

Terms and Conditions of Purchase

TERMS AND CONDITIONS OF PURCHASE HENRY TECHNOLOGIES LTD

1. Definitions and Interpretation

1.1 In this document the following words and expressions shall have the following meanings:-

“Buyer” means Henry Technologies Limited (Company Number SC069447).

“Buyer's Premises” means the Buyer's premises at Mossland Road, Hillington Industrial Estate, Glasgow G52 4XZ or such other premises as the Buyer may specify in the Order.

“Goods” means all of the goods itemised in the Order.

“Order” means the Buyer's purchase order of the Goods.

“Price” means the price of the Goods specified in the Order (including any charges for packaging and packing but excluding any VAT and charges for delivery of the Goods to the Buyer's Premises).

“Seller” means the company, firm or person to whom an Order is sent by the Buyer.

“Terms and Conditions” means the terms and conditions of purchase set out in this document together with any other terms and conditions agreed in writing and signed between the Buyer and the Seller.

1.2 Reference to any Clause is to a clause of these Terms and Conditions.

1.3 Any reference in these Terms and Conditions to any provisions of a statute shall be construed on a reference to that provision as amended, re-enacted or extended at the relevant time.

1.4 Headings are inserted for convenience only and shall not affect the interpretation and construction of these Terms and Conditions.

1.5 Reference to writing and written includes emails.

2. General

2.1 These Terms and Conditions shall apply to every purchase made or Order placed by the Buyer and shall prevail over any terms and conditions which the Seller purports or seeks to apply or which are implied by trade, custom, practice or course of dealing. No conduct other than express written acceptance by the Buyer shall be deemed to constitute acceptance of any term or condition put forward by the Seller.

2.2 The Order shall be deemed to be accepted on the earlier of (a) the Seller issuing a written acceptance of the Order; and (b) the Seller doing any act consistent with fulfilling the Order at which point a contract between the parties comes into existence.

2.3 No additions, alterations or substitutions to these Terms and Conditions including any special terms and conditions shall be binding on the Buyer unless expressly accepted in writing by the Buyer.

2.4 Insofar as not otherwise previously accepted by the Seller in accordance with these Terms and Conditions the delivery of the Goods by the Seller to the Buyer's Premises shall constitute acceptance of these Terms and Conditions.

2.5 Nothing in these Terms and Conditions shall prejudice any condition or warranty, expressed or implied, or any legal remedy to which the Buyer may be entitled in relation to the Goods, the subject of the Order, by virtue of any statute or custom or any general law or local law or regulation.

3. Goods

3.1 The Seller shall ensure that the Goods shall:

3.1.1 correspond with their description and any applicable specification;

3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Seller or made known to the Seller by the Buyer expressly or by implication, and in this respect the Buyer relies on the Seller's skill and judgement;

3.1.3 where they are manufactured products, be free from defects in design, material and workmanship and remain so for 12 months after delivery; and

3.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

3.2 The Seller shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under these Terms and Conditions.

4. Price And Payment

4.1 The Buyer shall pay the Price within 60 days of the date of receipt by the Buyer of the invoice relating to the Goods delivered or, if later, of acceptance of the Goods by the Buyer.

4.2 No variation of the Price or extra charges shall be accepted without the prior written consent of the Buyer.

4.3 Without limiting any of its other rights or remedies, the Buyer shall be entitled at any time to set off against the Price any sums owed to the Buyer by the Seller.

5. Delivery

5.1 The Seller shall deliver the Goods to the Buyer's Premises on the date specified in the Order during normal business hours, unless previously arranged otherwise. In this respect, time shall be of the essence and the Buyer reserves the right

