

**Tubex Limited**  
**Conditions of Sale**

The Buyer's attention is in particular drawn to the provisions of Conditions 8 (total liability) and 5 (Risk and passing of Ownership).

**1. Interpretation**

Definitions:

**Buyer** : the person, firm or company who purchases the Goods from TUBEX;

**Conditions**: these terms and conditions of sale relating to the Goods;

**Contract** : any contract between TUBEX and the Buyer for the sale and purchase of the Goods, incorporating these Conditions;

**Goods** : those goods to be supplied to the Buyer by TUBEX under the Contract; and

**TUBEX**: Tubex Limited of Aberaman Park, Aberaman CF44 6DA.

**2. When these Conditions apply**

2.1 Subject to any overriding agreement within which these conditions are referred by Tubex and subject to any variation under Condition 2.2 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 Any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by an authorised representative of TUBEX. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of TUBEX which is not set out in the contract. Nothing in this Condition shall exclude or limit TUBEX's liability for fraudulent misrepresentation.

2.3 Each order or acceptance of a quotation for Goods by the Buyer from TUBEX shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions.

2.4 No order placed by the Buyer shall be deemed to be accepted by TUBEX until a written acknowledgement of order is issued by TUBEX (or (if earlier) TUBEX delivers the Goods to the Buyer).

2.5 The Buyer shall ensure that the terms of its order and any applicable specification are given to TUBEX in good time and are readable, complete and accurate.

2.6 Any quotation is given by TUBEX on the basis that no contract shall come into existence until TUBEX despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that TUBEX has not previously withdrawn it.

**3. Delivery**

3.1 Any dates specified by TUBEX for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

3.2 Subject to the other provisions of these Conditions TUBEX shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by TUBEX's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 60 days.

3.3 TUBEX may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

3.3 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

3.4 If goods are sold "Ex Works", Tubex accepts no responsibility after the goods leave its premises, or after acceptance thereof by the purchaser if the goods then remain on the Tubex premises.

3.5 Tubex do not accept liability in respect of loss or damage to goods carried by ship beyond delivery F.O.B, unless the Tubex quotation is stated to be on a C.I.F basis.

3.6 Tubex reserves the right to restrict deliveries to the Purchaser's premises only.

3.7 Whilst we take reasonable steps to deliver the exact quantity of goods ordered, due to the nature of our product it is virtually impossible to ensure delivery of exact quantities. We therefore reserve the right to deliver up to 3% variation on the quantities ordered.

**4. Non-delivery**

4.1 The quantity of any consignment of Goods as recorded by TUBEX upon despatch from TUBEX's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

4.2 TUBEX shall not be liable for any non-delivery of Goods (even if caused by TUBEX's negligence) unless the Buyer gives written notice to TUBEX of the non-delivery within 5 days of the date when the Goods would in the ordinary course of events have been received.

4.3 Any liability of TUBEX for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the *pro rata* Contract rate against any invoice raised for such Goods.

4.4 Deliveries may be suspended during lock-outs, strikes, delays due to breakage of machinery, or accidents or stoppage of work for any other cause, and the period of delivery shall be extended by a reasonable time having regard to the circumstances.

**5. Risk and Passing of Ownership**

5.1 The Goods are at the risk of the Buyer from the time of delivery.

5.2 Ownership of the Goods shall not pass to the Buyer until TUBEX has received in full (in cash or cleared funds) all sums due to it in respect of:

(a) the Goods; and

(b) all other sums which are or which become due to TUBEX from the Buyer on any account.

5.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:

5.3.1 hold the Goods on a fiduciary basis as TUBEX's bailee;

5.3.2 store the Goods (at no cost to TUBEX) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as TUBEX's property; and

5.3.3 maintain the Goods in satisfactory condition and keep them insured on TUBEX's behalf for their full price against all risks to the reasonable satisfaction of TUBEX. On request the Buyer shall promptly produce the policy of insurance to TUBEX.

5.4 The Buyer may resell the Goods before ownership has passed to it solely on the following Conditions:

(a) any sale shall be effected in the ordinary course of the Buyer's business at full market value; and

(b) any such sale shall be a sale of TUBEX's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

5.5 The Buyer's right to possession of the Goods shall terminate immediately (and TUBEX shall have the option to terminate the Contract) if:

5.5.1 the Buyer (being an individual or partnership) has a bankruptcy order made against it (being an individual or partnership or body corporate) or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation;

5.5.2 the Buyer has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

5.5.3 a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency of the Buyer; or

5.5.4 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between TUBEX and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

5.5.5 the Buyer ceases to trade; or

5.5.6 the Buyer encumbers or in any way charges any of the Goods.

