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Terms and Conditions of Sale

Fine Tubes Limited

Revision [] February 2011



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TERMS AND CONDITIONS OF SALE (“Conditions”)

1 Definitions and Interpretation

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

Acknowledgement of Order	any acknowledgement of the Buyer’s Order provided by Fine Tubes to the Buyer, which may be in writing or sent by email.
Agreement	these Conditions, the Quotation and any Acknowledgement of Order collectively.
Bespoke Goods	those Goods which are specifically designed for the Buyer, modified for the Buyer, or sourced specifically for the Buyer pursuant to a Bespoke Specification.
Buyer	the person(s), firm or company purchasing the Goods.
Conditions	the terms and conditions of sale set out in this document.
Delivery	has the meaning set out in Condition 5.2 of these Conditions and “ Deliver ” and “ Delivered ” are to be construed accordingly.
Goods	the goods to be supplied by Fine Tubes pursuant to an Order made under this Agreement.
Order	the Buyer’s written acceptance of the Quotation.
Price	the contract price agreed between the parties for the supply of the Goods as detailed in the Quotation, subject always to confirmation by Fine Tubes in an Acknowledgement of Order.
Quotation	Fine Tubes’ written quotation for the supply of the Goods under the Agreement as provided to the Buyer upon request.
Fine Tubes	Fine Tubes Limited.
Specification	either: (a) in respect of an order for Bespoke Goods, the written specification agreed between the parties in accordance with Condition 2 (a Bespoke Specification); or (b) 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 something 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 Unless the parties agree otherwise, Fine Tubes will supply and the Buyer will purchase the Goods subject to these Conditions.

2.2 Upon request, Fine Tubes will provide the Buyer with a Quotation, which shall remain valid for 14 days from the Buyer's receipt. The Quotation is given on the understanding that the Specification for the Goods required by the Buyer will be reasonable. The Buyer's placing of an Order constitutes an offer by the Buyer to purchase the Goods from Fine Tubes, which Fine Tubes may or may not accept. Should Fine Tubes accept the Buyer's Order, a binding contract will come into existence. Fine Tubes shall, following receipt of the Buyer's Order, issue an Acknowledgement of Order.

2.3 If a Bespoke Specification is required, Fine Tubes will, following the Buyer's request for a Quotation, provide a draft Bespoke Specification to the Buyer. Fine Tubes and the Buyer will then negotiate in good faith to agree the Bespoke Specification. Bespoke Goods cannot be returned or cancelled by the Buyer after an Order is placed.

2.4 Fine Tubes reserves the right to supply a new Quotation for Bespoke Goods if Fine Tubes, in its reasonable opinion, considers that the supply of the Goods in accordance with the original Quotation would not be commercially viable.

2.5 All Orders accepted by Fine Tubes are subject to the necessary materials and components being commercially available. Fine Tubes does not give any warranty as to availability of materials and components. Fine Tubes reserves the right to vary the agreed Specification if, in its reasonable opinion, the finished product will be of an equivalent or higher standard.

3 Fine Tubes Warranties

3.1 Fine Tubes warrants that the Goods will correspond to the Specification at the time of Delivery. This warranty is not transferable in any way. 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 Specification, Quotation and/or any Acknowledgment of Order.



- 3.2 Fine Tubes does not warrant or represent that the appearance and/or colours of products shown in any catalogue or website exactly reproduce the appearance and/or colours of the physical products themselves. The Buyer agrees to check the accuracy and suitability of any Bespoke Specification before submitting its Order to Fine Tubes.

4 Documents

All documentation in connection with this Agreement shall be in the English language.

5 Liability

- 5.1 Except as provided in Condition 5.3, 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 Agreement, for:
- 5.1.1 any loss of profit, business, sales, turnover, contracts, opportunity, goodwill, reputation, 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 relevant Order. Fine Tubes will have no liability to the Buyer in respect of Goods for which the Buyer has not paid in full, or if the Goods have been sold or transferred in any way.
- 5.3 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 Fine Tubes shall not be responsible for the accuracy or suitability of any drawing, design or other specification document supplied by the Buyer, notwithstanding that Fine Tubes may have inspected, commented on or relied upon the same in the manufacture and/or supply of the Goods.
- 5.5 Fine Tubes does not represent that Goods are fit for any particular purpose [other than a purpose expressly set out in the Quotation and/or any Specification]. The Buyer must rely on its own testing of the Goods.

