

**TERMS AND CONDITIONS OF SALE
MELLING PERFORMANCE SPRINGS LTD**

The customer's attention is drawn in particular to the provisions of condition 14.

1 Interpretation

1.1 Definitions. In these conditions, the following definitions apply:

Acknowledgement of Order Melling's written acknowledgment of an Order, or Melling's electronic acknowledgement of an Order generated by the Website, as the case may be.

Business Day a day (other than a Saturday, Sunday or public holiday) when UK clearing banks in the city of London are open for general business.

Conditions the terms and conditions set out in this document as amended from time to time in accordance with condition 17.6.

Contract the contract between Melling and the Customer for the sale and purchase of the Goods in accordance with these Conditions, and which, for the avoidance of doubt, comes into existence in accordance with condition 2.3 below.

Customer the person or firm who purchases the Goods from Melling.

Delivery Location Melling's premises currently at Scafell Road, Queensway Industrial Estate, Lytham St. Annes, Lancashire, United Kingdom, FY8 3HE (and as may be updated from time to time), unless otherwise agreed in writing with Melling.

EDI the electronic data interchange system operated by the Customer for purposes of ordering the Goods.

Force Majeure has the meaning given in condition 16.

Event the goods (or any part of them) set out in the Order.

Goods all copyright, database rights, topography rights, design rights, trade marks, trade names, utility models, patents, domain names and any other intellectual property rights of a similar nature (whether or not registered) subsisting anywhere in the world.

Intellectual Property Rights Melling Performance Springs Ltd, a company registered in England with registered company number 12526534.

Melling the Customer's order for the Goods, as set out in the Customer's purchase order form, the electronic order generated by EDI or the Website or the Customer's written acceptance of Melling's quotation, as the case may be.

Order the specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and Melling.

Specification the website(s) of Melling for the sale of the Goods, from time to time.

Website

1.2 Construction. In these Conditions, the following rules apply:

1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns.

1.2.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.4 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.5 A reference to **writing** or **written** includes e-mails but not faxes.

2 Basis of Contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks or purports to impose or incorporate whether before or after the Contract is concluded (including, without limitation, any terms and conditions which the Customer seeks or purports to apply under any acceptance of a quotation, an Order, Specification or any other document), or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.3 The Order shall only be deemed to be accepted when Melling issues an Acknowledgement of Order, or (if earlier) Melling starts to supply or deliver the Goods to the Customer, at which point the Contract shall come into existence.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Melling which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter, or advertising produced by Melling and any descriptions or illustrations contained in Melling's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2.6 A quotation for the Goods given by Melling, whether in writing, by email or verbally, shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

2.7 No Order which has been accepted by Melling may be cancelled by the Customer except with the Melling's written agreement and on the condition that the Customer shall indemnify Melling in full and on demand against all loss (including loss of profit), costs (including the cost of labour and materials used), damages, charges and expenses incurred by Melling as a result of cancellation.

3 Goods

3.1 The Goods are described in Melling's catalogue, product list and/or Website (as may be modified by any applicable Specification) or are supplied in accordance with the Specification.

3.2 The Customer shall indemnify Melling against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Melling in connection with any claim made against Melling for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with Melling's use of the Specification. This condition 3.2 shall survive termination of the Contract.

3.3 Melling reserves the right to amend the specification of the Goods and/or any Specification if required by any applicable statutory or regulatory requirements or due to any fact beyond Melling's control.

4 Amendments to Orders

4.1 If the Specification or any other information supplied by or on behalf of the Customer is insufficient, incorrect, inaccurate or misleading, or if the Customer notifies Melling of any change of requirements in relation to the Contract and/or Goods, or if any delay in the supply of the Goods is caused by the Customer, Melling will, subject to condition 4.2, be entitled to amend or vary the price, the

terms of payment and the delivery date or delivery schedule in respect of the Goods in such a way as Melling considers fair and reasonable in the circumstances. Melling will as soon as practicable notify the Customer in writing of such amendments. The Customer shall fully indemnify Melling against and reimburse Melling for any expense, cost or liability incurred by Melling as a consequence of such insufficient, incorrect, inaccurate or misleading information, change in requirements or delay by the Customer.

