

TERMS & CONDITIONS OF SALE

Sto SEA Sdn Bhd

1. Definitions

"Buyer"	means the person who buys or agrees to buy the goods from the Seller
"Conditions"	means the terms and conditions of the sale set out in this document and any special terms and conditions agreed in writing by the Seller
"Delivery Date"	means the date specified by the Seller when the goods are to be delivered
"Goods"	means the articles which the Buyer agrees to buy from the Seller
"Price"	means the price for the Goods excluding carriage, packing, insurance and GST
"Seller"	means Sto SEA Sdn Bhd

All headings are for ease of reference only and shall not affect the construction of the contract.

2. Conditions Applicable

- 2.1 These Conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order confirmation of order or similar documents.
- 2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.
- 2.3 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyers' acceptance of these Conditions.
- 2.4 The unconditional delivery of goods or acceptance of payment shall not constitute acceptance by the Seller of any terms different from these Conditions.
- 2.5 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

3. The Price and Payment

- 3.1 The Price shall be the price set out in the invoice. The Seller may by giving notice to the Buyer at any time up to 24 hours before delivery increase the Price of the Goods to reflect any increase in the cost to the Seller which is due to factors occurring after the making of the contract of sale which are beyond the reasonable control of the Seller (including without limitation, foreign exchange fluctuations, taxes, and duties and the cost of labour, materials and other manufacturing costs). The Price is unless otherwise stated, exclusive of GST which shall be due at the rate ruling on the date of the Seller's invoice.
- 3.2 Payment of the Price and the GST shall be strictly as per the terms stated on the invoice. Time for payment shall be of the essence.
- 3.3 If the Buyer fails to make any payment on the due date (whether under this contract or any other contract between the Seller and the Buyer) then without prejudice to any the Seller's right and the Seller may:
 - 3.3.1 suspend or cancel deliveries of any articles due to the Buyer, and/or
 - 3.3.2 appropriate any payment made by the Buyer to such of the Goods (or) Goods supplied under any other contract with the Buyer as the Seller may in its sole discretion think fit.
- 3.4 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 1% per month and shall accrue at such a rate after as well as before any judgment.

4. The Goods

- 4.1 The Goods shall be supplied in accordance with the description contained in this contract.
- 4.2 The Seller may from time to time make changes in the specifications of the Goods which are required to comply with any applicable safety or statutory requirements or which do not materially affect the quality of fitness for purpose of the Goods.
- 4.3 The Buyer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased.

- 4.4 The Seller may cancel this contract at any time before the Goods are delivered by giving written notice. On giving such notice the Seller shall promptly repay to the Buyer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.

5. Warranties

- 5.1 Save that the Goods supplied shall correspond with the description of the Goods in the contract, all implied terms, conditions and warranties relating to the conditions, quality, merchantability and/or fitness for purpose of the Goods or any of the Goods whether implied by statute or common law or otherwise are excluded.

6. Delivery of the Goods

- 6.1 Unless otherwise stated, delivery of the Goods shall be made to the Buyer's address on the Delivery Date. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- 6.2 The Seller may deliver the Goods by separate instalments in accordance with the agreed delivery schedule. Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract of sale.
- 6.3 The failure of the Buyer to pay for any one or more of the said instalments of the Goods on the due dates shall entitle the Seller (at the sole discretion of the Seller):
 - 6.3.1 without notice to suspend further deliveries of the Goods pending payment by the Buyer; and /or
 - 6.3.2 to treat this contract as repudiated by the Buyer.
- 6.4 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.
- 6.5 Notwithstanding that the Seller may have delayed or failed to deliver the Goods (or any of them) promptly, the Buyer shall be bound to accept delivery and to pay for the Goods in full provided that the delivery shall be tendered at any time within 3 months of the Delivery Date.

7. Acceptance of the Goods

- 7.1 The Buyer shall be deemed to have accepted Goods within 24 hours after delivery to the Buyer.
- 7.2 After acceptance the Buyer shall not be entitled to reject Goods which are not in accordance with the contract.

8. Retention of Title

- 8.1 The Goods shall be at the Buyer's risks as from the time this contract is made whether delivery of the Goods is made or not. The Buyer shall assume all risks and liability for loss and damage resulting from the transportation, handling, storage or use of the Goods.
- 8.2 In spite of delivery having been made, property in the Goods shall not pass from the Seller until:
 - 8.2.1 the Buyer shall have paid the Price plus GST in full, and
 - 8.2.2 no other sums whatever shall be due from the Buyer to the Seller whether under this contract or any other contracts between the Buyer and the Seller.
- 8.3 Until the property in the Goods passes to the Buyer in accordance with Clause 8.2 hereof the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the Goods (at no cost to the Seller) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Seller's property.

