



## CONDITIONS OF SALE

### 1. GENERAL

- 1.1 In these conditions unless the context otherwise requires the following words have the following meanings:
- “Contract” is the contract for sale and purchase of the Goods [and/or supply of the Services];
- “Goods” the goods (including any instalment of the goods or any parts for them) which The Company is to supply;
- “Customer” the person, firm or company buying Goods [or Services] from The Company;
- “Price” the price payable for the Goods or Services, or both; [“Services” [INSERT DETAILS OF SERVICE TO BE SUPPLIED] (or any other services to be provided to the Customer) which The Company is to provide];
- “Specification” the specification agreed between the Customer and The Company; and
- “The Company” Mondottica Limited. Registered number 04262018, whose registered office address is Michael House, Riverside Business Park, Rennie Hogg Road, Nottingham. NG2 1RX
- 1.2 These Conditions are the only conditions upon which The Company is prepared to deal with the Customer and they shall govern the Contract to the entire exclusion of any other express or implied conditions.
- 1.3 These Conditions may only be modified by a variation in writing signed on behalf of The Company by a director or the secretary of The Company and no other action on the part of The Company (whether delivery of the Goods, [supply of the Services] or otherwise) shall be construed as an acceptance of any other conditions.
- 1.4 These Conditions (as modified in accordance with Condition 1.3 and together with the matters referred to on the face of The Company’s quotation and/ or acknowledgement of order) embody the entire understanding of the parties and supersede any prior promises, representations, undertakings or implications. This Condition shall not exclude any liability in respect of any statement or representation made fraudulently by either party prior to the date of the Contract.
- 1.5 The employees and agents of The Company are not authorised to make any representations concerning the Goods [or Services] unless confirmed by The Company in writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations that are not so confirmed.
- 1.6 No contract shall be concluded until The Company dispatches an acknowledgement of order to the Customer. Any quotation in whatever form given to the Customer is given subject to these Conditions and does not constitute an offer to sell or supply.
- 1.6 Any typographical, clerical or other error or omission in the sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by The Company shall be subject to correction without any liability on the part of The Company.
- 2. PERFORMANCE**
- 2.1 The Company warrants that: (i) the Goods shall at the time of delivery be free from defects in workmanship and materials; and (ii) due care and skill shall be exercised in the supply of the Services; if any Goods [or Services] do not conform to the above warranty The Company will at its option:

- 2.1.1 These Conditions are the only conditions upon which The Company is prepared to deal with the Customer and they shall govern the Contract to the entire exclusion of any other express or implied conditions.
- 2.1.2 take such steps as The Company deems necessary to bring the Goods into a state where they are free from such defects; [or] take back the Goods found not to conform to the warranty and refund the appropriate part of the Price; or
- 2.1.3 refund the appropriate part of the Price for the Services;] provided that the liability of The Company for any breach of any warranty under this Condition 2.1 shall in no event exceed the Price for the relevant Goods or Services, and performance of any one of the above options shall constitute an entire discharge of The Company’s liability under the relevant warranty.
- 2.2 The warranty in Condition 2.1 is conditional upon:
- 2.2.1 the Customer giving written notice to The Company of the alleged defect in the Goods [or Services] such notice to be received by The Company within seven days of the time when the Customer discovers or ought to have discovered the defect and in any event within three months of delivery [or supply] of the Goods [or Services]; and
- 2.2.2 the Customer affording The Company a reasonable opportunity to inspect the Goods and, if so requested by The Company, returning the allegedly defective Goods to The Company’s works, carriage pre-paid, for inspection to take place there; and
- 2.2.3 the Goods having not been altered or modified in any way whatsoever and having not been subjected to misuse or unauthorised repair; and
- 2.2.4 the Customer having complied with its obligations under this and any other contract made with The Company.
- 2.3 The Company shall not be in any way liable for any claim under the warranty in Condition 2.1 in respect of any defect in the Goods:
- 2.3.1 arising from any drawing, design or specification supplied by the Customer to which the Goods have been manufactured by The Company; and
- 2.3.2 arising from fair wear and tear, the fault or negligence of the Customer, damage caused by the Customers or the Customer’s abnormal working conditions or failure to follow The Company’s instructions (whether or not in writing).
- 2.4 The warranty in Condition 2.1 does not extend to parts, materials or equipment not manufactured by The Company, in respect of which the Customer shall only be entitled to the benefit of any warranty or guarantee as given by the manufacturer to The Company.
- 2.5 Save as provided in Condition 2.1, in section 12 of the Sale of Goods Act 1979 and in Section 2 of the Supply of Goods and Services Act 1982:
- 2.5.1 all conditions and warranties, express or implied, as to the quality or fitness for any purpose of the Goods [or as to the provision of the Services] are hereby expressly excluded; and
- 2.5.2 The Company shall be under no liability for any loss or damage (whether direct, indirect or consequential) howsoever arising which may be suffered by the Customer; except (unless the contract is an international supply contract [as described in Section 26 of the Unfair Contract Terms Act 1977]) liability for death or personal injury caused by The Company’s negligence which The Company in no way seeks to exclude or limit.
- 2.6 Notwithstanding the foregoing provisions of this Condition 2, our maximum aggregate liability under or in connection with the Contract, whether in contract, tort (including negligence) or otherwise, shall in no circumstances exceed:
- 2.6.1 [£1,000,000 (one million pounds)] in respect of any one claim or series of claims arising out of the same event or circumstances in the case of physical loss or damage to any property