4.2 Any variation or amendment to the Contract and/or Goods requested by the Customer will only be valid and binding when expressly accepted by Melling in writing and signed by a duly authorised representative.

4.3 Where Melling is required to produce a design, sample or prototype (**Sample**) under a Contract, the price, delivery dates and other terms (**Estimates**) relating to the Contract are based upon costs prevailing at the date of quotation and upon Melling's assessment of the amount of materials, labour and design and research time required for the Sample. Melling may revise the Estimates in its sole discretion to cover any increased cost to Melling.

5 Delivery

5.1 Delivery of the Goods shall take place at the Delivery Location. Acceptance of any change to the Delivery Location requested by the Customer shall be at Melling's sole discretion and the Customer shall be liable for any additional expenses incurred by Melling as a result of such change.

5.2 Any dates quoted or stated for delivery are approximate only, and the time of delivery of the Goods is not of the essence. Melling shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Melling with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

5.3 Delivery of the Goods shall be completed (**Delivery**) upon commencement of the uploading of the Goods at the Delivery Location by the Customer or the carrier appointed to despatch and deliver the Goods to the Customer, at which point risk in the Goods shall pass to the Customer.

5.4 If Melling agrees to deliver the Goods to a location other than the Delivery Location in accordance with condition 5.4, Delivery shall be on either (i) completion of the off-loading of the Goods at such agreed location, or (ii) the arrival of the Goods at the agreed location where the Customer is taking responsibility for the off-loading of the Goods.

5.5 Melling will, unless the Goods are collected by the Customer from the Delivery Location, arrange carriage at the Customer's risk and expense. Melling will arrange insurance as it thinks fit as agent for the Customer at the Customer's expense.

5.6 Subject to conditions 5.2 and 5.7, if Melling fails to deliver the Goods, its liability shall be limited to refunding any sum paid by the Customer for the Goods.

5.7 If the Customer elects to collect the Goods from the Delivery Location but fails to do so within 5 Business Days of Melling notifying the Customer that the Goods are ready for collection, or if the Customer's appointed courier fails to collect the Goods within 5 Business Days of Melling notifying the Customer that the Goods are ready for collection, or if the Customer fails to accept and take any attempted delivery where Melling has agreed to deliver the Goods to another location, then, except where such failure or delay is caused by a Force Majeure Event or Melling's failure to comply with its obligations under the Contract:

5.7.1 delivery of the Goods shall;

5.7.2 (where the Customer is collecting the Goods from the Delivery Location), be deemed to have been completed at 9:00am on the third Business Day after the day on which Melling notified the Customer that the Goods are ready for collection and (where Melling is delivering the Goods to another location agreed by the parties) be deemed to have completed at the time that delivery was initially attempted; and

5.7.3 Melling shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including storage costs, redelivery costs, any penalties or sums payable to the haulier and insurance).

5.8 The Customer shall not be entitled to reject the Goods if Melling delivers up to and including 5% more or less than the quantity of Goods ordered.

5.9 Melling may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5.10 Where Melling offers advice to the Customer regarding installation of Goods it is given as a matter of goodwill and without liability to Melling.

5.11 Melling's decision as to whether the Goods comply with any applicable Specification shall be final and binding on the Customer.

6 Overseas Sales

6.1 In relation to a Contract with a Customer outside the United Kingdom, these Conditions will apply subject to the following provisions:

6.1.1 delivery of the Goods will be either "ex works" at the Delivery Location or "delivered at place" (as defined in Incoterms® 2020), as confirmed in the Acknowledgement of Order;

6.1.2 prices are agreed and are payable in the United Kingdom (unless otherwise specified) in the invoiced currency;

6.1.3 all bank charges associated with any payment/payments made by the Customer to Melling are payable by the Customer;

6.1.4 all costs, duties, levies, taxes or other sums other than as normally covered by a supplier in accordance with "ex works" under the Incoterms® 2020 are payable by the Customer;

6.1.5 the Customer is responsible for obtaining, at its own cost, such export or import licences or other governmental or other consents in relation to the Goods as are required from time to time in the United Kingdom or any other country or jurisdiction and, if required by Melling, the Customer shall make those licences and consents available to Melling prior to the relevant shipment;

6.1.6 Where applicable, Melling will refund the VAT on the Goods to the Customer within 30 days after receipt of the Customer's VAT certificate, less any bank charges.

