

MAGNET SCHULTZ LTD

Standard Conditions of Sale

1. Definitions

<i>Seller</i>	Magnet Schultz Limited (912104, England)
<i>Buyer</i>	Buyer of Goods pursuant to the Contract
<i>Goods</i>	the Goods specified in the Contract
<i>Contract</i>	the Contract incorporating these Conditions
<i>Conditions</i>	these Conditions and agreed Written variations
<i>Writing and written</i>	Written communication, including those by fax, telex, e-mail and cable. For Seller, only if made by authorised representative.
<i>Works</i>	The premises of Magnet Schultz Ltd in Old Woking, Surrey

2. Sale Basis

2.1 These Conditions and no other Conditions, apply to the Contract and (as revised by the Seller from time to time) to each subsequent Contract between the Buyer and Seller.

2.2 The Seller:-

2.2.1 shall be entitled to refuse to accept any order from the Buyer unless received during a period in which a quotation is stated to be open for acceptance;

2.2.2 shall not be liable for indications of performance, dimensions and types of Goods unless in Writing;

2.2.3 may correct without liability, clerical, technical or other errors or omissions in literature, specification, quotation, price list, order acknowledgement, invoice or other Seller's documents and information; and

2.2.4 shall use its best endeavours to arrange to attend at a place of business (within the U.K.) to install, test, commission, service, maintain or advise on the Goods on the Written instructions of the Buyer at a charge to be agreed beforehand including travelling, accommodation and all other directly incurred expenses.

2.3 The Buyer:-

2.3.1 acknowledges that the Goods are sufficient and suitable for its application and environment;

2.3.2 acknowledges that any advice, representations or variation to these Conditions is only binding on the Seller if in Writing;

2.3.3 accepts responsibility for installing, testing, commissioning, servicing and maintaining the Goods;

2.3.4 agrees, where no earlier delivery date has been agreed, to accept delivery within 12 months of the date of the Contract;

2.3.5 shall indemnify the Seller against all losses (including profit), costs, including labour and materials (used or purchased for the Contract) damages, charges, tooling and all expenses, incurred by the Seller resulting from a Contract cancellation by the Buyer which is accepted by the Seller; and

2.3.6 accepts responsibility for ensuring that the Goods comply with all technical and commercial regulations and formalities in countries other than the U.K.

3. Order Specification

3.1 An order by the Buyer can be accepted either by the Seller's Written acknowledgement or by the Seller's delivery of the Goods.

3.2 The Seller:-

3.2.1 shall supply Goods of the quality, description, and specification set out in the literature, drawings, or specification forming part of the Contract;

3.2.2 reserves the right to incorporate modifications to the Goods not materially affecting their quality, endurance, performance or application or which may be required to comply with safety, health or other regulations;

3.2.3 does not grant the Buyer any rights in any drawings, specifications, processes, or technical and commercial information relating to the Goods.

3.3 The Buyer:-

3.3.1 if the Goods are to be manufactured, or any process applied, by the Seller in accordance with specifications or instruction from the Buyer, shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark, or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification or instruction;

4. Prices

4.1 The price of the Goods shall be the agreed price or Seller's quoted price or where no price has been quoted (or a quoted price is no longer valid) the price listed in the Seller's published price list or documentation.

4.2 The Seller reserves the right, by Written notice to the Buyer, to increase the price of the Goods owing to factors beyond the control of the Seller such as, without limitation, currency fluctuation, duties, labour, material and other manufacturing costs, and to delay caused by the Buyer.

4.3 Prices unless otherwise stated are on an unpacked basis, at Works, exclusive of Value Added Tax.

5. Payment Terms

5.1 Payment within the specified time shall be of the essence of the Contract.

5.2 The Seller shall:-

5.2.1 be entitled to invoice the Goods to the Buyer as at date of despatch, or when availability for collection is notified to the Buyer by the Seller; and

5.2.2 be entitled at any time to withdraw credit account facilities previously agreed with the Buyer.

5.3 The Buyer shall pay the Seller's packaging, insurance and delivery charges.

5.4 If the Buyer shall fail to make payment by the due date the Seller shall be entitled, in addition to other rights, to:-

5.4.1 cancel the Contract;

5.4.2 suspend further deliveries to the Buyer;

5.4.3 appropriate any payment by the Buyer under this or other Contracts, as the Seller may determine; and

5.4.4 charge interest (both before and after judgement) on the unpaid amount from due payment date at 3% for each complete or part month until payment.

6. Delivery

6.1 Delivery of the Goods shall be made either by collection of the Goods by the Buyer from the Seller's premises (after advice of availability to the Buyer) or by the Seller delivering the Goods to the premises specified by the Buyer in the Contract.

6.2 The Seller may deliver the Goods in advance of the quoted delivery date upon giving reasonable Written notice to the Buyer.