5.6 TUBEX shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from TUBEX.

5.7 The Buyer grants TUBEX, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

5.8 On termination of the Contract, howsoever caused, TUBEX's (but not the Buyer's) rights contained in this Condition 5 shall remain in effect.

**6. Price and Payment**

6.1 Unless otherwise agreed by TUBEX in writing, the price for the Goods shall be the price set out in TUBEX's order acknowledgement.

6.2 Any charge made in respect of cost of tools etc., does not confer on the Buyer any property therein, such property remaining vested in TUBEX.

6.3 Unless otherwise specifically agreed, TUBEX's terms are strictly net cash and payment must be made 20<sup>th</sup> of the month following the month of invoice. In the event of any payment being in arrear, TUBEX reserves the right (any previous waiver notwithstanding) to decline to make any further deliveries until such arrears have been settled.

**7. Quality**

7.1 Tubex accepts no responsibility for any materials, components or equipment of any description which Tubex does not manufacture itself, and Tubex can accept no liability for any claim in respect of any defects therein, or for any consequential loss or damage, although Tubex will pass on to the Buyer any benefit which Tubex may receive under any guarantee given to Tubex in respect of such equipment.

7.2 TUBEX warrants that (subject to the other provisions of these Conditions) upon delivery its own-produced Goods shall:

7.2.1 be of satisfactory quality; and

7.2.2 be reasonably fit for their purpose; and

7.2.3 be reasonably fit for any particular or non standard purpose for which the Goods are being bought if the Buyer had made known that purpose to TUBEX in writing and TUBEX has confirmed this.

7.3 TUBEX shall not be liable for a breach of any of the warranties in Condition 7.1 unless:

7.3.1 the Buyer gives written notice of the defect to TUBEX, within 45 days of the time when the Buyer discovers or ought to have discovered the defect; and

7.3.2 TUBEX is given a reasonable opportunity after receiving the notice of examining such Goods.

7.4 TUBEX shall not be liable for a breach of any of the warranties in Condition 7.1 if:

7.4.1 the Buyer makes any further use of such Goods after giving such notice; or

7.4.2 the defect arises because the Buyer failed to follow TUBEX's oral or written instructions as to the storage, installation or use of the Goods or (if there are none) good trade practice; or

7.4.3 the Buyer alters such Goods without the written consent of TUBEX.

7.5 Subject to Condition 7.3 and Condition 7.4, if any of the Goods do not conform with any of the warranties in Condition 7.2 TUBEX shall replace such Goods or refund the price of such Goods at the *pro rata* Contract rate provided that, if TUBEX so requests, the Buyer shall, at TUBEX's expense, return the Goods or the part of such Goods which is defective to TUBEX. Where the product is made to a certain life-span, the Tubex warranty is limited to replacement of product which does not last to the minimum period specified and such replacement will be on a *pro rata* basis relative to the minimum period specified.

7.6 If TUBEX complies with Condition 7.5 it shall have no further liability for a breach of any of the warranties in Condition 7.2 in respect of such Goods.

7.7 Any Goods replaced shall belong to TUBEX and any repaired or replacement Goods shall be guaranteed on these terms.

**8. Limitation of liability**

8.1 Subject to Condition 3 (Delivery), Condition 4 (Non-Delivery) and Condition 7 (Quality), the following provisions set out the entire financial liability of TUBEX (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

(a) any breach of these Conditions;

(b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and

(c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

8.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

8.3 Nothing in these Conditions excludes or limits the liability of TUBEX:

(a) for death or personal injury caused by TUBEX's negligence;

(b) under section 2(3) of the Consumer Protection Act 1987;

(c) for any matter which it would be illegal for TUBEX to exclude or attempt to exclude its liability; or

(d) for fraud or fraudulent misrepresentation.

8.4 Subject to Condition 8.2 and Condition 8.3:

(a) TUBEX's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and

(b) TUBEX shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

**9. Severance**

9.1 If any provision of the Contract (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

9.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

**10. Third party rights**

The parties to this Contract do not intend that any term of this Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

**11. Governing law and jurisdiction**

11.1 These Conditions and any disputes or claims arising out of or in connection with their subject matter are governed by and construed in accordance with the laws of England and Wales.

11.2 The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Conditions.