6 Delivery

- 6.1 The provisions of this Condition 6 are subject to Condition 15.
- 6.2 The Goods will be deemed Delivered when the Goods are properly unloaded at the address agreed in advance with the Buyer in accordance with the Buyer's instructions or, in the event that the Buyer collects and/or transports the Goods from Fine Tubes, the moment of loading onto the Buyer's or Buyer's contractor's vehicle or handing to the Buyer.
- 6.3 Any dates specified or agreed by Fine Tubes for delivery are estimates only and time is not of the essence in relation to delivery, nor may it be made so.
- 6.4 Unless otherwise agreed in writing, Fine Tubes will deliver the Goods to the address stated in the Quotation on the date or within the period stated in the Quotation and during the Buyer's normal business hours. Fine Tubes may refuse to deliver any Goods over roads or other ground which it considers unsuitable. Any resultant abortive costs incurred will be paid by the Buyer to Fine Tubes. It is the Buyer's responsibility to offload the Goods in a safe manner and to provide, free of charge, adequate labour and equipment for this purpose.



- 6.5 Fine Tubes may choose to divide and deliver the Goods in instalments, each of which may be invoiced separately in accordance with these Conditions.
- 6.6 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. The Buyer waives the right to deny that Delivery has taken place when a note identifying the Goods has been signed by or on behalf of the Buyer.
- 6.7 Without prejudice to Condition 6.3 above, the Buyer may terminate any Order where Delivery has been delayed by more than three months. In the event that the Buyer wishes to exercise this right and Fine Tubes has already notified the Buyer of a new delivery date that is more than 3 months after the original, the Buyer's notice of termination must be given within five (5) days of Fine Tubes notifying the Buyer of such new delivery date.
- 6.8 Without prejudice to any other right or remedy that Fine Tubes may have, if for any reason the Buyer fails to accept Delivery of any of the Goods when they are ready for Delivery, or Fine Tubes is unable to Deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
- 6.8.1 the Goods shall be deemed to be Delivered;
- 6.8.2 risk in the Goods shall pass to the Buyer;
- 6.8.3 Fine Tubes may store the Goods until Delivery, and the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance); and
- 6.8.4 Fine Tubes may, after 5 days, and in its absolute discretion, sell the Goods and credit the proceeds against the Price. The Buyer shall remain liable to Fine Tubes to the extent of any shortfall.

7 Acceptance, Defective Goods and Shortages

- 7.1 The Goods shall only be deemed defective if they fail to meet the Specification. It shall be conclusively agreed that the Goods are in accordance with the Specification unless the Buyer identifies a defect in the Goods and complies with the following:
- 7.1.1 In the event that an alleged defect in the quality or state of the Goods which would be apparent upon careful inspection or reasonable testing is identified by the Buyer, the Buyer must, within 7 days of Delivery and prior to the use or resale of the Goods, serve on Fine Tubes a written notice; or
- 7.1.2 In the event that an alleged defect in the quality or state of the Goods which would not be apparent upon careful inspection or reasonable testing is identified by the Buyer, the Buyer must, immediately upon its discovery, and in any event not more than 3 months after Delivery, serve on Fine Tubes a written notice.
- In each case, the written notice shall specify the alleged defect in the quantity, quality or state of the Goods. Fine Tubes shall be afforded a reasonable opportunity of inspecting or testing the Goods.
- 7.2 All Goods supplied shall be subject to a quantity tolerance of +/- 10% of the total quantity ordered unless agreed otherwise in writing and the Buyer shall take this into account before making any claim for a shortage of Goods. Any statement in a British or European Standard as to the suitability of the Goods for any purpose is excluded.
- 7.3 If the Goods or any part thereof are deemed defective in accordance with Condition 7.1, then, if Fine Tubes and the Buyer do not agree that the Buyer shall accept the Goods at a revised Price or that the Goods should be made good at Fine Tubes' expense, Fine Tubes may at its own expense and within a reasonable time at its sole discretion either:
- 7.3.1 repair or replace the Goods (or the defective part thereof);
- 7.3.2 deliver new Goods;
- 7.3.3 refund the Price paid by the Buyer for the Goods;



7.3.4 grant credit to the Buyer in the sum of the Price paid by the Buyer for the Goods; or

7.3.5 in the event of a shortage of Goods, deliver the missing quantities to the agreed address.

