

**TERMS AND CONDITIONS FOR SALE OF ALL PRODUCTS OF SHIN-ETSU  
HANDOTAI EUROPE LIMITED ("SEH")**

**1. BASIS OF SALE**

Upon acceptance by SEH this price quotation constitutes a complete and binding contract governed by the terms and conditions of sale appearing herein and by the laws of the Scotland. Acceptance is at all times subject to availability of the Products covered by each order. Any acceptance or confirmation which states additional or differing terms from this contract shall be operative as acceptances; provided, however, that all such additional or differing terms shall not be part of this contract and notice of objection to them is hereby given.

**2. PAYMENT**

- a. Payment of the price(s) for the Products or of any other additional amount shall be net thirty (30) days from the date of SEH's invoice.
- b. SEH reserves the right to change the credit terms at any time, when in SEH's opinion Buyer's financial condition or previous payment record so warrants.
- c. The price(s) shown in the quotation relate to a sale on the basis of the specified Incoterm (1990).
- d. Should Buyer fail to pay any sum due SEH, after ten (10) days from the date of written notice to Buyer, SEH shall not be obliged to continue performance under this contract.

**3. INCREASE IN PRICE**

The price(s) stated herein may be increased to the extent that SEH's cost of the Products sold hereunder may be increased as a result of (1) any agreements, codes, or legislative enactments made or enacted pursuant to government or local legislation, (2) increase in costs of labour, raw materials, or overhead, (3) taxes or other charges imposed by governmental authority upon the production, sale or use of such Products or of materials used in the manufacture thereof, or (4) increase in existing freight rates.

**4. END USE**

- a. Determination of the suitability of the Products described in the quotation for the use contemplated by Buyer or Buyer's customers is the sole responsibility of Buyer or Buyer's customers, whichever the case may be and SEH shall have no responsibility in connection therewith. Buyer assumes all risk and liability for loss, damage, or injury to property of Buyer or others, and injury to third persons or personnel of Buyer arising out of the use or possession of the Products furnished hereunder and hereby agrees to indemnify SEH in respect of any claim made by any third party in respect thereof.
- b. Buyer shall use the Product acquired from SEH for civil (non-military) purposes only or shall re-sell, re-transfer or re-export the Product only to customers or users who will use them for civil (non-military) purposes.

- c. Buyer shall not, directly or in-directly, re-sell, re-transfer or re-export the Product to customers or users engaged in the development or manufacture of weapons of mass-destruction such as nuclear, biological or chemical weapons and missiles.
- d. Buyer shall not use the items for the development of manufacture of weapons of mass-destruction such as nuclear, biological or chemical weapons and missiles.
- e. Buyer shall protect, defend, hold harmless and indemnify SEH from and against any liability, claims, damages or penalties arising from Buyer's failure to comply with its obligations set forth above.

**5. WARRANTY**

- a. SEH warrants only that the Products supplied hereunder shall meet the description(s) or specification(s) stated in the quotation.
- b. THE ABOVE WARRANTY IS IN LIEU OF ALL OTHER WRITTEN OR UNWRITTEN, EXPRESS OR IMPLIED, WARRANTIES AND SEH HEREBY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE PRODUCTS SUPPLIED HEREUNDER.
- c. Buyer shall notify SEH promptly in writing of any claim of breach of warranty and shall provide SEH with the opportunity to inspect and verify each Product claimed to be defective.

**6. BUYER'S REMEDIES AND NOTICE**

- a. Buyer's exclusive remedy and SEH's sole liability hereunder is expressly limited to (i) replacement of the Products shown to be other than as warranted, or (ii) refund of the purchase price to the Buyer, at SEH's option. Buyer shall have no right to cover by procuring substitute Products. In no event shall SEH be liable for any labour claims or special, indirect, incidental or consequential damages, lost profits, or for any claim or demand against Buyer by any other party, whether arising under any warranty, express or implied, or otherwise. SEH's liability for damages under this contract shall in no event exceed the purchase price. Said refund or replacement under this contract is conditional on Buyer giving SEH written notice within sixty (60) days from the date of shipment by SEH that such Products are other than as warranted. Failure by Buyer to give such notice within the sixty (60) day period shall constitute an irrevocable acceptance of the Products and an admission that they fully comply with all terms, conditions, warranties and specifications of this contract.
- b. Any action concerning this contract shall be brought within two (2) years after the cause of action has accrued.

