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Terms and Conditions

Fine Tubes Limited

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1 Definitions and Interpretation

1.1 In these Conditions the words below have the meaning next to them:

Agreement	these Conditions, the Quotation and Acknowledgement of Order.
Buyer	the person(s), firm or company purchasing the Goods.
Conditions	the terms and conditions of purchase set out in this document.
Delivery	has the meaning set out in Condition 6 and Deliver and Delivered are to be construed accordingly.
Goods	the goods to be supplied by Fine Tubes pursuant to this Agreement.
Quotation	Fine Tubes' written quotation for the supply of the Goods under this Agreement as provided to the Buyer.
Fine Tubes	Fine Tubes Limited.
Specification	in respect a bespoke order the written specification provided by Fine Tubes and agreed with the Buyer in accordance with Condition 2 and in respect of all other Goods the relevant industry standard from time to time.

1.2 In these Conditions unless the context requires otherwise:

- 1.2.1 references to these Conditions or any other document are to these Conditions or that document as amended;
- 1.2.2 The singular includes the plural and vice versa; references to any gender include every gender; and references to persons include corporations, partnerships and other unincorporated associations or bodies of persons;
- 1.2.3 all headings are for convenience, have no legal effect and should be ignored when interpreting these Conditions;
- 1.2.4 any obligation not to do anything is deemed to include an obligation not to suffer, permit or cause that thing to be done if it is within the power of the relevant person to prevent that thing being done
- 1.2.5 a reference to any provision of any enactment will be construed as a reference to that provision or enactment as amended, re-enacted or extended at the relevant time;
- 1.2.6 the definitions contained in the Interpretation Act 1978 apply (unless a specific definition has been included or the context otherwise requires) in interpreting words and phrases used in these Conditions.

2 Supply of Goods

- 2.1 The Buyer will purchase and Fine Tubes will supply the Goods subject to these Conditions. These conditions are an integral part of all offers and agreements for the sale of Goods made by Fine Tubes. No variation of these Conditions shall be binding on Fine Tubes unless agreed in advance by Fine Tubes in writing.
- 2.2 Orders for the Goods can only be made by the Buyer's acceptance of the Quotation. Quotations are valid for 28 days.
- 2.3 The Quotation is given on the understanding that the specification for the Goods required by the Buyer will be reasonable given the nature of the Goods. If a bespoke specification is required, Fine Tubes will provide a statement of the intended specification following the Buyer's acceptance of the Quotation and Fine Tubes and the Buyer will negotiate in good faith to agree the Specification. [Fine Tubes reserves the right to supply a new Quotation if it becomes apparent that the due to the particular requirements of the specification for the Goods it is not commercially acceptable to supply the Goods in accordance with the original Quotation.]
- 2.4 Fine Tubes shall issue an Acknowledgement of Order and an agreement will only come into being upon issue of such acknowledgement.

3 Supplier Warranties

- 3.1 Except as set out below, Fine Tubes warrants that the Goods will correspond to the Specification at the time of delivery. All other warranties, conditions or other terms implied by statute or common law (including fitness for purpose) are excluded to the fullest extent permitted by law. Statements in production information, handbooks, websites, price lists or other information regarding the Goods will only be binding on Fine Tubes if expressly referred to in the Quotation or Acknowledgment of Order. This warranty is not transferable in any way.
- 3.2 No warranty claim may be made if the Buyer has not paid the Price in full or, the Goods have been sold or transferred in any way. [In respect of any Goods, parts or components not manufactured by Fine Tubes, the Buyer is only entitled to the benefit of any guarantee or warranty to which Fine Tubes is itself entitled.] Replacement Goods are only warranted for the period of the original Goods, warranty and defective parts replaced will become Fine Tubes' property.
- 3.3 Where a valid warranty claim is made in respect of any of the Goods, Fine Tubes can choose either to repair or replace the Goods (or the part in question) free of charge or grant credit to or refund to the Buyer the Price of the Goods (or a proportionate part of the Price) at Fine Tubes' absolute discretion, but Fine Tubes will have no further liability to the Buyer under the warranty. This is the Buyer's sole remedy in respect of the Goods.