Terms and Conditions of Purchase

- to cancel, without notice, the whole or any unexecuted part of the Order in the event of the Seller failing to comply with this Clause for whatever reason.
- 5.2 In the event of cancellation by the Buyer in accordance with Clause 4.1 the following provisions shall have effect:-
- 5.2.1 all sums payable by the Buyer in relation to the part of or the whole of the Order cancelled shall cease to be payable;
- 5.2.2 the Seller shall repay to the Buyer immediately all sums paid by the Buyer in relation to the part of or the whole of the Order cancelled; and
- 5.2.3 the Buyer shall be entitled to recover damages from the Seller in respect of any losses caused to the Buyer as a result of the Seller's failure to make delivery and/or as a result of the cancellation of the Order in whole or in part.
- 5.3 The Buyer shall inspect the Goods within 7 days of their delivery in accordance with this Clause 4. If any of the Goods have sustained damage or there any shortages in relation to the Order the Buyer shall notify the Seller of such shortages or damage.
- 5.4 In the event of notification by the Buyer in accordance with Clause 4.3 the following provisions shall have effect:-
- 5.4.1 the Buyer shall be entitled to reject all damaged Goods, in which case:-
- 5.4.1.1 the Seller shall be responsible for collecting the damaged Goods, at its own expense, from the Buyer's Premises;
- 5.4.1.2 the Buyer shall bear no liability whatsoever for any loss or further damage caused to the damaged Goods in the period from delivery to the Buyer's Premises to collection by the Seller;
- 5.4.1.3 all sums payable by the Buyer in respect of the damaged Goods shall cease to be payable;
- 5.4.1.4 the Seller shall repay to the Buyer all sums paid by the Buyer in respect of the damaged Goods; and
- 5.4.1.5 the Buyer shall be entitled to recover damages from the Seller in respect of any losses caused to the Buyer as a result of the Goods being damaged.
- 5.4.2 in relation to any shortages in the Order:-
- 5.4.2.1 all sums payable by the Buyer in respect of those Goods which are missing shall cease to be payable;
- 5.4.2.2 the Seller shall repay to the Buyer immediately all sums paid by the Buyer in respect of the missing Goods; and
- 5.4.2.3 the Buyer shall be entitled to recover damages from the Seller in respect of any losses caused to the Buyer as a result of the shortages in the Order.
- 5.4.3 the Seller shall, on request by the Buyer, immediately replace the damaged Goods or complete the Order in relation to the shortages in it, at the Seller's own expense; and/or
- 5.4.4 the Buyer reserves the right to cancel, without notice, the whole or any unexecuted part of the Order, in which case the rights and remedies itemised in Clause 4.2 shall be available to the Buyer.
- 5.5 In the event that, on inspection in terms of Clause 4.3, there is found to be an excess of Goods in relation to the Order the Buyer shall be entitled, at its discretion, in respect of any such excess to:-
- 5.5.1 reject such excess Goods by notification to the Seller of such rejection, in which case:-
- 5.5.1.1 the Seller shall be responsible for collecting the excess Goods, at its own expense, from the Buyer's Premises;
- 5.5.1.2 the Buyer shall bear no liability whatsoever for any loss or damage caused to the excess Goods in the period from delivery to the Buyer's Premises to collection by the Seller; and
- 5.5.1.3 no sum shall be due by the Buyer to the Seller in relation to such excess Goods and in the event that sums are inadvertently paid to the Seller for such excess Goods, after notification in accordance with Clause 4.5.1, the Seller shall repay to the Buyer immediately all such sums.
- 5.5.2 accept such excess Goods by notification of such acceptance to the Seller, in which case the Buyer shall pay to the Seller the price of such excess Goods in accordance with Clause 3.
- 5.6 Signature on behalf of the Buyer given on any delivery note of the Seller, or other documentation presented for signature in connection with the delivery of the Goods, is evidence only of the number of packages received. In particular, it is not evidence that the correct quantity or number of Goods has been delivered nor that the Goods delivered are in good condition or of the correct quality.
- 6. Property**
- Property and risk in the Goods shall pass to the Buyer as soon as the Goods are delivered in accordance with Clause 4.1. Such passing of property and risk shall be without prejudice to any right of rejection arising under these Terms and Conditions, in particular (but without prejudice to the generality of the foregoing) under Clause 4.3 - 4.5 inclusive.
- 7. Warranty**
- 7.1 The Seller warrants to the Buyer that the Goods and all of their components, where applicable, are of the nature, quality, substance, quantity and description ordered by the Buyer.

Terms and Conditions of Purchase

7.2 The Seller warrants to the Buyer that as from the date of delivery for a period of 12 months the Goods and all of their components, where applicable, are free from any defects in design, workmanship, construction or materials.

7.3 In the event of a breach of any warranty contained in this Clause 6 by the Seller, the Buyer shall notify the Seller of such breach advising the Seller that it must within 14 days of such notification:-

7.3.1 repair any defective Goods, at the Seller's own expense;

7.3.2 replace any defective Goods, at the Seller's own expense; or

7.3.3 repay the Price or such part of the Price applicable to the Goods to which the breach relates.

7.4 In the event that the Goods are repaired or replaced in terms of Clauses 6.3.1 or 6.3.2 the Seller warrants those repaired or replaced Goods for a further period of 12 months from the date of repair or replacement on the same terms as those which applied to the Goods originally supplied.

7.5 The Seller warrants to the Buyer that the Goods comply with all British and EC statutory and other legal requirements applicable to such Goods.

8. Indemnity

8.1 The Seller shall fully indemnify the Buyer against any action, loss, liability, costs, claims, demands or expenses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and all legal and professional costs) arising or incurred by the Buyer (other than as a result of any default or neglect of the Buyer) either at common law or by statute in respect of personal injury to or the death of any person or in respect of any loss or destruction of or damage to the property which shall have occurred as a result of:-

8.1.1 negligence of the Sellers, its employees, sub-contractors or agents;

8.1.2 the faulty design of the Goods or the use of faulty, defective or substandard workmanship, construction or materials in their manufacture; or

8.1.3 any defect in the Goods.