- 2.7 Unless otherwise provided in the Contract, The Company shall not be liable under the Contract for any loss of actual or anticipated income or profits, contracts, business, goodwill, revenue or anticipated savings or any indirect, consequential or special loss howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise, whether or not such losses foreseeable, foreseen or known.
- 2.8 The Company reserves the right to make any changes to the specification of the Goods or to the components within the Goods provided that these do not materially affect the quality or performance of the Goods.
- 3. PRICE**
- 3.1 The Price will be as set out in the Company price list current at the date on which the consignment of Goods is dispatched to the Customer [or the Services are provided.]
- 3.2 The Company reserves the right, by giving written notice to the Customer at any time before delivery, to increase the Price to reflect any increase in the cost to The Company which is due to any factor beyond its control (such as without limitation, foreign exchange fluctuation, currency regulation, alteration of duties, significant increases in the cost of the labour, materials or other costs of manufacture), any changes in delivery dates, quantities or the Specification for the Goods [or Services] which is requested by the Customer or any delay caused by any of the Customer’s instructions or the Customer’s failure to give The Company adequate information or instructions.
- 3.3 [The Price for the Services shall be exclusive of any accommodation, living or travelling expenses incurred by The Company as a result of the provision of the Services, for which The Company shall invoice the Customer separately.]
- 3.4 The Price is exclusive of value added tax or any similar applicable taxes, levies or duties, which will be added to or charged on invoices at the appropriate rates.
- 4. PAYMENT**
- 4.1 Subject to any terms agreed in writing between the Customer and The Company, The Company may invoice the Customer for the Price of the Goods [and/ or Services] on or at any time after delivery of the Goods [and/or Services,] unless the Goods are to be collected by the Customer or the Customer wrongly fails to take delivery of the Goods, in which event The Company shall be entitled to invoice the Customer for the Price of the Goods at any time after The Company has notified the Customer the Goods are ready for collection or (as the case may be) The Company has tendered delivery of the Goods.
- 4.2 Unless otherwise agreed in writing, the Customer shall pay the Price of any Goods [and/or Services] no later than the thirtieth day from the date of the relevant The Company invoice.
- 4.3 If any payment that is to be made hereunder by the Customer to The Company is overdue, interest will be chargeable thereon at the rate specified in the Late Payment of Commercial Debts (Interest) Act 1998 until the sum due is paid in cleared funds.
- 4.4 Where any sum owed by the Customer to The Company under this or any other contract between The Company and the Customer is overdue, The Company may withhold any deliveries or supply of Goods [or Services] due to be made under this Contract until arrangements as to payment or credit have been established which are satisfactory to The Company.
- 4.5 If the Customer fails to pay for any Goods in accordance with these Conditions, The Company may bring an action against the Customer for the Price of those Goods at any time, even though the property in the Goods has not passed to the Customer.
- 5. DELIVERY**
- 5.1 Delivery of each consignment of the Goods shall be made to the place designated by the Customer when placing the order, provided that The Company shall be entitled to withhold delivery of the Goods until the Customer has paid all sums due to The Company hereunder.
- 5.2 Where the Goods are to be collected by the Customer, The Company shall give the Customer notice that the Goods are ready for collection and the Customer will arrange for the Goods to be collected within 2 working days of such notice.