7.4 Apart from the remedies set out in this Condition 7 the Buyer cannot invoke any other remedies in respect of a defect or shortage in the Goods. Any action taken by Fine Tubes under Condition 7.3 shall not be construed as an admission of any liability.

8 Risk and Title

8.1 Risk in the Goods will pass to the Buyer upon Delivery or in the case of delivery by instalments, upon Delivery of each instalment.

8.2 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) for:

8.2.1 the Goods; and

8.2.2 any other goods or services that the Supplier has supplied to the Customer in respect of which payment has become due.

8.3 Until title in the Goods passes to the Buyer, the Buyer 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 against all insurable risks for the Price due to Fine Tubes and identified as Fine Tubes' property. The Buyer will not pledge, assign or charge the Goods by way of security or otherwise. The Buyer will not remove, deface or obscure any identifying mark or packaging on or relating to the Goods. Breach of any of the provisions of this Condition 8.3 will result in all payments due to Fine Tubes (without affecting any of Fine Tubes' other rights or remedies) becoming immediately due and payable. Fine Tubes may, before title 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 Fine Tubes an irrevocable licence to enter, with or without vehicles, any of its premises for the purpose of inspecting or repossessing the Goods held pursuant to this Condition 8.3.

8.4 If the Goods are destroyed by an insured risk before the Buyer has paid the Price, the Buyer shall hold the insurance proceeds as Fine Tubes' trustee.

9 Price and Payment

9.1 The Price of the Goods shall be stated in the Quotation and, unless specified otherwise in the Quotation, will be exclusive of Value Added Tax (**VAT**), or any other tax, levy or duty. All prices in a Quotation are subject to confirmation by Fine Tubes in an Acknowledgement of Order.

9.2 Fine Tubes will invoice the Buyer upon Delivery of the Goods. Payment will be due within 30 days of the date of the invoice (the **Due Date**).

9.3 If the Buyer fails to pay for the Goods or any other goods supplied by Fine Tubes by the Due Date Fine Tubes may:

9.3.1 charge interest on all overdue amounts at the rate of 4% per annum over the base rate from time to time of the Bank of England or the penalty interest according to the law of the country of the Buyer's domicile, whichever is the highest, which shall be paid from the Due Date. Such interest shall be calculated on a daily compound basis from the Due Date. Fine Tubes reserves the right to claim interest and compensation under the Late Payment of Commercial Debts (Interest) Act 1998;

9.3.2 withhold manufacture or supply of any further Goods due to the Buyer;

9.3.3 terminate any or all contracts between Fine Tubes and the Buyer.



- 9.4 Fine Tubes shall have the right of set off for amounts owed to the Buyer against amounts owed by the Buyer to Fine Tubes. The Buyer may not withhold payment of any invoice or other amount due to Fine Tubes by reason of any right of set off or counterclaim for any reason whatever.
- 9.5 In addition to any right of lien to which Fine Tubes may by law be entitled, Fine Tubes shall be entitled to a general lien on all goods of the Buyer in Fine Tubes' possession for the unpaid Price of the Goods.
- 9.6 If Fine Tubes has to resort to legal proceedings to recover the Price or part thereof from the Buyer, Fine Tubes reserves the right to charge all Fine Tubes' legal fees and disbursements incurred to the Buyer.
- 9.7 Orders from the UK are payable in pounds sterling (£). Orders made from or for delivery to the Eurozone are payable in Euros (€). Orders made from the US are payable in US dollars (\$). Orders from the rest of the world are payable in any other major currency provided that such is agreed between the parties in advance.

10 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 an authorised representative of Fine Tubes.

11 Confidentiality

- 11.1 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:
- 11.1.1 to that party's employees, sub-contractors and agents insofar as it is necessary for the performance of its obligations under the Agreement; or
 - 11.1.2 with the prior written consent of the other party; or
 - 11.1.3 as required by law or the requirements of any recognised stock exchange; or
 - 11.1.4 where such information comes into the public domain other than by a breach of the Agreement.
- 11.2 The party disclosing the Confidential Information will procure that the person to whom the Confidential Information is disclosed is aware of the obligations of confidentiality set out in the Agreement and will ensure that any such third party will comply with those obligations as if the third party were itself a party to the Agreement.