**7. REJECTED PRODUCTS**

It is agreed that, Buyer, on rejecting any Product delivered hereunder, will hold such Product at Buyer's place of business until such time as SEH has been notified in writing of such rejection. If requested by SEH, Buyer shall promptly return to SEH's plant any

rejected Product and SEH will pay freight thereon. Under no circumstances may Buyer return any rejected Product to SEH without first receiving an A.R.M. (Authorisation to Return Material) form.

#### **8. RETENTION OF TITLE**

- a. SEH retains, until Buyer performs all of its obligations hereunder (including, without limitation, payment in full of the purchase price), a purchase money security interest in the Products (including all accessions and replacements thereto and the proceeds thereof) to secure performance of all such obligations of Buyer.
- b. Buyer agrees promptly upon request by SEH to execute any financing statement, application for recording and like documents, and to take any other action deemed necessary or desirable by SEH in order to perfect SEH's security interest hereunder. In addition, Buyer hereby appoints SEH its attorney-in-fact to prepare, sign, and file or record for Buyer's name, any such documents.
- c. The making of this contract between Buyer and SEH shall constitute their execution of this Security Agreement.

#### **9. SHIPMENT AND RISK OF LOSS**

- a. The delivery date set forth on the Schedule is approximate and dependent upon prompt receipt by SEH of all necessary information from Buyer and shall be subject to review and revision on the basis of SEH's commitments at the time of receipt of such information.
- b. In the absence of specific written instructions from Buyer, SEH shall select a carrier, but shall not thereby assume any liability in connection with the shipment, nor shall the carrier be construed to be an agent of SEH.
- c. Risk of loss or damage to the Products shall pass to Buyer upon delivery of the Products to the carrier at the designated shipping point (regardless of whether payment of the purchase price has theretofore been made).
- d. Confiscation or destruction of, or damage to, the Products following delivery shall not in any way affect the liability of Buyer to pay the purchase price. Buyer shall inspect the Products upon receipt, and notify SEH within twenty-four (24) hours following delivery, of evidence of shipping damage or destruction.

#### **10. PATENTS**

- a. If any proceedings are instituted against Buyer for infringement of any United Kingdom patent alleging that the Products furnished hereunder or SEH's method of manufacturing the same, infringe any such United Kingdom patent, SEH shall, at its own expense, defend and control such proceedings against such allegations and shall pay any award of damages assessed against Buyer in such proceedings only to the extent that the damages are awarded in connection specifically with said alleged infringement; provided, however, Buyer gives SEH prompt notice in writing of the institution of such proceedings and Buyer permits SEH to defend

and control same with Buyer's co-operation and assistance against such allegations. The foregoing fully expresses Buyer's exclusive remedy and SEH's sole liability with respect to infringement of any patent by the Products supplied hereunder and SEH HEREBY EXPRESSLY DISCLAIMS ANY WRITTEN OR UNWRITTEN, EXPRESS OR IMPLIED, WARRANTY AGAINST INFRINGEMENT, with respect to such Products.

- b. In no event shall SEH be liable to defend or pay any award of damages assessed against Buyer in any proceedings or cause of action alleging that the use of the Products supplied hereunder infringes any patent. Buyer shall hold SEH harmless against any claim, loss, or expense arising out of SEH's compliance with any specifications furnished by Buyer with respect to the Products supplied hereunder and Buyer shall, at its own expense, defend any proceedings against SEH arising out of SEH's compliance with specifications furnished by Buyer.

