

STANDARD TERMS AND CONDITIONS OF SALE

The Buyer's attention is in particular drawn to the provisions of condition 10.4

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this condition apply in these conditions:
- 1.1.1 "Buyer" means the person, firm or company who purchases the Goods from the Company.
- 1.1.2 "Company" means Wavin Limited a company incorporated and registered in England and Wales with company number 405836 whose registered office is at Hazlehead, Crow Edge, Sheffield S36 4HG.
- 1.1.3 "Contract" means any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions.
- 1.1.4 "Delivery Point" means the place where delivery of the Goods is to take place under condition 4.
- 1.1.5 "Goods" means any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

2. APPLICATION OF TERMS

- 2.1 Subject to any variation under condition 2.3 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 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a duly authorised person on behalf of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.4 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.
- 2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgment of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.
- 2.6 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.7 Any quotation is given on the basis that no Contract shall come into existence other than in accordance with condition 2.5. Any quotation is valid for a maximum period of 30 days only from its date, provided that the Company has not previously withdrawn it or agreed in writing to extend the 30 day period.

3. DESCRIPTION

- 3.1 The Price quantity and description of the Goods shall be as set out in the Company's quotation or acknowledgment of order.
- 3.2 Delivery up to 5% above or below the quantities ordered shall be permissible. Colour shall be subject to reasonable variation; The Buyer shall accept delivery of Goods within such limits without objection but invoices will be adjusted to actual quantities. In particular the Company at its discretion may effect delivery of the quantities ordered within such limits in standard pack quantities as used by the Company from time to time.
- 3.3 Any descriptive information or samples supplied by the Company or on its behalf are for general guidance only and do not form part of any contract between the Company and the Buyer and the Buyer admits that it was not induced to enter into the Contract by any representation contained in such information or sample. The Company may at the request of the Buyer, without being under any obligation to do so, furnish technical advice concerning the use of the Goods and such assistance will be given to the best of the Company's ability but this shall be on the express understanding that any such advice or assistance is given and accepted at the Buyer's risk and the Company shall not be liable for any loss, damage or claims arising therefrom. No liability will be accepted for work carried out or material supplied to the Buyer's own drawings, design or specification. The submission of a quotation or acceptance of an order by the company in no way implies any responsibility on its part for any bye-law, planning or other approval which may be required by the Buyer. This is not a sale by sample.

4. DELIVERY

- 4.1 Delivery shall be deemed to take place either on the completion of unloading where the Company delivers the Goods or on the completion of loading where the Buyer collects the Goods.
- 4.2 Where the Buyer is collecting the Goods, the Buyer shall take delivery of the Goods within 7 days of the Company giving it notice that the Goods are ready for delivery.
- 4.3 Signature of any delivery note by any agent, employee, nominee or representative of the Buyer or by any independent carrier shall be conclusive proof of delivery.
- 4.4 Any dates specified by the Company 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.
- 4.5 Subject to the other provisions of these conditions, the Company 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 the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 4.6 The Buyer shall provide at the Delivery Point and at its expense adequate appropriate equipment and manual labour for offloading the Goods.
- 4.7 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 4.8 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.
- 4.9 Delivery to a site of works shall be made at a point on a good hard ground nearest to the site and the Seller refuses to deliver the Goods to sites considered in the discretion of the driver to be unsuitable.
- 4.10 If the Buyer fails to take or make arrangements to accept delivery of the Goods or if delivery is delayed by the Buyer or the Seller is unable to deliver because of inadequate access or instructions or failure of the Buyer to obtain necessary instructions, consents or licences, delivery shall be deemed ("Deemed Delivery") and the Seller may do any one or more of the following (without prejudice to any other right or remedy the Seller may have):
- 4.10.1 make additional charges for failed delivery;
- 4.10.2 allocate new delivery dates;
- 4.10.3 store the Goods at the Buyer's risk and cost;
- 4.10.4 invoice the Buyer for the Goods;
- 4.10.5 terminate this Contract without liability on the Seller's part; and/or
- 4.10.6 recover from the Buyer all costs and losses incurred by the Seller.
- 4.11 In the event of a Deemed Delivery:
- 4.11.1 risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
- 4.11.2 the Goods shall be deemed to have been delivered; and
- 4.11.3 the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.12 If Goods are to be deposited other than on the Buyer's premises the Buyer shall be responsible for compliance with all regulations and for all steps which need to be taken for the protection at all times of persons or property. The Buyer will indemnify and keep indemnified the Seller in respect of all claims, losses, damages, costs and expenses incurred as a result of loading, unloading or delivery in accordance with the Buyer's instructions. This indemnity will be reduced in proportion to the extent that such claims, losses, damages, costs and expenses are due to the Seller's negligence.