12 Intellectual Property Rights

- 12.1 The Buyer shall hold Fine Tubes indemnified from and against all actions, proceedings, claims, damages, costs and expenses in respect of any intellectual property rights claims which may be infringed by the Goods supplied under this Agreement.
- 12.2 The Buyer indemnifies and will hold Fine Tubes indemnified against all actions, proceedings, claims, damages, costs and expenses in respect of any intellectual property rights claims which may be infringed by any drawings, Bespoke Specifications or other information supplied under this Agreement.
- 12.3 All intellectual property rights in the Goods shall be the property of Fine Tubes and the Buyer undertakes to execute all documents and take all steps necessary to secure to Fine Tubes all rights assigned by this Condition 12.



- 12.4 Any Bespoke Specification, together with the copyright, design rights or any other intellectual property rights in the Bespoke Specification, shall be Fine Tubes' exclusive property. The Buyer shall not disclose to any third party or use any such Bespoke Specification except to the extent that it is or becomes public knowledge through no fault of the Buyer, or as required for the purpose of the Agreement.

13 Termination

- 13.1 Without prejudice to any other rights of termination, Fine Tubes may terminate the Agreement at any time on giving the Buyer 30 days' prior notice of such termination.
- 13.2 Fine Tubes is entitled to terminate the Agreement immediately on written notice to the Buyer if:
- 13.3 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 (7) days of being required by written notice to do so. For the purpose of the Agreement "**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;
- 13.4 the Buyer 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.
- 13.5 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.
- 13.6 The Buyer acknowledges its obligation to take all reasonable steps to mitigate any liabilities arising from termination.

14 Export Terms

- 14.1 Where the Goods are supplied for export from the United Kingdom, the provisions of this Condition 14 apply (subject to any additional terms agreed in writing between the parties). Any term or expression which is defined in or given a particular meaning by the provisions of Incoterms 2010 has the same meaning in these Conditions, unless there is any conflict, in which case these Conditions will prevail.
- 14.2 Unless otherwise agreed between the parties, the Goods will be delivered duty paid (or DDP as defined in the Incoterms 2010). Fine Tubes is under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 14.3 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 any import duty, levy or other local tax.



15 Force Majeure

15.1 Neither party shall be liable for delay in performance 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 (a "Force Majeure Event"). Such delay or failure shall not constitute a breach of the 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 the 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 returned to Fine Tubes.

16 Notices

Any notices served by the parties under the Agreement may be delivered by hand or sent by first class, pre-paid, recorded delivery 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. Notice is not validly served if sent by e-mail.

17 Disputes

- 17.1 In the event of any dispute or difference arising between the parties in connection with the Agreement, the parties shall attempt to resolve such dispute or difference (including any dispute relating to an invoice) in good faith and without recourse to legal proceedings. If the parties are unable to resolve such dispute or difference within fifteen (15) working days of initial discussions between the parties taking place, either party may send notice to the other in writing requesting that the matter be referred to senior representatives of the parties with authority to settle the dispute, who shall then attempt to resolve the dispute within thirty (30) working days of that written request. 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 17, either party may take action in accordance with Condition 23.
- 17.2 Nothing in this Condition is intended to restrict the right of either party to apply to any court for injunctive or other urgent relief.
- 17.3 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 debts of the Buyer.

18 Waiver

- 18.1 Failure or delay by Fine Tubes in enforcing or partially enforcing any provision of the Agreement shall not be construed as a waiver of its rights under the Agreement.
- 18.2 No waiver or forbearance by Fine Tubes of any of its rights under the Agreement or any other agreement with the Buyer shall be construed as a waiver of any right under the Agreement and shall not preclude Fine Tubes from enforcing any of its legal rights whatsoever.

19 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.



20 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.

21 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.

22 Entire Agreement

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

23 Governing Law

English law applies to the Agreement and, subject to Condition 17.3, the construction, validity and performance of the Agreement shall be governed by English law. The parties irrevocably agree that Fine Tubes shall be entitled to bring an action against the Buyer in any other court of competent jurisdiction if Fine Tubes considers that such action is appropriate for the purposes of protecting Fine Tubes' interests.