7 Quality

7.1 Melling warrants that on Delivery and for a period of 12 months following Delivery (**Warranty Period**), the Goods shall:

7.1.1 conform in all material respects with their description and any applicable Specification; and

7.1.2 be free from material defects in design, material and workmanship.

7.2 Subject to condition 7.5, the Customer shall:

7.2.1 inspect the Goods promptly upon Delivery and must, within 5 Business Days of the arrival of each delivery of the Goods, give written notice of rejection to Melling on account of any defects in the Goods or non-compliance with the Specification; and/ or

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- 7.2.2 give notice in writing to Melling during the Warranty Period within a reasonable time of discovery of any latent defects in some or all of the Goods that are not apparent on normal visual inspection and result in the non-compliance of the Goods with the warranty set out in condition 7.1; and
- 7.2.3 within 15 Business days of such notice return any allegedly defective or non-compliant part or parts of Goods (unaltered and unrepaired) to Melling or as Melling directs at the Customer's risk and expense. The Customer shall pay to Melling the costs of any tests carried out to such part or parts (such costs to be certified by Melling) together with the costs of return to the Customer, in the event that no liability attaches to Melling in respect of the alleged defects or non-compliance.
- 7.3 Where the Customer ordered the Goods via the Website, it must provide the date of purchase and reference/invoice number when returning any alleged defective or non-compliant Goods to Melling.
- 7.4 If the liability in respect of the defective, non-compliant or rejected Goods attaches to Melling under these Conditions, Melling shall at its option, repair or replace the defective or non-compliant Goods, or refund the price of the defective Goods in full.
- 7.5 Melling shall not be liable for Goods' failure to comply with the warranty set out in condition 7.1 or for any rejected Goods in any of the following events:
- 7.5.1 the Customer fails to return the Goods for inspection to Melling in accordance with clause 7.2.3;
- 7.5.2 the Customer makes any further use of such Goods after giving notice in accordance with condition 7.2;
- 7.5.3 the defect or non-compliance arises because the Customer or any third party failed to follow Melling'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;
- 7.5.4 the defect or non-compliance arises as a result of Melling following any drawing, design or Specification supplied by the Customer;
- 7.5.5 the Customer or any third party alters or repairs such Goods without the written consent of Melling;
- 7.5.6 the defect or non-compliance arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;
- 7.5.7 the defect arises after the Goods have been installed into a larger component or product and it cannot be ascertained using reasonable efforts that the Goods were defective at the time of installation; or
- 7.5.8 the Goods differ from their description and/or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements;
- 7.6 If the Customer fails to give notice as specified in condition 7.2.1 and/ or 7.1.2 then the Customer shall be deemed to have accepted the delivery of the Goods in question and Melling shall have no liability to the Customer with respect to that delivery.
- 7.7 Except as provided in this condition 7, Melling shall have no liability to the Customer in respect of defective or rejected Goods.
- 7.8 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 7.9 These Conditions shall apply to any repaired or replacement Goods supplied by Melling.
- 8 Title and Risk**
- 8.1 The risk in the Goods shall pass to the Customer on Delivery as defined in conditions 5.3 and 5.4.
- 8.2 Title to the Goods shall not pass to the Customer until Melling has received payment in full (in cash or cleared funds) for:
- 8.2.1 the Goods; and
- 8.2.2 any other goods or services that Melling has supplied to the Customer in respect of which payment has become due; and
- 8.2.3 all other sums which are or which become due to Melling from the Customer on any account.
- 8.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 8.3.1 hold the Goods on a fiduciary basis as Melling's bailee;
- 8.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Melling's property;
- 8.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 8.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- 8.3.5 notify Melling immediately if it becomes subject to any of the events listed in condition 13.2; and
- 8.3.6 give Melling such information relating to the Goods as Melling may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.
- 8.4 The Customer shall lose its rights to possession and resale of the Goods if:
- 8.4.1 the Customer becomes subject to any of the events in condition 13; or
- 8.4.2 the Customer does not pay all outstanding amounts under a Contract when such amounts become due; or
- 8.4.3 the Customer suffers any legal or equitable execution to be levied on its property.
- 8.5 The Customer grants to Melling an irrevocable licence for Melling, its agents and employees to enter any premises where the goods of the Customer are stored to ascertain whether any Goods are stored there and to inspect, count and recover them.
- 8.6 The Customer shall register any necessary charge over money or goods and take such other steps as are necessary to give effect to this condition 8 at the request of Melling.
- 9 Price and Payment**
- 9.1 The price of the Goods shall be the price set out in the Acknowledgement of Order (subject to any subsequent amendments in accordance with condition 4), or, if no price is quoted, the price set out in Melling's published price list in force as at the date of delivery of the Goods concerned.
- 9.2 Melling may, by giving notice to the Customer at any time before Delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to any factor beyond Melling's control (including but not limited to foreign exchange fluctuations, increases in labour, materials and other manufacturing costs).
