8.3 Gee Graphite shall not be liable for a breach of any of the warranties given by it under condition 8.1 if:
- 8.3.1 the Customer makes any further use of the Goods after giving such notice; or
- 8.3.2 the defect arises because the Customer failed to follow Gee Graphite's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
- 8.3.3 the Customer alters or repairs the Goods without the written consent of Gee Graphite.
- 8.4 Subject to condition 8.1 and condition 8.2, if any of the Goods do not conform with any of the warranties given by it, Gee Graphite shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if Gee Graphite so requests, the Customer shall, at Gee Graphite's expense, return the Goods or the part of such Goods which is defective to Gee Graphite.
- 8.5 If Gee Graphite complies with condition 8.3 it shall have no further liability for a breach of any of the warranties given by it under condition 8.1
- 8.6 Any Goods replaced shall belong to Gee Graphite and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the 12 month period.

9. LIMITATION OF LIABILITY – THE CUSTOMER'S ATTENTION IS DRAWN TO THIS TERM IN PARTICULAR

- 9.1 The following provisions set out the entire financial liability of Gee Graphite (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- 9.1.1 any breach of these terms and conditions;
- 9.1.2 any use made or resale by the Customer of any Goods, or of any product incorporating any of the Goods; and
- 9.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 9.2 Nothing in these conditions excludes or limits the liability of Gee Graphite:
- 9.2.1 for death or personal injury caused by Gee Graphite's negligence; or
- 9.2.2 under section 2(3), Consumer Protection Act 1987; or
- 9.2.3 for any matter which it would be illegal for Gee Graphite to exclude or attempt to exclude its liability; or
- 9.2.4 for fraud or fraudulent misrepresentation.
- 9.3 Subject to condition 9.2 and condition 9.3:
- 9.3.1 Gee Graphite's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid under the Contract plus 10%; and
- 9.3.2 Gee Graphite shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses.
- 9.4 In relation to Free Issued Goods only, Gee Graphite shall have no liability to the Customer where:
- 9.4.1 risk of damage to the Free Issued Goods is notified to the Customer in advance of any services being performed and such damage subsequently occurs; or
- 9.4.1 the Free Issued Goods are themselves inherently defective.
- 9.5 Except as otherwise provided for under these terms and conditions, all other warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

10. UNFORSEEABLE DELAYS

- 10.1 Gee Graphite reserves the right to defer the performance of the Contract (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of Gee Graphite including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

11. EXPORT OF GOODS

- 11.1 The Goods may be supplied by Gee Graphite for export from the United Kingdom. The Customer shall comply with all applicable legislation and regulations and payment of any duties, import taxes or other costs of import. If Gee Graphite notifies the Customer that export of the Goods into a country is prohibited under the Gee Graphite export licence, the Customer shall not supply or offer the Goods for supply into or within that country.
- 11.2 The Customer shall obtain all licences, authorisations and approvals required for export of Goods from the United Kingdom or import into any other country and shall indemnify Gee Graphite against any liability in relation to the Customer's breach of any of the provisions of this condition 11.

12. GENERAL

- 12.1 Gee Graphite may assign the Contract or any part of it to any third party. The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of Gee Graphite.
- 12.2 Each right or remedy of Gee Graphite under the Contract is without prejudice to any other right or remedy of Gee Graphite whether under the Contract or not.

- 12.3 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 12.4 Failure or delay by Gee Graphite in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 12.5 Any waiver by Gee Graphite of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 12.6 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 12.7 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.