

STRIX LTD, STRIX GUANGZHOU LTD and STRIX (CHINA) LIMITED
TERMS AND CONDITIONS OF SALE

12/24

1. DEFINITIONS

The following terms shall have the following meanings:

'The Seller'	means STRIX LTD, STRIX GUANGZHOU LTD and STRIX (CHINA) LIMITED
'The Buyer'	means the company, firm, person or body of persons from whom the Order is received.
'Goods'	means the products, items, materials, services and/or articles (or any part of them) set out in the Order, which the Buyer has agreed to purchase.
'Order'	means the order placed by the Buyer with the Seller for the supply of Goods.
'Conditions'	means the terms and conditions of trading set out in this document, as may be amended from time to time by the Seller without notice.
'Latent Defect'	means a frailty or shortcoming in the Goods resulting from a departure from the Specification of the Goods during manufacture that could not have been discovered by a reasonable thorough inspection before acceptance of the Goods by the Buyer.
'Confidential Information'	means all information of the Seller (in whatever medium including written, oral, visual or electronic form) which is non-public, sensitive, confidential or proprietary in nature, including but not limited to all business, financial, commercial, technical, operational, organisational, legal, management and marketing information.
'Intellectual Property'	means all inventions, patents, utility models, designs (both registered and unregistered), database rights, copyright and trade marks (both registered and unregistered), together with all rights to the grant of and applications for the same and including all similar or analogous rights and all other rights in the nature of intellectual and industrial property throughout the world and all future rights of such nature.
'Specification of the Goods'	means any specification for the Goods, including any related plans and drawings that is agreed in writing by the Seller and the Buyer.
'Warranty Period'	as defined in clause 12.

2. ACCEPTANCE

2.1 All acceptances, contracts, Orders and quotations are subject to these Conditions. These Conditions supersede any arrangements, agreements, statements, representations or negotiations made between the Buyer and the Seller relating to the subject matter hereof.

2.2 No variation of these Conditions, including the introduction of additional terms and conditions shall be binding on the parties unless it is in writing and approved by a Director of the Seller.

3. CONDITIONS

3.1 Any quotation given by the Seller is an invitation to treat and is based on prices current at the time the quotation is given. Such quotation shall remain open for a period of 30 days unless previously withdrawn by the Seller.

3.2 All prices quoted are exclusive of Value Added Tax (where applicable) unless expressly stated otherwise and may exclude transportation costs in line with the latest Incoterms.

3.3 Goods shall be delivered to the Buyer's designated location and in accordance with the Incoterms that have been agreed between the parties and specified in the Order. Subject to which Incoterms is specified in the Order, the computation of insurance and freight costs is 1.5% of the total invoice.

3.4 The Seller reserves the right at any time prior to delivery of the Goods to adjust the price to take account of any increase in costs the Seller may incur, including but not limited to materials, labour or services or any exchange rate fluctuations.

3.5 The Seller reserves the right to make any changes in the Specification of the Goods without obtaining the Buyer's consent if such changes are required to conform with any applicable safety or other statutory requirements or which does not in any way affect the appearance of the Goods or materially affect their quality or performance.

3.6 The Buyer shall be responsible for giving the Seller within a sufficient time any information known to the Buyer which the Seller requires to perform its obligations under the contract.

4. RISK

4.1 Risk of loss of, or destruction of or damage to the Goods shall pass to the Buyer (or its agents) pursuant to the applicable Incoterms specified in the Order.

4.2 From the moment of delivery the Buyer shall promptly effect and maintain in the joint names of the Buyer and the Seller comprehensive insurance cover on the Goods for their full invoice price until payment has been made in accordance with clause 11.

5. PASSING OF TITLE

5.1 Notwithstanding the passing of risk in accordance with clause 4.1, title in the Goods shall not pass to the Buyer until payment in full has been received by the Seller for all Goods and for all other amounts outstanding from the Buyer to the Seller on any account whatsoever.

5.2 The Buyer is hereby licensed by the Seller to use or to agree to sell the Goods subject to the express condition that:

5.2.1 any sale by the Buyer of the Goods whether or not incorporated into other goods shall be made as agent on behalf of the Seller;

5.2.2 the percentage of the proceeds of sale made by the Buyer pursuant to clause 5.2.1 which relates to the invoice price of the Goods sold shall be paid into a separate bank account and held in trust for the Seller and shall not be mixed with other monies or paid into an overdrawn bank account and shall at all times be identified as the Seller's monies.