5. NON-DELIVERY

- 5.1 The quantity of any consignment of Goods as recorded by the Company on despatch from the Company'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.
- 5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received.
- 5.3 Any liability of the Company for non-delivery of the Goods shall be limited, at the sole discretion of the Seller, to:
- 5.3.1 replacing the Goods within a reasonable time; and
- 5.3.2 issuing a credit note at the pro rata Contract rate for such Goods.
6. RISK/TITLE
- 6.1 The Goods are at the risk of the Buyer from the time of delivery.
- 6.2 Both legal and equitable ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- 6.2.1 the Goods; and
- 6.2.2 all other sums which are or which become due to the Company from the Buyer on any account.
- 6.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
- 6.3.1 hold the Goods on a fiduciary basis as the Company's bailee;
- 6.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
- 6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 6.3.4 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full Price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.
- 6.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
- 6.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value;
- 6.4.2 any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale; and
- 6.4.3 the Buyer will at the Seller's request and at the Buyer's expense assign to the Seller all rights the Buyer may have against its customers.
- 6.5 The Buyer's right to possession, use or sell the Goods may be withdrawn by the Seller on notice at any time.
- 6.6 The Buyer's right to possession of the Goods and all credit arrangements shall terminate immediately and all sums due to the Company shall immediately become payable if:
- 6.6.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his 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, or 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 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 or possible insolvency of the Buyer; or
- 6.6.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
- 6.6.3 the Buyer encumbers or in any way charges any of the Goods.
- 6.7 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 6.8 The Buyer grants the Company, 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.
- 6.9 Where the Company is unable to determine where any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.
- 6.10 On termination of the Contract, however caused, the Company's (but not the Buyer's) rights contained in this condition 6 shall remain in effect.
7. PRICE
- 7.1 Unless otherwise agreed by the Company in writing, the Price for the Goods shall be as set out in the Company's quotation or acknowledgment of order.
- 7.2 The price for the Goods shall be exclusive of any value added tax and unless otherwise agreed in writing, all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods ("Price").
- 7.3 The Company shall at its sole discretion discount the Price by up to 2.5% on payments received in cleared funds by the Company before the due date.
8. PAYMENT
- 8.1 Subject to condition 8.4, payment of the Price for the Goods is due in the invoiced currency on the last working day of the month proceeding the month in which the Goods are delivered or deemed to be delivered (the "Due Date").
- 8.2 Time for payment shall be of the essence.
- 8.3 No payment shall be deemed to have been received until the Company has received cleared funds.
- 8.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 8.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 8.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Company may charge interest to the Buyer on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of Nat West Bank, accruing on a daily basis until payment is made, whether before or after any judgment. Alternatively, the Company reserves the right to claim interest and fixed sum compensation under the Late Payment of Commercial Debts (Interest) Act 1998.
9. QUALITY
- 9.1 The Buyer shall inspect the Goods at the place and time of delivery but nothing in these conditions shall require the Buyer to break packaging and/or unpack Goods which are intended to be stored before use.
- 9.2 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.
- 9.3 The Company warrants that (subject to the other provisions of these conditions) on delivery, and for a period of 12 months from the date of delivery, the Goods shall:
- 9.3.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
- 9.3.2 the Goods will correspond with their specification set out in the Seller's Price list at the time of delivery;
- 9.3.3 be reasonably fit for any particular purpose for which the Goods are being bought if the Buyer had made known the purpose to the Company in writing and a duly authorised person of the Company has confirmed in writing that it

