



## TERMS AND CONDITIONS OF PURCHASE

### 1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

**Conditions:** the terms and conditions set out in this document.

**Contract:** the contract between the Supplier and Eriez for the sale and purchase of the Goods in accordance with these Conditions.

**Delivery Location:** the delivery address or location set out in the Order.

**Eriez:** Eriez Magnetics Europe Limited (registered in England and Wales with company number 01397255) whose registered office is at Bedwas House Industrial Estate, Bedwas, Caerphilly CF83 8YG, UK.

**Force Majeure:** has the meaning given in clause 12.

**Goods:** the goods (or any part of them) set out in the Order.

**Order:** Eriez's order for the Goods, as set out in the Eriez's purchase order form.

**Specification:** any specification for the Goods, including any related designs, models, samples, plans and drawings, that is referred to or forms part of the Order and whether prepared by or on behalf of Eriez, the Supplier or jointly.

**Supplier:** the person or firm from whom Eriez purchases the Goods.

**Working Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

### 2. BASIS OF CONTRACT

2.1) These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2) The Order constitutes an offer by Eriez to purchase the Goods in accordance with these Conditions.

2.3) The Order shall be deemed to be accepted on the earlier of 2.3.1) the Supplier issuing a written acceptance of the Order; and 2.3.2) the Supplier doing any act consistent with fulfilling the Order, at which point the Contract shall come into existence.

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

2.5) If there is any conflict between the provisions of these Conditions and any other provision in the Contract, the other provision in the Contract shall prevail.

### 3. THE GOODS

3.1) The Goods are described in the Contract, including and Specification, and the Supplier shall ensure the Goods

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 Supplier or made known to the Supplier by Eriez expressly or by implication, and in this respect Eriez relies on the Supplier's skill and judgement;

3.1.3) where applicable, be free from defects in design, material and workmanship and remain so for twenty four (24) 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 Supplier 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 the Contract.

3.3) Eriez shall have the right to inspect and test the Goods at any time before delivery.

3.4) If following such inspection or testing Eriez considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, Eriez shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

3.5) Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and Eriez shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

### 4. DELIVERY

4.1) The Supplier shall ensure that:

4.1.1) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;

4.1.2) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

4.1.3) if the Supplier requires Eriez to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.

4.2) The Supplier shall deliver the Goods:

4.2.1) on the date specified in the Order, or, if no such date is specified, within twenty one (21) Working Days of the date of the Order and time shall be of the essence for the delivery date;

4.2.2) to the Delivery Location; and

4.2.3) during Eriez's normal business hours, or as instructed by Eriez.

4.3) Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location

4.4) If the Supplier:

4.4.1) delivers less than 95% of the quantity of Goods ordered, Eriez may reject the Goods; or

4.4.2) delivers more than 105% of the quantity of Goods ordered, Eriez may at its discretion reject the Goods or the excess Goods,

and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and Eriez accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

4.5) The Supplier shall not deliver the Goods in instalments without Eriez's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle Eriez to the remedies set out in clause 5.

### 5. REMEDIES

5.1) If the Goods are not delivered on the date they are due as referred to in clause 4.2.1, or do not comply with the undertakings set out in clause 4.2.1, then, without limiting any of its other rights or remedies, Eriez shall have the right to any one or more of the following remedies, whether or not it has accepted the Goods to:

5.1.1) terminate the Contract;

5.1.2) reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;

5.1.3) require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);

5.1.4) refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;

5.1.5) recover from the Supplier any costs incurred by Eriez in obtaining substitute goods from a third party; or

5.1.6) claim damages for any other costs, loss or expenses incurred by Eriez which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

5.2) If the Goods are not delivered on the due date Eriez may at its option claim or deduct one percent (1%) of the price of the Goods for each week or part of a week during which the delivery of the Goods is delayed by way of liquidated damages, up to a maximum of five percent (5%) of the total price of the Goods. If Eriez exercises its rights under this clause 5.2, it shall not be entitled to any of the remedies set out in clause 5.1 in respect of the Goods' late delivery (but such remedies shall be available in respect of the Goods' condition).