4 Defective Goods and Shortages

- 4.1 In the event of any defects or shortages in the Goods, the Buyer shall give notice to Fine Tubes in writing within one week of the Goods arriving at their final destination in accordance with the agreed delivery term between the Parties. For defects that could not reasonably have been detected by the arrival of goods at their final destination the Buyer shall notify Fine Tubes within one week of the date the Buyer notices the defect provided that such notice shall not be later than [3] months after Delivery. In the event of any defects or shortages in the Goods notified to Fine Tubes by the Buyer in due time and in accordance with this Condition, Fine Tubes shall at its own expense and within reasonable time at its sole discretion either rectify the fault or deliver new goods or in the event of a shortage deliver the missing quantities to the agreed named place of destination.
- 4.2 The Goods shall only be deemed defective if they fail to meet the Specification. All Goods supplied shall be subject to a quantity tolerance of +/- 10% of the total quantity ordered unless agreed otherwise in writing and this shall be taken into account before there is deemed to be a shortage of Goods.
- 4.3 Apart from the remedies and conversation expressly set out in this Agreement or a separate agreement with Fine Tubes the Buyer cannot invoke any other remedies in respect of a defect or shortage in the Goods.

5 Liability

- 5.1 Except as provided in Condition 5.4, Fine Tubes is not liable to the Buyer because of any representation (unless fraudulent), or any warranty (express or implied), condition or other term, or any duty at common law, or under the express terms of the Contract, for:
- 5.1.1 any loss of profit, business, contracts, opportunity, goodwill, revenue, anticipated savings, expenses, costs or similar loss; and/or
- 5.1.2 any indirect, special or consequential loss or damage (whether for loss of profit or otherwise);
- whether caused by the negligence, breach of contract, tort, or breach of statutory duty of Fine Tubes, its employees or agents or otherwise, arising out of or in connection with the Agreement.**
- 5.2 Subject to Condition 5.3, the total liability of Fine Tubes to the Buyer in contract, tort, negligence, breach of statutory duty or otherwise arising out of or in connection with the Agreement is limited to the amount payable by the Buyer in respect of the Goods.
- 5.3 Despite the Conditions set out above, no Condition will exclude or restrict the liability of Fine Tubes for breach of the statutory warranty as to title and quiet possession. Nothing in these Conditions will operate or be construed to operate so as to exclude or restrict the liability of Fine Tubes for death or personal injury caused by the negligence of Fine Tubes.
- 5.4 The Buyer must rely on its own testing of Goods and in no circumstances will Fine Tubes be deemed to have represented that Goods are fit for any particular purpose[, other than any purpose expressly set out in the Quotation or Specification].

6 Delivery and Title

- 6.1 The provisions of this Condition 6 are subject to Condition 11.2.
- 6.2 Unless otherwise agreed in writing, Fine Tubes will Deliver the Goods to the delivery address stated in the Quotation on the date or within the delivery period stated in the Quotation during the Buyer's normal business hours.
- 6.3 Fine Tubes may divide and Deliver the Goods in instalments.
- 6.4 Delivery will be effected when Fine Tubes (its carrier or agent), properly unloads the Goods at the delivery address in accordance with the Buyer's instructions.
- 6.5 Any dates specified or agreed by Fine Tubes for Delivery are estimates only and time is not of the essence in relation to Delivery.
- 6.6 Without prejudice to Condition 6.5 above, the Buyer will, without obtaining any remedies, be entitled to terminate the purchase of the Goods by giving written notice thereof to Fine Tubes where the Delivery has been delayed by more than three months provided that if Fine Tubes has notified the Buyer of a specific new delivery date that is more than 3 months after the Delivery date originally anticipated, notice of termination must be given within five days of such notification.
- 6.7 If the Buyer for any reason will not accept Delivery of the Goods or has failed to provide adequate instructions, licences, documents or authorisations to facilitate Delivery;
- 6.7.1 risk in the Goods will pass to the Buyer when Fine Tubes informs the Buyer that the Goods are ready for Delivery; and
- 6.7.2 Delivery of the Goods will be deemed to have taken place; and
- 6.7.3 the Buyer will be liable to pay for the Goods in full together with any costs and expenses incurred by Fine Tubes as a result of the Buyer's failure to accept Delivery including but not limited to storage and insurance costs.
- 6.8 Risk in the Goods will pass to the Buyer upon Delivery or (in the case of Delivery by instalments upon Delivery of each instalment). Where payment or part payment has been made prior to Delivery, title in the Goods purchased will immediately vest in the Buyer and Fine Tubes will identify such Goods as the property of the Buyer and keep them separate from other goods at all times.
- 6.9 Title to the Goods does not pass to the Buyer until Fine Tubes has received full payment of the Price (plus VAT and other applicable charges) and all other sums due to Fine Tubes from the Buyer. Until property in the Goods passes to the Buyer, it will hold the Goods as Fine Tubes' fiduciary agent and bailee and will keep the Goods separate from its goods and those of third parties, properly stored, protected, insured and identified as Fine Tubes' property; and the Buyer will not pledge or charge the Goods by way of security or otherwise. Breach of any of the provisions of this Condition will result in all money owing by the Buyer to Fine Tubes (without affecting any of Fine Tubes' other rights or remedies) becoming immediately due and payable. Once property in the Goods has passed to the Buyer, it is entitled to resell or use the Goods in the ordinary course of its business. Fine Tubes may, before property in the Goods passes, require the Buyer to deliver up the Goods to it and, if the Buyer fails to do so, may repossess the Goods. The Buyer grants the Supplier an irrevocable licence to enter, with or without vehicles, any of its premises for the purpose of inspecting or repossessing the Goods.
- 6.10 The quantity of any consignment of Goods as recorded by Fine Tubes upon despatch from Fine Tubes' place of business shall be conclusive evidence of the quantity received by the Buyer on Delivery.