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- 8.4 Notwithstanding that the Goods (or any of them) remain the property of the Seller the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such sales or dealings shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until property in the Goods passes from the Seller the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Seller's money.
- 8.5 In the event that the Buyer processes, mixes or combines the Goods with other materials whether belonging to the Buyer or third parties into new products, the Buyer shall do so as trustee for and on behalf of the Seller. The Buyer shall thereafter store the new products incorporating the Goods (at no cost to the Seller) separately from all other goods in its possessions and marked in such a way that clearly indicates that the Buyer stores them as bailee for the Seller. If such goods are sold by the Buyer, the Buyer shall keep the portion of proceeds of sale representing the Price of the Goods so utilised in trust for the Seller and shall not mix the same with other money or pay into any overdrawn bank account and shall be at all material times identified as the Seller's money.
- 8.6 The Seller shall be entitled to recover the Price (plus GST) notwithstanding that property in any of the Goods has not passed from the Seller.
- 8.7 Until such time as property in the Goods passes from the Seller the Buyer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold to the Seller. If the Buyer fails to do so the Seller may enter upon a premises owned occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of such request the rights of the Buyer under Clause 8.4 hereof shall cease.
- 8.8 The Buyer shall not pledge or in any way charge by way of security of any indebtedness any of the Goods which are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 8.9 The Buyer shall insure and keep insured the Goods to the full Price against "all risks" to the reasonable satisfaction of the Seller until the date that property in the Goods passes from the Seller, and shall whenever requested by the Seller produce a copy of the policy of insurance. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 9. Remedies of the Buyer**
- 9.1 Where the Buyer rejects any Goods then the Buyer shall have no further rights whatever in respect of the supply to the Buyer of such Goods of the failure by the Seller to supply Goods which conform to the contract of sale.
- 9.2 Where the Buyer accepts or has been deemed to have accepted any Goods then the Seller shall have no liability whatever to the Buyer in respect of those Goods.
- 9.3 The Seller shall not be liable to the Buyer for late delivery or short delivery, handling, storage, use, imperfection or otherwise of the Goods.
- 10. Liability of the Seller**
- 10.1 The Seller shall be under no liability whatsoever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of any breach by the Seller of this contract.
- 10.2 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.
- 11. Insolvency or other Default of the Buyer**
- If the Buyer fails to make payment for the Goods in accordance with this contract of sale or commits any other breach of this contract of sale or if any distress or execution shall be levied upon any of the Buyer's goods or if the Buyer offers to make any arrangement with its creditors or commits an act of bankruptcy or if any petition in bankruptcy is presented against the Buyer or the Buyer is unable to pay its debts as and when they fall due or if being a limited company any resolution petition to wind up the Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver administrator administrative receiver or manager shall be appointed over the whole or any part of the Buyer's business or assets or if the Buyer shall suffer any analogous proceedings under foreign law all sums outstanding in respect of the Goods shall become payable immediately. The Seller may in its absolute discretion and without prejudice to any other rights which it may have.
- 11.1 Suspend all future deliveries of Goods to the Buyer and/or terminate the contract without liability upon its part; and/or
- 11.2 exercise any of its rights pursuant to clause 8 hereof.
- 12. Set-Off and Counterclaim**
- The Buyer may not withhold payment of any invoice or other amount due to the Seller by reason of any right of set-off counterclaim which the Buyer may have or allege to have or for any reason whatever.
- 13. Severance**
- Any provision of this contract which is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision of this contract.
- 14. Waiver**
- No waiver or forbearance by the Seller (whether express or implied) in enforcing any of its rights under this contract shall prejudice its right to do so in the future.
- 15. Notices**
- Any notices:
- 15.1 shall be in writing, and may be given to any party at the addresses stated overleaf or to such other address as may have been notified to the other parties; and
- 15.2 will be effectively served:
- 15.2.1 on the day of receipt where any hand delivered letter, any telex or telefax message is received on a business day before or during normal working hours
- 15.2.2 on the following business day, where any hand delivered letter, any telex or telefax message received either on a business day or after normal working hours or any other day or
- 15.2.3 on the second business day following the day of posting from within Malaysia of any letter sent by post office inland first class mail postage prepaid.
- 16. Service of Proceedings**
- The Buyer agrees that any Writ of Summons, statement of claim or other legal process or document requiring personal service in respect of any action or proceedings arising herein may be served on the Buyer by:
- 16.1 leaving it at the Buyer's address as stated overleaf, and/or
- 16.2 sending it by ordinary post to the Buyer's address stated overleaf.
- 17. Force Majeure**
- Delivery of Goods may be delayed or suspended by the Seller in the event of any act of God, war, riot, fire, explosion, accident, flood, sabotage, inability to obtain fuel, power, raw material, labour, regulation, order of action, national defence requirements or any other event beyond the reasonable control of the Seller or in the event of labour trouble, strike, lockout or injunction, any of which events prevent the manufacture or dispatch of a shipment of the goods or of a material upon which the manufacture of the goods is dependent. If because of any such event, the Seller is unable to supply part or all the Goods, the Seller shall be exempted to such extent from its obligations hereunder upon giving prompt notice of such event to the Buyer, but this contract shall otherwise remain in force.
- 18. Governing Laws**
- This Agreement shall be governed by laws of Malaysia.