

Valdamark LTD

Terms and Conditions of Sale

Date: 2019

Parties:

“Valdamark”: Valdamark Limited a company incorporated in England under 7498265, whose registered office is at Unit 13, 30 the Downs, Altrincham, Cheshire, WA14 2PX, UK.

1 “Buyer”: means the person who accepts the Valdamark’s written quotation for the sale of the Goods or whose written order for the Goods is accepted by Valdamark.

Recitals:

(A) Valdamark is the owner of the goods details of which are given in the specification attached to this agreement (the “Goods”).

(B) The Buyer wishes to purchase the Goods, and Valdamark is willing to sell the Goods, on the terms and conditions of this agreement.

Operative Provisions:

1 Interpretation

1.1 In this agreement, unless the context otherwise requires:

“Business Day” a day on which clearing banks in London are open for business;

“Completion” completion of the sale and purchase of the Goods in accordance with clause 3;

“Delivery” delivery of the Goods in accordance with this agreement;

“Delivery Date” the estimated date for Delivery specified in the Schedule;

“Goods” the goods, details of which are set out in the specification;

“Incoterms” the international rules for the interpretation of trade terms of the International Chamber of Commerce, as in force at the date of this agreement, and any term described in Incoterms has the same meaning in this agreement;

“Intellectual Property” any patent, copyright, design right or any other form of protection, any application for such protection, and any rights in relation to any confidential information, which are subsisting at the relevant time;

“Payment Date(s)” the date(s) for payment of the Price specified in the Schedule;

“Price” the price of the Goods specified in the Schedule;

“Sellers Premises” the premises of Valdamark specified in the Schedule.

1.2 In this agreement, unless otherwise stated, each reference to:

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- 1.2.1 a clause is a reference to a clause of this agreement;
  - 1.2.2 a Schedule is a reference to the schedule to this agreement;
  - 1.2.3 a statute or statutory provision includes that statute or provision as amended, extended, re-enacted or consolidated and all statutory instruments or orders made under it;
  - 1.2.4 "this agreement" means this agreement and the Schedules, as amended or supplemented at the relevant time;
  - 1.2.5 "writing" or any similar expression does not include any similar form of electronic communication;
  - 1.2.6 a document "in the agreed form" means the form of that document as annexed to this agreement and signed for the purposes of identification by or on behalf of the parties;
  - 1.2.7 the word "including" shall be interpreted as being without limitation to the generality of any preceding words; and
  - 1.2.8 words denoting the singular include the plural and vice versa, words denoting one gender include the other, and words denoting persons include firms, corporations or other legal entities and vice versa.
- 1.3 The headings in this agreement are for convenience only and do not affect its interpretation.

## 2 Sale of goods

- 2.1 Valdemark shall sell and the Buyer shall buy the Goods, free from all liens, charges and encumbrances, and otherwise subject to the terms and conditions of this agreement.
- 2.2 The Buyer acknowledges and agrees that the details of the Goods in the specification are given only for the purpose of identifying the Goods, and do not make this agreement a sale by description.
- 2.3 The Buyer acknowledges and agrees that prior to the date of this agreement:
- 2.3.1 Valdemark has given the Buyer a reasonable opportunity to inspect the Goods and carry out FAT test; and
  - 2.3.2 the Buyer has satisfied itself as to the quality and condition and suitability for purpose of the Goods.

## 3 Completion

- 3.1 Completion of the sale and purchase of the Goods shall take place on Delivery when:
- 3.1.1 the Buyer shall:
    - (a) pay the Price to Valdemark in accordance with clause 4; and
    - (b) subject to clause 3.1.2(a), deliver to Valdemark a signed acknowledgement of receipt of the Goods in the agreed form; and
  - 3.1.2 Valdemark shall:
    - (a) deliver the Goods to the Buyer in accordance with clause 5; and
    - (b) deliver to the Buyer:
      - (i) a signed receipt in respect of the Price in the agreed form; and
      - (ii) the documents relating to the Goods which are referred to in the specification.
- 3.2 This agreement shall, in so far as it remains to be performed, remain in full force and effect notwithstanding Completion.

## 4 Price

- 4.1 As consideration for the sale of the Goods, the Buyer shall pay the Price on the Payment Dates and in the instalments set out in the Schedule .
- 4.2 Valdemark shall invoice the Buyer for the Price on the date of this agreement.
- 4.3 The Price is exclusive of:

4.3.1 any applicable value added tax, which the Buyer shall be additionally liable to pay to Valdemark at the rate in force at the date on which any payment is required from the Buyer, subject to receipt of a valid VAT invoice; and

4.3.2 any other taxes, duties or levies payable in respect of the sale of the Goods (other than taxes on income or profits payable by Valdemark), for which the Buyer shall be liable.

4.4 Payment of each instalment of the Price shall be made in pounds sterling by electronic transfer to the bank account of Valdemark details of which are given in the Schedule.

4.5 All payments to be made under this agreement shall be made without any set-off or counterclaim and free from any deduction or withholding except as required by law.