- 9.3 The price of the Goods is, unless otherwise agreed in writing by Melling, exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 9.4 The price of the Goods is exclusive of amounts in respect of value added tax (VAT) and all other indirect taxes, duties and levies, which must be paid by the Customer. The Customer shall, on receipt of a valid VAT invoice from Melling, pay to Melling such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 9.5 Unless Melling requires payment on Order (which it may at its sole discretion), Melling may invoice the Customer for the Goods on or at any time after Delivery of the Goods as defined under conditions 5.3 and 5.4.
- 9.6 Melling reserves the right, at any time and at its discretion, to demand security for payment before continuing with or delivering any Samples or Goods under a Contract.
- 9.7 Melling may, in its sole discretion, at any time, withdraw or alter any credit and credit terms that it provides to a Customer.
- 9.8 The Customer shall pay Melling's invoices in full and in cleared funds within 30 days of the date of the invoice unless otherwise agreed by Melling in writing. Payment shall be made to the bank account nominated in writing by Melling. Time of payment of Melling's invoices is of the essence.
- 9.9 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Melling in order to justify withholding payment of any such amount in whole or in part. Melling may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Melling to the Customer.
- 9.10 If the Customer fails to pay Melling any sum due pursuant to the Contract, the Customer shall be liable to pay interest and any charges to Melling on such sum in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Customer further agrees to indemnify Melling against all costs, charges, expenses and fees (including debt collection agency and legal fees) incurred or agreed to be paid by Melling in collection any overdue amounts from the Customer. Furthermore Melling may, in the event of an delay or failure in payment, suspend or terminate the Contract.
- 10 Business Users only**
- 10.1 The Customer warrants that it is purchasing the Goods and entering into the contract in the course of its business and is not a consumer (within the meaning set out in the Consumer Rights Act 2015.).
- 10.2 The Customer agrees, acknowledges and accepts that it does not have any rights under the Consumer Rights Act 2015, the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 or any other consumer legislation in force from time to time.
- 11 Website Sales**
- 11.1 In relation to a Contract with a Customer who purchases Goods via the Website, these Conditions will apply subject to the provisions of this condition 11.
- 11.2 Payment of the whole of the price for the Goods must be made before Melling will accept an Order. Once payment has been received by Melling, an Acknowledgement of Order will be sent to the email or address provided by the Customer when placing the Order.
- 11.3 Delivery of the Goods will be made to the address provided by the Customer at the time the Order was placed. Delivery will be made as soon as possible after the Customer's Order is accepted or as set out in the Acknowledgement of Order. For the avoidance of doubt, any delivery dates stated are estimates only and time of delivery shall not be of the essence of the Contract. The Customer shall be required to pay all costs relating to delivery and it might not be possible for Melling to deliver to some locations.
- 11.4 Risk and title in the Goods shall pass when delivery of the Goods is made to the Customer.
- 11.5 Melling reserves the right to cancel the Contract where:
- 11.5.1 Melling has insufficient stock to deliver the Goods ordered by the Customer;
- 11.5.2 Melling does not supply Goods to the Customer's area; or
- 11.5.3 one or more of the Goods ordered by the Customer was listed at an incorrect price due to a typographical error or an error in the pricing information received by Melling from its suppliers.
- 11.6 If Melling so cancels the Contract in accordance with clause 11.5, Melling will credit to the Customer's account any sum deducted from the Customer's payment card as soon as possible but in any event within 30 days of the cancellation of the Contract, unless otherwise agreed with the Customer in writing. Melling will not be obliged to offer or be liable for any additional compensation for disappointment suffered or any other losses, damages or expenses suffered or incurred by the Customer, whatsoever.
- 12 Customer's Property and Premises**
- 12.1 Without prejudice to Melling's rights under condition 4.1, all drawings, artwork, Specifications, samples, tooling, equipment and property provided by the Customer of whatever nature (**Customer's Property**) must be correct and accurate and satisfactory in all respects (in Melling's sole opinion) and in such conditions and suitable to enable Melling to comply with its obligations under the Contract and the Customer will indemnify Melling from any liability flowing from a breach of the Customer's obligations under this condition 12.1 and from any liability and expense howsoever (including from negligence) arising from any injury or damage to any third party caused by any Customer's Property.
- 12.2 If Melling (or any of its employees, representatives, subcontractors or other personnel (**Melling Personnel**)) are required to attend or carry out any work at the Customer's premises, the Customer shall ensure that such premises comply with all health and safety legislation and are free from hazards and risk to all Melling Personnel. The Customer will fully indemnify Melling, its employees, agents and representatives against any loss, damage, injury or liability howsoever arising (including from negligence) and any expense incurred in connection therewith by Melling or any third party as a result directly or indirectly of Melling carrying out any work at the Customer's premises or with equipment loaned by the Customer.
- 12.3 Until Melling has received payment in full for any Goods from the Customer, Melling will have a general and specific lien on all the Customer's Property which is in the possession or control of Melling, for all monies due to Melling from the Customer.
- 13 Customer's Insolvency or Incapacity**
- 13.1 If the Customer becomes subject to any of the events listed in condition 13.2, or Melling reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to Melling, Melling may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and Melling without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.
- 13.2 For the purposes of condition 13.1, the relevant events are:
- 13.2.1 the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either