5.3) These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

5.4) The Supplier shall keep Eriez indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by Eriez as a result of or in connection with:

5.4.1) any claim made against Eriez for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

5.4.2) any claim made against Eriez by a third party arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and

5.4.3) any claim made against Eriez by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.

This clause 5.4 shall survive termination of the Contract.

5.5) Eriez's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

## **6. TITLE AND RISK:**

6.1) Title and risk in the Goods shall pass to Eriez on completion of delivery.

## **7. PRICE AND PAYMENT**

7.1) The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date the Order was issued.

7.2) The price of the Goods is exclusive of amounts in respect of value added tax (VAT), but includes the costs of packaging, insurance, carriage and delivery of the Goods. No extra charges shall be effective unless agreed in writing and signed by Eriez.

7.3) Eriez shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

7.4) The Supplier may invoice Eriez for the Goods on or at any time after the completion of delivery.

7.5) Eriez shall pay correctly rendered invoices within sixty (60) calendar days following the end of the month in which delivery of the Goods occurs. Payment shall be made to the bank account nominated in writing by the Supplier.

7.6) Eriez may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier to Eriez under any Contract against any amounts payable by it to the Supplier under the Contract.

## **8. CUSTOMER PROPERTY**

8.1) The Supplier acknowledges that all materials, equipment and tools, drawings, specifications and data supplied by Eriez to the Supplier and all rights in them are and shall remain the exclusive property of Eriez. The Supplier shall keep the same in safe custody at its own risk, maintain them in good condition until returned to Eriez, and not dispose or use the same other than in accordance with Eriez's written instructions or authorisation.

## **9. DELIVERY**

9.1) During the term of the Contract and for a period of six (6) thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover such heads of liability as may arise under or in connection with the Contract, and shall, on Eriez'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. CONFIDENTIAL INFORMATION**

10.1) A party (receiving party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are disclosed to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products or its services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors shall keep such information confidential.

## **11. SUSPENSION AND TERMINATION**

11.1) Eriez may terminate the Contract in whole or in part at any time before delivery with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. Eriez shall pay the Supplier fair and reasonable compensation for work-in-progress at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

11.2) If the Supplier becomes bankrupt or insolvent or (being a company) makes any arrangement with its creditors or has a receiver appointed or commences to be wound up (other than for the purpose of amalgamation or reconstruction) or enters into any scheme of arrangement or has an administrative receiver appointed (or if Eriez reasonably believes that the Supplier is about to become subject to any of them) or if the Supplier is in breach of the Contract then, without limiting any other right or remedy available to it, Eriez may suspend the Contract without incurring any liability to the Supplier or may terminate the Contract.

11.3) 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.

## **12. FORCE MAJEURE**

12.1) 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 provided that the Supplier shall use all reasonable endeavours to cure any such events or circumstances and resume performance under the Contract. If any events or circumstances prevent the Supplier from carrying out its obligations under the Contract for a continuous period of more than ten (10) Working Days, Eriez may terminate the Contract immediately by giving written notice to the Supplier. 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 strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, 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, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

## **13. GENERAL**

13.1) Assignment and subcontracting.

13.1.1) Eriez may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.

13.1.2) The Supplier may not assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract without Eriez's prior written consent.

13.2) Notices.

13.2.1) 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 clause, and shall be delivered personally, or sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.

13.2.2) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.2.1; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the first Working 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 fax or e-mail, on the day of transmission

13.3) Severance.

13.3.1) 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.

13.3.2) 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.

13.4) **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.

13.5) **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.

13.6) **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 Eriez.

13.7) **Headings.** Headings in these Conditions are for convenience only and shall not affect their interpretation.

13.8) **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, the law of England and Wales, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.