5.3 Until title to the Goods passes:-

- 5.3.1 The Buyer will hold the Goods as fiduciary agent and bailee for the Seller. For clarity, the Buyer has full discretion in establishing the subsequent sales price for the specified Goods to its customers. The Seller retains title solely as protection against the Buyer's failure to pay;
- 5.3.2 Subject to clause 5.2 the Goods shall be kept separate and distinct from all other property of the Buyer or of any third party and shall be stored (at no cost to the Seller) in such a way as to be clearly identifiable as belonging to the Seller;
- 5.3.3 The Seller may at any time revoke the power of sale and use contained in clause 5.2 by notice to the Buyer if the Buyer is in default for longer than 14 days in the payment of any sum whatsoever due to the Seller in respect of any Goods or if the Seller has bona fide doubts as to the solvency of the Buyer;
- 5.3.4 The Buyer's power of sale and use contained in clause 5.2 shall automatically cease if the Buyer has a petition presented for its winding-up or passes a resolution for voluntary winding up other than for the purposes of a bona fide amalgamation or reconstruction or compounds with its creditors or has a receiver appointed of all or any part of its assets or becomes bankrupt or insolvent or enters into any arrangement with creditors or suffers from any similar action in consequence of debts or carries out or undergoes any analogous act or proceedings under foreign law;
- 5.3.5 Upon determination of the Buyer's power of sale and use pursuant to clauses 5.3.3 or 5.3.4 the Buyer shall place any unsold Goods in its possession or under its control at the disposal of the Seller and the Buyer hereby authorises the Seller using such force as may be reasonably necessary to enter upon the premises of the Buyer for the purpose of removing such Goods for re-sale or otherwise.

6. LIABILITY

- 6.1 Nothing in clause 6 shall be deemed to exclude or restrict the Seller's liability for death or personal injury resulting from negligence.
- 6.2 Each of the sub-classes in clause 6 is to be treated as separate and independent.
- 6.3 The Seller is willing to undertake liability additional to that provided by this clause in exchange for a higher price.
- 6.4
- 6.4.1 The Seller shall not be liable for any consequential or indirect loss suffered by the Buyer whether this loss arises from a breach of a duty in contract or tort or in any other way (including loss arising from the Seller's negligence).
- 6.4.2 Non-exhaustive illustrations of consequential or indirect loss would be loss of profits, loss of contract, damage to property of the Buyer or anyone else, and personal injury to the Buyer or anyone else (except so far as such injury is attributable to the Seller's negligence).
- 6.5 The Seller's total liability for any loss of the Buyer arising from any act or omission, neglect or default including negligence by the Seller under the Order, whether in tort or in contract (except in respect of death or personal injury resulting from negligence, which shall be unlimited) over the term of the Order in the aggregate shall not exceed £500,000 (five hundred thousand pounds).

7. SPECIAL ORDERS

- 7.1 Orders for Goods to be manufactured by the Buyer's unique requirements and/or specifications cannot be amended without prior written agreement.
- 7.2 The Buyer shall meet the cost of any special packaging or additional packaging requested by the Buyer.
- 7.3 For any bespoke or private-label packaging of the Goods, the Buyer shall ensure that it has all necessary rights and permissions in order to grant to the Seller all appropriate licences to copy, reproduce and use such materials provided by the Buyer, including without limitation any name, artwork, logo, slogan, design, trade name, trade mark, copyright and any other intellectual property.

8. DESPATCH DATES AND LICENCES

- 8.1 Although the Seller will use all reasonable efforts to meet despatch forecasts, such forecasts are estimates only. For the avoidance of doubt, time is not of the essence. Delays in despatch shall not entitle the Buyer to (i) refuse to take delivery of the Order; or (ii) claim damages for loss whether direct or consequential arising from delay in despatch; or (iii) terminate the contract.
- 8.2 The Seller may effect delivery in one or more instalments. Failure by the Seller to deliver any one or more instalments shall not entitle the Buyer to treat the contract as a whole repudiated. Each instalment shall be treated as a separate contract and will be invoiced and paid for in accordance with these Conditions. The failure of the Buyer to pay for any one or more of the said instalments of Goods on due dates shall entitle the Seller to suspend further deliveries of the Goods without notice, pending payment by the Buyer.
- 8.3 If the Buyer refuses or fails to take delivery of Goods tendered in accordance with the contract or fails to take any action necessary on its part for delivery and/or shipment of the Goods (otherwise than by reason of the Seller's fault), the Seller shall, without prejudice to any other right or remedy, be entitled to: (i) any costs or losses sustained or incurred directly from the Buyer's refusal or failure to take delivery, including, but not limited to any freight charges; (ii) store the Goods (at the risk of the Buyer) and charge the Buyer for the reasonable costs of storage (including insurance); and/or (iii) terminate the contract with immediate effect, re-sell or otherwise dispose of the Goods as the Seller may determine and recover from the Buyer any loss and additional costs incurred as a result of such refusal or failure.
- 8.4 The Buyer shall be responsible for (i) providing the Seller with any information which is necessary in order to enable the Seller to fulfil the Orders and to comply with all manufacturing, sales, labelling, packaging, marketing and other applicable legal requirements in the country of destination; and (ii) complying with any legislation or regulations governing the importation of the Goods into the country of destination. If any licence, clearance, duty deferment facility or consent of any government or other authority shall be required for the acquisition, carriage or use of the Goods by the Buyer, the Buyer shall obtain it at its own expense and if required by the Seller produce evidence on demand that it has done so. Failure to obtain it shall not entitle the Buyer to withhold or delay payment of the Goods. Any additional expenses or charges incurred by the Seller resulting from such failure shall be for the Buyer's account.