6.3 The Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery of Goods is not of the essence.

6.4 The Seller's liability for failure to deliver the Goods for any reason other than the fault of the Buyer or any cause beyond its reasonable control (including strikes, lock-outs, failure or delay of suppliers to provide materials, components or equipment) shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar Goods to replace those not delivered, above the price of the Goods.

6.5 The Buyer acknowledges that each instalment of delivery constitutes a separate Contract and failure by the Seller to deliver any instalment or any claim in respect of any one or more instalment shall not entitle it to treat the Contract as a whole as repudiated.

6.6 If the Buyer fails to arrange for delivery or collection of the Goods, in the specified quantities, at due date, the Seller is entitled, without prejudice to any other rights, to:-

6.6.1 claim reasonable storage and insurance costs;

6.6.2 sell the Goods at the best price readily obtainable; and

6.6.3 claim any shortfall below the Contract price, inclusive of selling, storage and insurance costs.

7. Risk

7.1 The risk of damage to or loss of the Goods shall pass to the Buyer:-

7.1.1 (for Goods to be collected) on notification to the Buyer that Goods are available for collection;

7.1.2 (for Goods to be delivered) on delivery of the Goods to the premises as specified in the Contract or to the Buyer's instruction, or if the Buyer, or his agent, for whatever reason wrongfully fails to take delivery when the Seller tenders the Goods for delivery.

8. Property and Title

8.1 The property of the Goods, irrespective of any other provision of these Conditions, shall not pass to the Buyer until the Seller has received in cash, or cleared funds, all funds due in respect of:-

8.1.1 the Goods and delivery charges;

8.1.2 all other amounts owing by the Buyer to the Seller.

8.2 Until such time as the property in the Goods passes to the Buyer, the Buyer shall:-

8.2.1 hold the Goods in trust for the Seller;

8.2.2 shall keep the Goods properly stored, protected and insured, and on request shall produce the policy of insurance to the Seller; and

8.2.3 shall keep the Goods identified clearly as the Seller's property, with separate identification of each delivery instalment.

8.3 The Buyer is entitled to use or resell the Goods, held in trust for the Seller, in the ordinary course of business conduct provided that the Buyer shall:-

8.3.1 provide, on demand by the Seller, Written evidence of the exact location of the Goods;

8.3.2 hold such part of the proceeds of sale as represent the amount owed by the Buyer to the Seller on behalf of the Seller;

8.3.3 account for proceeds of the Sale, including the proceeds of any insurance claim relating to the Goods, in accordance with clause 8.3.2;

8.3.4 record and keep these proceeds separate and clearly identifiable as the Seller's property;

8.3.5 ensure that these proceeds shall be made available to the Seller or his agent on demand.

8.4 Acceptance of the Goods on trust is confirmed by the Buyer's collection or Seller's delivery of the Goods in addition to any Written communication.

8.5 If the Buyer is in default under the Contract:-

8.5.1 the Seller is entitled to require the Buyer to release the Goods on demand to the Seller or his agent; and

8.5.2 the Buyer grants an irrevocable licence to the Seller or his agent at any time to enter upon the premises at which the Goods are located, in order to inspect them or, where the Buyer's right to possession has terminated, to remove them from any storage, machinery or location into the Seller's possession.

8.6 The Buyer shall not be entitled to pledge or in any way charge as security for indebtedness any of the Goods. If the Buyer does so, all monies owing to the Seller by the Buyer shall, without prejudice to any other Seller's rights, become due for immediate payment in full, notwithstanding that ownership of any of the Goods has not passed from the Seller.

8.7 On termination of the Contract, howsoever caused, the Seller's (but not the Buyer's) rights contained in this condition 8 will remain in effect.

9. Warranties and Liabilities

9.1 The Seller warrants that the Goods, subject to conditions detailed below, will comply with their specification at the time of delivery and be free of defects in material and workmanship for a period of TWELVE months from delivery date.

9.2 Goods supplied as used or sub-standard are expressly excluded.

9.3 The Seller will be under no liability under the above and any other warranty condition or guarantee for:-

9.3.1 any defect arising from the Buyer's application of the Goods;

9.3.2 any defect in the Goods arising from any drawing, design, specification or component supplied by the Buyer;

9.3.3 any defect arising from fair wear and tear, willful damage, negligence or abnormal work or application which does not accord with the Seller's specification;

9.3.4 any defect due to failure to comply with the Seller's Written or verbal instructions;

9.3.5 any defect due to misuse, modification or repair of the Goods by the Buyer without the Seller's Written authority;

9.3.6 any claim if the Buyer has not paid for the Goods in full by the due date;

9.3.7 any claim not notified by the Buyer to the seller within FOURTEEN days of discovery of the defect or failure;

9.3.8 any claim for non-delivery not notified within fourteen days of receipt by the Buyer of the Seller's advice of despatch;

9.3.9 any claim for transit damage or shortage not given in writing within THREE days after delivery;

9.3.10 any claim in excess of that granted by the manufacturer or supplier to the Seller for parts, materials, equipment, or components.