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- unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- 13.2.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 13.2.3 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 13.2.4 (being an individual) the Customer is the subject of a bankruptcy petition or order;
- 13.2.5 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 10 Business Days;
- 13.2.6 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- 13.2.7 (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- 13.2.8 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- 13.2.9 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 13.2.1 to condition 13.2.8 (inclusive);
- 13.2.10 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
- 13.2.11 the Customer's financial position deteriorates to such an extent that in Melling's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- 13.2.12 (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 13.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 14 Limitation of Liability**
- 14.1 Nothing in these Conditions shall limit or exclude Melling's liability for:
- 14.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 14.1.2 fraud or fraudulent misrepresentation;
- 14.1.3 any matter in respect of which it would be unlawful for Melling to exclude or restrict liability.
- 14.2 Subject to condition 14.1:
- 14.2.1 Melling shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of or damage to goodwill or any indirect or consequential loss arising under or in connection with the Contract; and
- 14.2.2 Melling's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, including losses caused by a deliberate breach of the Contract by Melling, its employees, agents or subcontractors shall not exceed the price of the Goods under the Contract or the amount (if any) paid out by Melling's product liability insurance, whichever is the lesser.
- 14.3 In relation to components supplied by outside manufacturers (**Manufacturers**), Melling will use reasonable endeavours to allow the Customer the benefit of any such rights that Melling may have against such Manufacturers.
- 14.4 Melling will not be liable to the Customer for any loss or damage caused by or resulting from any variation to the Goods or the terms of the Contract, or Melling's inability to provide the Goods in accordance with the Contract, due to:
- 14.4.1 any variation (for whatever reason) in the components supplied by the Manufacturers; or
- 14.4.2 a curtailment or cessation of supply (for whatever reason) of the components by the Manufacturers.
- 14.5 Save as set out in the Order (as accepted by Melling), or in a specific written agreement signed by Melling's duly authorised representative:
- 14.5.1 the Customer accepts that it is not relying upon Melling's judgement as to the fitness of Goods for any specific purpose of the Customer, and;
- 14.5.2 the Customer accepts that it is not placing an order in reliance upon any recommendation or advice, promise, representation or inducement on the part of Melling.
- 14.6 Melling carries product liability insurance.
- 14.7 Each exclusion or limitation of liability in this condition 14 or any sub-condition or paragraph thereof is severable.
- 15 Intellectual Property Rights**
- 15.1 The Customer warrants that any design, instruction or Specification provided by it does not infringe any Intellectual Property Rights of any third parties or other such interest whether registered or unregistered.
- 15.2 The Customer acknowledges that:
- 15.2.1 the Intellectual Property Rights relating to the Goods are Melling's (or its licensor's) property;
- 15.2.2 nothing in the Conditions shall be construed as conferring any licence or granting any rights in favour of the Customer in relation to the Intellectual Property Rights relating to the Goods. Melling asserts its full rights to control the use of its trade marks within the UK and the EEA and the Customer shall assist Melling as required in preventing parallel importers from diluting Melling's rights; and
- 15.2.3 any reputation in any trade marks affixed or applied to the Goods shall accrue to the sole benefit of Melling or any other owner of the trade marks from time to time.
- 15.3 The Customer shall not repackage the Goods and/or remove any copyright notices, confidential or proprietary legends or identification from the Goods save for any removal which is a necessary result of a manufacturing process of which Melling has been previously notified in writing by the Customer.