- 5.3 Unless otherwise agreed by The Company in writing, the Price quoted for the Goods by The Company shall be exclusive of the costs of delivering the same in accordance with the Contract [for which the Customer will be invoiced separately by The Company]. Such delivery charges shall include the costs of freight and insurance and The Company’s handling charge.
- 5.4 Any dates quoted for delivery of the Goods [or supply of the Services] are non-binding, indicative business estimates only and The Company will not be liable to the Customer for any loss or damage (whether direct, indirect or consequential and howsoever arising) sustained by the Customer as a result of any delay in delivery or dispatch of the Goods [or supply times.] Time for delivery [or supply] shall not be of the essence. The Goods may be delivered [or the Services supplied] by The Company in advance of the quoted delivery [or supply] date on giving reasonable notice to the Customer.
- 5.5 Where the Goods [or the Services] are to be delivered [or supplied] in instalments, each delivery [or supply] shall constitute a separate contract and failure by The Company to deliver [or supply] any one or more of the instalments in accordance with the Contract or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 5.6 If the quantity of Goods delivered does not correspond with the quantity required to be delivered in that consignment, the Customer shall not be entitled to reject that consignment but shall be entitled only:
- 5.6.1 if the quantity delivered is less than the Contract quantity, to a further delivery of Goods to make up the deficiency or (at The Company’s option) a refund of the appropriate part of the Price for the Goods; or
- 5.6.2 if the quality delivered exceeds the Contract quantity, to return the excess or to retain the whole, in which case the Price for the Goods shall be adjusted at the rate then prevailing; provided that the Customer shall have no entitlement whatsoever in respect of that deficiency unless The Company is notified in writing within three days of delivery.
- 5.7 If the Customer fails to take delivery of the Goods or fails to give The Company adequate delivery instructions at the time stated for delivery (otherwise than by any reason of any cause beyond the Customer’s reasonable control or by reason of The Company’s fault) or The Company is withholding delivery of the Goods pursuant to Condition 4.4, The Company (without prejudice to any other rights or remedy it may have) may either:
- 5.7.1 store the Goods as set out in Condition 7; or
- 5.7.2 sell the Goods at the best price readily obtainable and, after deduction of The Company’s reasonable storage and sale expenses, charge the Customer for any shortfall below the Price.
- 6. RISK AND PROPERTY**
- 6.1 The risk in the Goods shall pass to the Customer upon delivery of the Goods to the Customer or any carrier acting on the Customer’s behalf. If the Customer fails to collect the Goods from The Company’s premises on the date specified or it fails to take delivery of the Goods or The Company is unable to dispatch the Goods because of the Customer’s acts or omissions, the risk in the Goods shall still pass to the Customer at the time when it should have collected the Goods or taken delivery.
- 6.2 The property in the Goods shall not pass to the Customer until the total price of: (i) the Goods; and (ii) any goods which are subject to any other contract between The Company and the Customer for which payment remains due; is paid in full and in cleared funds.
- 6.3 Until such time as the full Price for any Goods has been paid:
- 6.3.1 those Goods shall be held by the Customer in fiduciary capacity and stored by the Customer at its premises in such a manner that they are clearly identifiable as the Goods of The Company and shall be kept separate from other goods whether or not supplied by The Company;
- 6.3.2 the Customer shall insure those Goods to the full replacement value of the Goods and shall note The Company’s interest on the policy;