7 Price and Payment

- 7.1 Unless specified in the Quotation, the prices quoted by Fine Tubes will be exclusive of Value Added Tax (**VAT**), or any other tax or duty, and charges for packaging, shipping, carriage, insurance or Delivery of the Goods which will be charged in addition. All prices quoted are valid for 28 days only.
- 7.2 Fine Tubes will invoice the Buyer [●] [upon the Buyer's acceptance of the Quotation]. Payment will be due within 30 days of the date of the invoice.

- 7.3 Fine Tubes is entitled to charge interest on any undisputed overdue payment at the rate of 6% above the official Repo Rate of the European Central Bank or the penalty interest according to the law of the country of the Buyer's domicile, whichever is the highest shall be paid from the due date of the invoice.
- 7.4 VAT, where applicable, will be shown separately on all invoices and unless otherwise agreed, the invoice price is deemed to include all taxes (other than VAT), levies and duties of every kind and, where applicable, all packaging, carriage, freight and insurance in accordance with Condition 7.1.
- 7.5 Orders from the UK are payable in pounds sterling (£). Orders made from or for delivery to the rest of Europe are payable in Euros (€). Orders made from the US are payable in dollars (\$). Orders from the rest of the world are payable in [●].

8 Variations

No variation of any provision of the Agreement is effective unless it is in writing, refers specifically to the Agreement and is duly executed by the parties.

9 Confidentiality

- 9.1 Neither party will, either during the period of the Agreement or at any subsequent time, disclose to any other person any information of a commercial or proprietary nature including, without limitation, the terms and conditions of the Agreement and the commercial and financial arrangements evidenced by the Agreement (**Confidential Information**) disclosed to it by the other party, in writing or orally, whether before or after the date of the Agreement or which either party may make or discover during the term of the Agreement, other than:
- 9.1.1 to that party's employees, sub-contractors and agents insofar as it is necessary for the performance of its obligations under the Agreement; or
 - 9.1.2 with the prior written consent of the other party; or
 - 9.1.3 as required by law or the requirements of any recognised stock exchange; or
 - 9.1.4 where such information comes into the public domain other than by a breach of the Agreement; or
 - 9.1.5 where such information comes into the possession of the party from a third party who is not prevented from disclosing such information.
- 9.2 The party disclosing the Confidential Information will procure that the person to whom the Confidential Information is disclosed is made aware of the obligations of confidentiality set out in the Agreement and will comply with those obligations as if it were a party to the Agreement.

10 Termination

- 10.1 Without prejudice to any other rights of termination, Fine Tubes may terminate the Agreement at any time on giving the Buyer [14] days' prior notice of such termination.
- 10.2 Fine Tubes is entitled to terminate this Agreement immediately on written notice to the Buyer if:
- 10.2.1 the Buyer commits an irremediable material breach of the Agreement, or any other material breach of the Agreement and fails to remedy such breach within seven days of being required by written notice to do so. For this purpose "material breach" includes persistent breaches of the Agreement whether or not such breaches are significant in the context of the Agreement as a whole and/or have been remedied by the Buyer;
 - 10.2.2 the other party is unable to pay its debts (within the meaning of section 123(1) of the Insolvency Act 1986) or an order is made or a resolution passed for its liquidation, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer is appointed over it or all or any substantial part of its assets or takes formal steps towards making any kind of composition, compromise or arrangement involving it and any of its creditors, or anything analogous to the foregoing will occur in any jurisdiction.
- 10.3 The termination of the Agreement for any reason will be without prejudice to any rights or obligations which had accrued before the date of termination. The termination of the Agreement for any reason, will not affect the coming

into force or the continuation in force of any of its provisions which expressly or by implication are intended to come into force or to continue in force on or after termination.