- 15.4 The Customer shall not use (other than pursuant to these Conditions) or seek to register any trade mark or trade name (including any company name) which is identical to, confusingly similar to or incorporates any trade mark or trade name which Melling or any associated company of Melling owns or claims rights in anywhere in the world.
- 15.5 If at any time it is alleged that the Goods infringe the rights of any third party or if, in Melling's reasonable opinion, such an allegation is likely to be made, Melling may at its option and its own cost:
- 15.5.1 modify or replace the Goods in order to avoid the infringement; or
- 15.5.2 procure for the Customer the right to continue using the Goods; or
- 15.5.3 repurchase the Goods at the price paid by the Customer.
- 15.6 The Customer shall promptly and fully notify Melling of:
- 15.6.1 any actual, threatened or suspected infringement of any Intellectual Property Rights in relation to the Goods which comes to the Customer's notice; and
- 15.6.2 any claim by any third party that comes to the Customer's notice that the sale or advertisement of the Goods infringes the rights of any person.
- 15.7 The Customer agrees (at Melling's request and expense) to do all such things as may be reasonably required to assist Melling in taking or resisting any proceedings in relation to any infringement or claim referred to in condition 15.6.
- 15.8 In the event of any claim, proceeding or suit by a third party against the Customer alleging an infringement of any Intellectual Property Right connected with the Goods, Melling shall defend the Customer at Melling's expense, subject to:
- 15.8.1 the Customer promptly notifying Melling in writing of any such claim, proceeding or suit; and
- 15.8.2 Melling being given sole control of the defence of the claim, proceeding or suit, and provided that Melling shall not be liable for infringements to the extent that they arise out of or in connection with modifications to the Goods made by anyone except Melling or its authorised representative, or out of the use or the combination of the Goods with products or third party materials not specified or expressly approved in advance in writing by Melling, or where the claim, proceeding or suit arises from Melling's adherence to the Customer's requested changes, to the Specification or from infringing items of the Customer's origin, design or selection.
- 16 Force Majeure**
- Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including epidemic, pandemic disease or similar event (including but not limited to COVID 19) as well as any law, governmental order, rule, regulation, direction, curfew restriction, quarantine or other act of the competent authorities implemented to combat such epidemic, pandemic or similar diseases or events), strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, port, border and other transport delays (including but not limited as a result of the exit of the United Kingdom from the European Union), acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.
- 17 General**
- 17.1 Assignment and subcontracting.**
- 17.1.1 Melling may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 17.1.2 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Melling.
- 17.2 Notices.**
- 17.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this condition, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier or e-mail.
- 17.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in condition 17.2.1; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission provided that the email is not recalled, nor any notification of non-delivery or delayed delivery received by the sender..
- 17.2.3 The provisions of this condition shall not apply to the service of any proceedings or other documents in any legal action.
- 17.3 Severance.**
- 17.3.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 17.3.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 17.4 Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 17.5 Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 17.6 Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by Melling.
- 17.7 Governing law and jurisdiction.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

**TERMS AND CONDITIONS OF SALE
MELLING PERFORMANCE SPRINGS LTD**