8.2 The Seller shall fully indemnify the Buyer against any action, loss, liability, costs, claims, demands or expenses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and all legal and professional costs) arising or incurred by the Buyer as a result of any claims by any third party that the Goods, their use or packaging infringe any intellectual property rights of that third party or any other third party.

9. Insurance

During the term of the contract, the Seller shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the contract, and shall, on the Buyer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

10. Liability And Remedies

It is expressly understood that neither the Buyer nor the Seller are "consumers" (as defined in the Unfair Contract Terms Act 1977).

11. Termination

11.1 The Buyer may terminate the contract in whole or in part at any time before delivery with immediate effect by giving the Seller written notice, whereupon the Seller shall discontinue all work on the contract.

11.2 Without limiting its other rights or remedies, the Buyer may terminate the contract with immediate effect by giving written notice to the Seller if:

11.2.1 the Seller commits a material breach of any term of the contract and (if such a breach is remediable) fails to remedy that breach within 20 days of being notified in writing to do so;

11.2.2 the Seller takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

11.2.3 the Seller takes any step or action in connection with the Seller being made bankrupt, entering any composition or arrangement with his creditors, having a receiver appointed to any of his assets, or ceasing to carry on business;

11.2.4 the Seller suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

11.2.5 the Seller's financial position deteriorates to such an extent that in the Buyer's opinion the Seller's capability to adequately fulfil its obligations under the contract has been placed in jeopardy.

11.3 Termination of the contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

11.4 Clauses that expressly or by implication survive termination of the contract shall continue in full force and effect.

Terms and Conditions of Purchase

12. Force Majeure

12.1 If performance of the Seller's obligations is delayed or hindered by circumstances outwith the Seller's control amounting to a "force majeure" event as defined hereunder, the following provisions shall apply:-

12.1.1 the Seller shall as soon as reasonably practicable give the Buyer written notice specifying the full details of the reasons for the delay or hindrance and an estimate of its likely duration;

12.1.2 the Seller shall use its best endeavours to overcome the difficulties caused by the "force majeure" and shall keep the Buyer informed of such endeavours; and

12.1.3 the Buyer shall have the option to terminate this contract in the event that the Seller's obligations have been prevented from being performed due to the "force majeure" for a period of one month. If the Buyer shall terminate this contract and orders a like quantity of goods of similar description and quality from a third party, the Seller shall be liable to reimburse the Buyer, on demand, all expenditure incurred by the Buyer in connection with the termination, including any increase in the price of the Goods originally ordered from the Seller.

12.2 If, due to circumstances out with the Seller's control amounting to "force majeure", there is a shortage of goods of a type to be supplied under this contract so that the Seller can obtain or produce insufficient goods to satisfy its contracts with the Buyer and the Seller's other customers and the Seller allocates the goods available to it between the Buyer and the Seller's other customers, then the Buyer has the following options:-

12.2.1 it can accept and pay for such quantity of Goods delivered to it, the price for those Goods being the relative proportion of the Price in the Order made by the Buyer; or

12.2.2 it can reject such quantity of Goods and any sums paid by the Buyer in relation to the Order to which that quantity of Goods relates shall be repaid immediately by the Seller to the Buyer.

12.3 For the purposes of this Clause "force majeure" means events out with the Seller's reasonable control including, but not limited to, the following: strikers, sit-ins, trade disputes, walkouts or any other actual or threatened industrial action, breakdown of plant, machinery or interruption of power supplies, fire, flood, war, civil war or intervention by governmental authority.

13. Waiver

No failure by the Buyer to enforce any of the Terms and Conditions shall constitute a waiver of its rights hereunder.

14. Amendment

The Terms and Conditions may be subject to amendment by the Buyer from time to time by 21 days' notice given by the Buyer. In the event that the Seller does not reject the

amendment within that 21 day period the Seller shall be deemed to have accepted the amendment.

15. Notices

15.1 Any notice required to be given in accordance with these Terms and Conditions shall be in writing and shall be deemed to be served in the following circumstances:-

15.1.1 sent by prepaid first class post to the party to whom it is given at its last known address, it shall be effected on the second day after posting;

15.1.2 sent electronically to the recipient's e-mail address, it shall be effective on transmission.

16. Assignment and Sub-Contracting

The Seller shall not assign, sub-contract or transfer the Order or part thereof to any third party without the written consent of the Buyer.

17. Entire Agreement

17.1 These Terms and Conditions constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

17.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms and Conditions. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement within these Terms and Conditions.

18. Governing Law

The interpretation of these Terms and Conditions are subject to the laws of Scotland and both the Buyer and the Seller shall submit to the exclusive jurisdiction of the Scottish Courts except that the Buyer may be entitled to proceed in any jurisdiction where proceedings may lawfully be brought against the Seller.