#### **11. QUANTITY VARIATIONS**

On any individual order or release against an order for Products not stocked as a standard item, or not packed in standard cartons or packages, or on which special fabrication or production is involved, SEH reserves the right to ship and invoice for a quantity of goods which may vary up to ten (10) per cent over or under the quantity specified on the individual order or release. Buyer shall accept delivery and pay for such revised quantity.

#### **12. ORDERS FOR INDEFINITE DELIVERY**

Orders with indefinite delivery dates are accepted upon the understanding that SEH shall have the right to fill such orders as it sees fit in the course of its manufacturing schedules, and to hold the Products for Buyer's account, at Buyer's expense and risk, pending receipt of definite shipping instructions, and, where required, by government authorisation.

#### **13. ASSIGNATION**

Buyer may not assign this contract, in whole or in part, without the prior written consent of SEH. Any attempt to assign any rights, duties, or obligations which arise under such assignation shall be void.

#### **14. FORCE MAJEURE**

In the event of war, fire, flood, strike, work stoppage, power failure, accident, riot, act of God, law, regulation, ordinance, act or order of any governmental agency or official thereof, or other contingency beyond the control of the parties, interfering with the production, supply, transportation, or consumption of the Products covered by this contract, or with the supply of any raw material used in connection therewith, quantities so affected may be eliminated from this contract without liability, but the contract shall otherwise remain unaffected. SEH may during any period of shortage due to any of said causes, prorate its supply of such Products among its customers under this and other orders and contracts in such manner as SEH may deem fair and practicable.

#### **15. CHANGES AND TERMINATIONS FOR CONVENIENCE**

- a. Modifications may only be made by a writing signed by both parties.

- b. If Buyer desires to terminate this contract SEH may charge Buyer a cancellation charge to cover SEH's actual or anticipated loss. SEH reserves the right to charge the full purchase price of the Products by way of a cancellation charge.

**16. VALIDITY OF CONTRACT**

If any provision(s) of this contract shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provision(s) shall not in any way be affected or impaired thereby.

**17. ANTI-FACILITATION OF TAX EVASION**

- a. The Buyer shall:
  - (i) not engage in any activity, practice or conduct which would constitute either:
    - 1. a UK tax evasion facilitation offence under section 45(5) of the Criminal Finances Act 2017; or
    - 2. a foreign tax evasion facilitation offence under section 46(6) of the Criminal Finances Act 2017;
  - (ii) comply with SEH's ethics, anti-bribery and anti-corruption policies as amended by notification to the Buyer from time to time, but only to the extent that such policies have been provided or notified to the Buyer;
  - (iii) have and shall maintain in place throughout the term of this contract such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person (including without limitation employees of the Buyer) and to ensure compliance with Clause 17; and
  - (iv) promptly report to SEH any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017, in connection with the performance of this contract.
- b. For the purposes of Clause 17, the meaning of reasonable prevention procedure shall be determined in accordance with any guidance issued under section 47 of the Criminal Finances Act 2017 and a person associated with the Buyer includes but is not limited to any subcontractor of the Buyer.

**18. ENTIRE CONTRACT AND HEADINGS**

- a. Save where specified on the quotation or otherwise agreed in writing by SEH, the above terms and conditions represent the entire contract between SEH and Buyer with respect to the sale of the Products supplied hereunder and supersede all proposals, oral or written, and all other communications between the parties relating to the subject matter of this contract.
- b. Headings to paragraphs have been included for convenience only and shall not affect the interpretation or construction of this contract.

**19. REMEDIES UPON DEFAULT**

- a. Upon Buyer's default, SEH shall have all the rights and remedies of a secured creditor, as well as those of a seller of goods, under the Uniform Commercial Code and other applicable law, including but not limited to the right to take possession of the Products herein supplied.
- b. SEH may remedy any default by Buyer and may waive any default by Buyer without waiving the default remedied or without waiving any prior or subsequent such default.

**20. FEES AND COSTS**

If any action at law or in equity is necessary to enforce or interpret the terms of this contract, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which it may be entitled.

**21. LAW AND JURISDICTION**

This contract shall be governed by Scots Law and the Buyer submits to the non-exclusive jurisdiction of the Scottish Courts.