- is reasonable for the Buyer to rely on the skill and judgement of the Company. Unless otherwise indicated in writing, Goods are guaranteed against defects in materials or manufacturing for a period of 12 months from Delivery.
- 9.4 The Company shall not be liable for a breach of any of the warranties in condition 9.3 unless:
- 9.4.1 the Buyer gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit by the carrier, within 7 days of the time when the Buyer discovers or ought to have discovered the defect; and
- 9.4.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.
- 9.5 The Company shall not be liable for a breach of any of the warranties in condition 9.3 if:
- 9.5.1 the Buyer makes any further use of such Goods after giving such notice; or
- 9.5.2 the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
- 9.5.3 the Buyer alters or repairs such Goods without the written consent of the Company.
- 9.6 Subject to condition 9.4 and condition 9.5, if any of the Goods do not conform with any of the warranties in condition 9.3 the Company shall at its option repair or replace such Goods (or the defective part) or refund the Price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.
- 9.7 If the Company complies with condition 9.6 it shall have no further liability for a breach of any of the warranties in condition 9.3 in respect of such Goods.
- 9.8 Any Goods replaced shall belong to the Company and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the 12 month period.
10. LIMITATION OF LIABILITY
- 10.1 Subject to condition 4 and condition 5 and condition 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- 10.1.1 any breach of these conditions;
- 10.1.2 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
- 10.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 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.
- 10.3 Nothing in these conditions excludes or limits the liability of the Company:
- 10.3.1 for death or personal injury caused by the Company's negligence; or
- 10.3.2 under section 2(3), Consumer Protection Act 1987; or
- 10.3.3 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- 10.3.4 for fraud or fraudulent misrepresentation.
- 10.4 Subject to condition 10.2 and condition 10.3:
- 10.4.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance of the Contract shall be limited to the Contract Price; and
- 10.4.2 the Company shall not be liable to the Buyer for pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss 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.
11. ASSIGNMENT
- 11.1 The Company may assign the Contract or any part of it to any person, firm or company.
- 11.2 The Buyer shall not be entitled to assign the Contract or any part of it without prior written consent of the Company.
12. GENERAL
- 12.1 Neither party is liable for any breach of the Contract caused by matters beyond its reasonable control including acts of God, fire, lightning, explosion, war, disorder, flood, industrial disputes, weather of exceptional severity, unavoidable hardware or software failures, or acts of local or central government or other authorities.
- 12.2 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 12.3 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 12.4 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 12.5 The parties to the Contract do not intend that any term of the Contracts shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 12.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties irrevocably submit to the exclusive jurisdiction of the English courts.
- 12.7 Any personal data we collect will be used for fulfilling your order. We may also send you information about our other products and services and those of other members of our group. If you do not want us to do so, please let us know. We do not sell your personal data to third parties.
13. EDI AGREEMENT
- 13.1 The Company has adopted the Standard Electronic Data Interchange Agreement of the EDI Association. Where relevant in dealing with the Buyer the Company will observe the terms of that Agreement and the Buyer will be obliged also to observe its terms in dealings with the Company. A copy of the Agreement is available on application to the Company or the EDI Association.
14. COMMUNICATIONS
- 14.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:
- 14.1.1 (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or
- 14.1.2 (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.
- 14.2 Communications shall be deemed to have been received:
- 14.2.1 if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- 14.2.2 if delivered by hand, on the day of delivery; or
- 14.2.3 if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
- 14.3 Communications addressed to the Company shall be marked for the attention of Customer Services.