9.4 All warranties, conditions, or other terms implied by statute or common law are, subject as expressly provided within these Conditions, excluded to the fullest extent permitted by law.

9.5 If a valid claim in respect of any defect in quality, condition or failure to meet the specification or performance of the Goods is notified in Writing to the Seller, within these Conditions, it shall be entitled to replace the Goods, or a part in question, within reasonable period free of charge provided always that the defective parts have been returned to the Seller, if so required, or, at the Seller's sole discretion, refund to the Buyer the price or proportionate price of the Goods. The Seller shall have no further liability to the Buyer.

9.6 Except in respect of death or personal injury directly attributable to and caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation or implied warranty, condition or other term or any duty at common law or under the express terms of the Contract, for pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (and whether caused by negligence of the Seller, his employees, agents or otherwise) which arise out of or in conjunction with the supply of the Goods, their use or re-sale by the Buyer, except as expressly provided in these Conditions.

9.7 Subject to the terms of conditions 6 and 9 above, the Seller'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 this contract shall be limited to £1,000,000.

10. Insolvency

10.1 If the Buyer:-

10.1.1 makes voluntary arrangements with its creditors;

10.1.2 becomes subject to an administration order;

10.1.3 becomes bankrupt (being an individual or firm);

10.1.4 goes into liquidation (being a company);

10.1.5 has any of its properties or assets taken possession of by an encumbrance, or has a receiver appointed;

10.1.6 ceases, or threatens to cease, to carry on business; or

10.1.7 is notified by the Seller of reasonable apprehension that any of the above events may occur;

10.2 the Seller is then entitled, without prejudice to any other right or remedy, to:-

10.2.1 cancel the Contract;

10.2.2 suspend further Contract deliveries without liability to the Buyer;

10.2.3 receive immediate payment for all Goods delivered;

10.2.4 re-possess the Goods, if immediate payment is not made; and

10.2.5 obtain possession of monies held by the Buyer for Goods resold without payment for them to the Seller.

11. Intellectual Property

11.1 All intellectual property rights (including patents, registered designs, unregistered designs, copyrights, technical information, or know how and similar rights in the United Kingdom and abroad) arising in the course of or as a consequence of this Contract shall belong to the Seller for the full term of such right and for all renewals and extensions of such right, save where the Buyer has provided a drawing, design, technical specification or component to the Seller in which circumstance the intellectual property rights attaching to such drawing, design, technical specification or component shall remain the property of the Buyer.

11.2 Any designs, drawings, models, samples, prototypes or other matters the subject of such intellectual property rights and owned by the Seller as set out in condition 11.1 shall not be disclosed by the Buyer to any third party without the Seller's prior written consent.

11.3 The Seller hereby grants the Buyer a non-exclusive, royalty free licence to use the intellectual property in the Goods or any ancillary designs, drawings, models, samples or prototypes for the purpose of incorporating such intellectual property into the Buyer's own product or for re-sale to the Buyer's customers. For the avoidance of doubt nothing in this Contract shall grant the Buyer the right to reverse engineer the Goods, to disclose the intellectual property relating to the Goods to a competitor of the Seller or for any purpose other than expressly set out in this condition 11.3.

12. General

12.1 Any Notice required or permitted to be given by either party to the other under these Conditions shall be in Writing, addressed to that other party at its registered office or principal place of business.

12.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any other breach of the same or other provision.

12.3 Each right and remedy of the Seller under this Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or not.

12.4 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

12.5 If any provision of these Conditions is held by any competent authority to be invalid or enforceable only in part, the validity of the other provisions of these Conditions and the remainder of the provisions in question, shall not be affected thereby.

12.6 If at any time any questions, dispute or difference whatsoever shall arise between the Buyer and Seller, in relation to, or in connection with the Contract, either may give to the other notice in Writing of the existence of such question, dispute or difference, and the same, if the Seller so requires within 28 days of such notice, shall be referred to the arbitration of a person to be mutually agreed upon, or failing agreement within 30 days of receipt of such notice of some person appointed by the President for the time being of the Institute of Electrical Engineers upon the application of either party.

12.7 Communications in Writing under this Contract shall be deemed to have been received:-

12.7.1 if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);

12.7.2 if delivered by hand, on the day of delivery;

12.7.3 if sent by facsimile transmission on a working day prior to 4.00 p.m., at the time of transmission and otherwise on the next working day.

12.8 The headings in these Conditions shall not affect their interpretation.

12.9 The Contract shall be governed by the laws of England.