9. SHORTAGE OR DAMAGE

9.1 The Buyer shall immediately on receipt of the Goods, inspect for any external damages to the Goods and notify the carrier of any shortages of the Goods prior to acknowledging safe delivery of the ordered Goods.

9.2 Notices of shortages or damages to Goods must be sent to the Seller in writing within three days from receipt of the Goods. In the case of a Latent Defect, the Buyer must notify the Seller within a reasonable time of the Latent Defect having become apparent, and certainly within the Warranty Period.

9.3 Upon receiving notice of damaged Goods, the Seller may at its option request the Buyer to destroy the damaged Goods or request such Goods to be returned to the Seller for examination. If defects exceeds 5% (five percent) of the Goods ordered in any Order, the Seller shall repair or replace the defective Goods, or if the Goods cannot be repaired or replaced, the Seller shall give the Buyer credit equivalent to the invoice price of the defective Goods, as the Buyer's sole remedy. Where Goods are returned to the Seller and no fault is found, a charge may be made for the time spent inspecting such Goods and for the cost of carriage and insurance and any other charges reasonably incurred by the Seller.

9.4 Wherever the Seller sells, supplies Goods which are manufactured by a third party, specifically, but not exclusively, rubber seals and gaskets, screws and washers, the quantity supplied against the invoice price relating to the Goods manufactured by a third party will be allowed to vary by +/- 2% of the invoiced quantity.

10. TRANSPORT

10.1 Transportation of the Goods shall be in line with the Incoterms specified in the Order.

10.2 The Seller shall not be liable for demurrage, detention or delays in unloading inbound vehicles, or detention or delays in obtaining and loading vehicles for outbound shipment unless the Seller has failed to exercise reasonable care and judgement as determined and expected by good industry practice.

11. PRICE VARIATION and PAYMENT

11.1 In view of the uncertainty of the future cost of manufacture the Seller is compelled to stipulate that notwithstanding any prices quoted by the Seller, stated in the Buyer's Order, or stated on the Seller's order acknowledgement form, Goods will be invoiced at the Seller's price current at the date of dispatch.

11.2 Any increase in the rate of carriage during the continuance of the Order to be payable by the Buyer.

11.3 Quantity orders are accepted on the condition that they are called off within 12 months of the date of acknowledgement. If they are not called off, the Seller reserves the right to change retrospectively the difference between the bulk price and the higher price for quantity actually called off.

11.4 The Seller shall invoice the Buyer for the Goods, and the Buyer shall pay each invoice submitted by the Seller in accordance with the payment terms set out in the invoice and on the Seller's order of acknowledgement.

11.5 Payment shall be made to the bank account nominated in writing by the Seller. Time of payment is of the essence.

11.6 If the Buyer fails to make any payment due to the Seller in accordance with the Seller's payment terms (which are set out on the invoice), then the Buyer shall pay interest on the overdue amount at the rate of 4% per annum above the Seller's nominated bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount. The Buyer shall pay the interest together with the overdue amount.

11.7 Payment of invoices shall be made in full and without any deduction or set off.

11.8 All prices are confidential and shall not be disclosed to any third party without the Seller's written consent.

12. WARRANTY

Any Goods failing due to faulty workmanship and/or defective material, will be replaced or repaired free of charge by the Seller providing such failure occurs within a period of one year from the date of invoice, or such period in line with the Seller's legal guarantee of conformity, or such period in line with the Specification of the Goods, or agreed elsewhere in writing, whichever period is the longest ('Warranty Period'). The Seller shall not be liable for the Goods' failure to comply within the Warranty Period if any of the following events occur: (i) the Goods are dismantled or altered or repaired by the Buyer (or a third party) without the Seller's prior written permission; (ii) the Buyer makes any further use of such Goods after giving notice that the Goods do not comply to workmanship and/or materials; (iii) the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same; (iv) the defect arises as a result of the Seller following any drawing, design or specification supplied by the Buyer; (v) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or (vi) the Goods differ from the Specification of the Goods as a result of changes made to ensure they comply with applicable statutory or regulatory requirements. The Seller will not be responsible for any Goods returned without its consent having first been obtained in writing, irrespective of whether the Goods are defective or not. The warranty is limited to repair or replacement only and no responsibility can be accepted for consequential loss or damage. The warranty does not apply to Goods purchased second hand or through private sales.