11 Export Terms

- 11.1 **Incoterms** means The International Rules for the Interpretation of Trade Terms, 2000.
- 11.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this Condition 11 apply (subject to any special terms agreed in writing between the Parties) and any term or expression which is defined in or given a particular meaning by the provisions of Incoterms has the same meaning in these Conditions, unless there is any conflict, in which case these Conditions will prevail.
- 11.3 Unless otherwise agreed in writing the Goods will be delivered EXW and Fine Tubes is under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 11.4 Payment of all amounts due to Fine Tubes must be made in accordance with Condition 7.
- 11.5 The Buyer is responsible for ensuring that the Goods comply with the laws and regulations of the country to which it requires the Goods to be supplied and for obtaining the necessary export/import licences, consents and approvals. The Buyer will not hold Fine Tubes liable for any failure to comply with those laws and regulations or to obtain the necessary licences, consents or approvals and the Buyer accepts liability and responsibility for and import duty or other local tax.

12 Force Majeure

- 12.1 Neither party should be liable for delay in performing or failure to perform its obligations if the delay or failure results from events or circumstances outside their reasonable control such as war, civil unrest, fire, flood, labour disputes (including those initiated by a Party) and trade disputes. Such delay or failure shall not constitute a breach of this agreement and the time for performance shall be extended by a period equivalent to that during which performance is so prevented. If such delay or failure persists for more than three months, either party shall be entitled to terminate this Agreement to the extent of Goods not yet delivered to the Buyer. In the event of such a termination, neither party will be entitled to any compensation, but any pre-payment for goods not delivered shall be refunded and goods in transit not delivered shall be reverted.
- 12.2 The Party affected by the Force Majeure Event will take all steps as are necessary, without as a result having to incur the expenditure, to bring the Force Majeure Event to an end or to find a solution by which the Agreement may be performed despite the Force Majeure Event.

13 Notices

- 13.1 Any notices served by the parties under the Agreement may be delivered by hand or sent by first class, pre-paid, recorded delivery post [marked for the attention of [*insert job title of addressee*]] to the address of the registered office at the time of the notice of the addressee. Such notice shall be deemed to have been given on delivery at the relevant address or, if sent by first-class pre-paid post, two business days (that is, any day which is not a Saturday, Sunday or public holiday in the place at or to which the notice is left or sent) or seven business days in the case of overseas post sent by recorded delivery airmail after the date of posting, or if sent by fax, when despatched, subject to confirmation of uninterrupted transmission by a transmission report.
- 13.2 Notice is not validly served if sent by e-mail.

14 Disputes

- 14.1 In the event of any dispute or difference arising between the parties in connection with this Agreement, the parties shall attempt to resolve such dispute or difference in good faith and without recourse to legal proceedings. If the parties are unable to resolve such dispute or difference within 15 Working Days of initial discussions between the parties taking place, either party may request the other in writing that the matter be referred to senior representatives of the parties with authority to settle the dispute, who shall attempt to resolve the dispute within 30 Working Days of the written request to do so. If the dispute or difference is not resolved as a result of a meeting of the senior representatives of the parties, or if no meeting of the senior representatives occurs within the prescribed time periods set out in this Condition, either party may take action in accordance with Condition 20.
- 14.2 Nothing in this Condition is intended to restrict the right of either party to apply to a Court for injunctive or other urgent relief.

14.3 Fine Tubes shall in its sole discretion be entitled to choose to have recourse to a competent court in and laws of the Buyer's country for purposes of collecting mature debts of the Buyer.

15 Waiver

No relaxation, forbearance, delay or indulgence by either party in enforcing any of the terms and conditions of this agreement or the granting of time by either party to the other shall prejudice, affect or restrict the rights and powers of that party, nor shall any waiver by either party of any breach of this agreement operate as a waiver of or in relation to any subsequent or any continuing breach of it.

16 Severability

Any provision of the Agreement which is held to be invalid or unenforceable in any jurisdiction will be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of the Agreement, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

17 Contracts (Rights of Third Parties) Act 1999

Except as expressly provided in the Agreement, a person who is not a party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

18 Assignment and Sub-Contracting

Fine Tubes may assign, transfer or sub-contract in whole or in part any of its rights or obligations under the Agreement. The Buyer may not assign, transfer or sub-contract in whole or in part any of its rights or obligations under the Agreement without Fine Tubes' prior written consent.

19 Entire Agreement

This Agreement sets out the entire agreement and understanding between the Parties and supersedes any previous agreements between them relating to the subject matter of this Agreement. No amendment to this Agreement shall be binding on the parties unless it is recorded in writing and signed by both parties.

20 Governing Law

English law applies to the Agreement and, subject to Condition 14.3, the parties submit to the non-exclusive jurisdiction of the English courts as regards any claim or matter arising under the Agreement.