- 6.3.3 the Customer shall not pledge or charge in any other way any of those Goods and, if the Customer breaches this clause 6.3.3, the Price for those Goods shall become immediately due and payable; and
- 6.3.4 those Goods shall be handed over to The Company on demand and The Company: (i) shall be entitled to re-take possession of them without prejudice to any of its other rights against the Customer; and (ii) is hereby granted a license to enter into the Customer’s premises for such purposes.
- 6.4 The Company hereby authorises the Customer to use and/or sell the Goods in the normal course of the Customer’s business. If the Customer sells any Goods prior to paying the full Price due in respect thereof: (i) the Customer shall hold the proceeds of sale on trust for The Company and shall immediately pay the proceeds of sale into a separate bank account for such purposes; and (ii) The Company shall be entitled to call upon the Customer to assign all claims that the Customer may have against the purchaser(s) of those Goods.
- 7. STORAGE**
- 7.1 The Company shall be entitled to store the Goods (or any of them) at the Customer’s expense at The Company’s premises or elsewhere:
- 7.1.1 if the Customer fails to take delivery of the Goods at the specified time, where the Customer is required to collect the Goods from The Company’s works;
- 7.1.2 if The Company is either unable to dispatch the Goods by reason of the acts or omissions of the Customer or The Company has dispatched the Goods but the Customer fails to take delivery, where the arrangement is for the Goods to be delivered to the Customer; or
- 7.1.3 if The Company is withholding delivery of the Goods pursuant to Condition 4.4.
- 7.2 Where The Company becomes entitled under Condition 7.1 to store away Goods at its premises at the Customer’s expense, Mondottica may reclaim rom the Customer all reasonable costs incurred by The Company (whether by way of storage, insurance or otherwise) in respect of those Goods. It is expressly declared that it shall be reasonable for The Company to take out insurance in respect of any Goods stored at The Company’s premises at the Customer’s expense notwithstanding that risk in the Goods has passed to the Customer.
- 8. LIEN**
- 8.1 The Company will (without prejudice to any other remedy available to it) have in respect of all unpaid debts due from the Customer a general lien on all property of the Customer in possession of The Company for whatever purpose and whether worked upon or not and be entitled on the expiration of not less than 14 days notice in writing to the Customer to dispose of such property and to apply the proceeds towards satisfaction of such debts.
- 9. INTELLECTUAL PROPERTY**
- 9.1 The Customer acknowledges that The Company and/ or its Lessors retain ownership of all intellectual property rights in the Goods [or Services, and in any goods, products or materials made available or produced as part of the Services].
- 10. CANCELLATION**
- 10.1 Orders which have been accepted by The Company can only be cancelled by the Customer with the prior written agreement of The Company and on condition that the Customer shall indemnify The Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by The Company as a result of such cancellation.
- 11. FORCE MAJEURE**
- 11.1 The Company shall have the right to cancel or to reduce the volume of the Goods delivered [or Services supplied] if it is prevented from or hindered in delivery of the Goods [or supply of the Services] through any circumstances beyond its control, including (but not limited to) industrial action, war, fire, or prohibition or enactment of any kind, without incurring any liability for any loss or damage whatsoever resulting therefrom.

- 12. SET-OFF**
- 12.1 The Customer will have no right of withholding or setoff statutory or otherwise.
- 13. THIRD PARTY RIGHTS**
- 13.1 The Contract does not create any right enforceable by any person not a party to it under the Contracts (Rights of Third Parties) Act 1999 except that a person who is a permitted successor to or assignee of the rights of a party is deemed to be a party to the Contract.
- 14. SUB-CONTRACTING**
- 14.1 The Company shall be entitled to sub-contract or assign all or any of its obligations hereunder.
- 15. TERMINATION**
- 15.1 Without prejudice to any other rights or remedies available to The Company, The Company may terminate the Contract or suspend or cancel delivery or recover the possession of any Goods [and/or the provision of any Services] without any liability to the Customer if:
- 15.1.1 any sum owed by the Customer under this or any other contract between The Company and the Customer is overdue;
- 15.1.2 the Customer breaches any term of this Contract and (if capable of remedy) does not remedy such breach within 7 days of being requested to do so by The Company;
- 15.1.3 the Customer being a company shall pass a resolution or suffers an order of a court to be made for its winding-up, or if a receiver, administrative receiver or administrator shall be appointed over all or any part of its undertaking or assets, goes into liquidation or ceases or threatens to cease to trade, or if a petition for the appointment of an administrator shall be presented in respect of it; or
- 15.1.4 being an individual or partnership shall suspend payment or propose to enter into any composition with creditors or become unable to pay its debts (or have no reasonable prospects of doing so) or suffer a bankruptcy order; or
- 15.1.5 in the reasonable opinion of The Company, the Customer is for any other reason unable to meet its obligations under the Contract.
- 15.2 Upon termination of the Contract for any reason, the Price payable for any Goods [and/or Services] for which payment has not been received by The Company prior to termination shall become immediately due and payable.
- 16. EXPORT SALES**
- 16.1 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 16 shall (subject to any special terms agreed in writing between The Company and the Customer) apply notwithstanding any other provision of these Conditions.
- 16.2 The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of all taxes, duties, levies and other charges in relation thereto.
- 16.3 Unless otherwise agreed in writing payment will be made in pounds sterling in England.
- 16.4 The Uniform Laws on International Sales Act 1967 shall not apply to the Contract.
- 17. GOVERNING LAW**
- 17.1 The Contract is governed by the laws of England and the English courts shall have the exclusive jurisdiction (to which the Customer hereby irrevocably submits) to resolve any disputes arising out of it.
- NOTE:**
- The Company’s prices are calculated on the basis that the above Conditions will apply. Customers requiring prices to be quoted on a different basis should inform The Company.