13. INFRINGEMENT

The Seller cannot guarantee that the Goods do not infringe any patent, trade mark, copyright or other similar right held by any third party (and the Buyer accordingly takes the Goods with the risk thereof) nor will the Seller accept any liability whether statutory or otherwise to disclose to the Buyer any claim by a third party that the Goods do infringe any such right. The Seller therefore will in no circumstances be liable for any damage or loss howsoever caused to the Buyer which is or may be attributable to any such claim.

14. INTELLECTUAL PROPERTY

All right, title and interest in and to any Intellectual Property made or related to the Goods (including any improvements which are made or conceived by the Seller) shall be the sole property of the Seller. Unless otherwise expressly stated in these Conditions, these Conditions shall not be construed as transfer of ownership of, or convey any licenses or rights under any Seller's Intellectual Property.

15. FORCE MAJEURE

15.1 The Seller shall not be liable for any failure to deliver the Goods arising from circumstances outside the Seller's control, which by its nature could not have been foreseen, or if it could have been foreseen, was unavoidable.

15.2 Non-exhaustive illustrations of such circumstances would be an act of God, war or hostilities, riot or civil commotion, explosion, abnormal or extreme weather conditions, storms, earthquake, epidemic, pandemics, natural disaster, fire, flood, accidents, strikes, lock-outs or industrial action (whether involving its own workforce or a third party), Government actions or regulations (UK or otherwise), delay or default by suppliers or contractors or break down of transport or machinery, or collapse of building structures.

15.3 Should the Seller be prevented from delivering in the above circumstances it shall give the Buyer written notice of this fact as soon as reasonably practicable after discovering it.

15.4 If the circumstances preventing delivery are still continuing three months after the Buyer receives the Seller's notice then either party may give written notice to the other cancelling the contract.

15.5 If the contract is cancelled pursuant to clause 15.4 the Seller will refund any payment which the Buyer has already made on account of the price (subject to deduction of any amount the Seller is entitled to claim from the Buyer) but the Seller will not be liable to compensate the Buyer for any further loss or damage caused by the failure to deliver.

16. NOTICES

16.1 Any notice or other communication to be served under these Conditions shall be sent in writing by pre-paid recorded delivery or registered post (addressed to the other party's registered office or its principal place of business) or by email (to the address frequently used between the parties to correspond with each other) and shall be deemed to have been received by the addressee within (10 days) of posting or if sent by email, one business day after transmission.

16.2 The Buyer shall give notice to the Seller of the change or acquisition of any address or facsimile or similar number at the earliest possible opportunity but in any event within 48 hours of such change or acquisition.

17. CONFIDENTIALITY

17.1 The Buyer shall use the Confidential Information only for the proper performance of its duties under the contract of sale and shall not without the Seller's prior written consent disclose or permit the disclosure of such information except in confidence for the proper performance of its duties under the contract of sale to those of its employees, officers and professional advisers who need to have access to it.

17.2 The provisions of clause 17.1 shall not apply to Confidential Information which (i) was known to the Buyer before receipt of such information, (ii) is in or enters the public domain through no wrongful default by or on behalf of the Buyer or (iii) was received from a third party without similar obligations of confidence. Within three (3) days of receipt of a request to do so made at any time and in any event if the contract of sale is terminated, the Buyer shall promptly return or destroy (at the option of the Seller) all such Confidential Information.

18. ASSIGNMENT

The Buyer shall not assign or transfer or purport to assign or transfer the benefits or liabilities arising under the contract for the sale and purchase of the Goods to any other person without the prior written consent of the Seller.

19. RIGHTS OF THIRD PARTIES

Unless it expressly states otherwise, these Conditions do not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Conditions.

20. PROPER LAW

These Conditions shall be governed by and construed in accordance with English law and the Buyer hereby irrevocably submits to non-exclusive jurisdiction of the English Courts in respect of any dispute or matter arising out of or connected with these Conditions.

21. TRANSLATION

These Conditions have been drafted in the English language. In the event of any ambiguity between the English language version and any translation into another language, the meaning and intent contained in the English language version shall prevail.