4.6 If the Buyer is required by law to make any tax deduction or withholding from the Price, it shall do all things in its power which may be necessary to enable or assist Valdemark to claim an exemption from or (if that is not possible) a credit for the deduction or withholding under any applicable double taxation or similar agreement from time to time in force, and shall give Valdemark proper evidence as to the deduction or withholding and payment over of the tax deducted or withheld; but if Valdemark is not able to obtain such an exemption or credit, the Buyer shall pay to the Licensor such additional amount as will, after the deduction or withholding, result in Valdemark receiving the amount that would have been payable under this agreement had no such deduction or withholding been required.

4.7 The Buyer shall be responsible for all bank charges in connection with the payment of the Price, and if any deduction is made by a bank from any payment made by the Buyer, the Buyer shall forthwith on written request by Valdemark pay such additional amount as will result in Valdemark receiving the amount that would have been payable under this agreement had no such charges been deducted.

4.8 The Buyer acknowledges that the time of payment of each instalment of the Price is of the essence of this agreement. If payment of any instalment of the Price is not received in cleared funds in Valdemark's bank account on or within 10 Business Days after the Payment Date, then without limiting any other right or remedy of Valdemark:

4.8.1 Valdemark shall be entitled to charge the Buyer interest on the amount outstanding, both before and after any judgment, calculated on a daily basis, at the rate of 5 per cent per annum over Bank of England base rate from time to time from the Payment Date until payment is made in full; and

4.8.2 Valdemark shall not place the order for the Goods or parts of the Goods with any third party until the deposit element of the Price has been received.

4.8.3 Valdemark shall be entitled to give the Buyer a notice requiring the Buyer to pay the outstanding amount of the Price, and if within a further 10 Business Days after the notice is given the Buyer has not paid in full the outstanding amount together with interest (calculated in accordance with clause 4.8.1) without any deduction then, without limiting any other right or remedy of Valdemark, Valdemark shall be entitled to give a notice terminating this agreement, in which case:

(a) Valdemark shall repay the amount (if any) of the Price which had been received by Valdemark prior to the date of the notice, less interest on the outstanding amount of the Price (calculated in accordance with clause 4.8.1) from the due date for payment to the date of repayment (which Valdemark shall be entitled to retain by way of liquidated damages), but shall have no further rights under this agreement; and

(b) if the amount of interest (calculated in accordance with clause 4.8.1) to which Valdemark is entitled is greater than the amount of the Price which had been received by Valdemark prior to the date of the notice terminating this agreement, the difference shall be owing as a debt to Valdemark.

4.9 If the Buyer would otherwise be required to make any payment under this agreement on a day which is not a Business Day, it shall make that payment no later than the previous Business Day.

## 5 Delivery

5.1 Within good time before Delivery:

5.1.1 the Buyer shall give Valdemark any information necessary to enable Valdemark to effect Delivery; and

5.1.2 Valdemark shall give the Buyer any information necessary to enable Valdemark to accept Delivery.

5.2 Unless otherwise agreed in writing with the Buyer, and subject to clause 6, Valdemark shall deliver the Goods to the Buyer at any time after the Buyer has paid the Price in full and Valdemark has notified the Buyer that the Goods are ready for collection, by making the Goods available for collection by the Buyer at Valdemark's Premises or, if it is agreed by Valdemark that Delivery will take place at some other place, by Valdemark delivering the Goods to that place.

5.3 The Delivery Date or any other date given for Delivery of the Goods is approximate only. If it becomes apparent that the Goods are unlikely to be delivered by the Delivery Date, Valdemark may give the Buyer a revised Delivery Date. Time for Delivery of the Goods shall not be of the essence of this agreement, and Valdemark shall not be liable for any delay in Delivery of the Goods however caused.

5.4 Where the Goods are to be delivered to the Buyer at Valdemark's Premises, the Buyer shall be responsible for the collection and transport of the Goods from Valdemark's Premises on or after the Delivery Date, and (without limiting clause 5.1.1) shall inform Valdemark in writing no later than 10 Business Days prior to the date on which the Goods are to be collected of the name of the transport company (which shall be a reputable transport company previously approved by Valdemark) and the date and time at which the Goods are to be collected (being any time between the hours of 9.00am and 5.00pm, UK time, on a Business Day).

5.5 Where any of the Buyer's representatives are to enter Valdemark's Premises for the purposes of taking Delivery, the Buyer shall ensure that its representatives comply with all applicable regulations in force at Valdemark's Premises and take reasonable care to avoid any damage to property or persons.

5.6 The costs of Delivery (including all transport to and from the UK) unless separately negotiated shall be payable by the Buyer in addition to the Price.

5.7 If the Buyer fails to take delivery of the Goods on [or within 5 Business Days after] the Delivery Date then, without limiting any other right or remedy available to Valdemark, Valdemark may:

5.7.1 store the Goods until actual Delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

5.7.2 where the failure is caused otherwise than by reason of any circumstances beyond the Buyer's reasonable control or by reason of Valdemark's fault, sell the Goods and (after deducting all reasonable storage and selling expenses) charge the Buyer for any amount by which the net proceeds of sale fall short of the Price.

5.8 For machinery Valdemark will install the Goods at the Buyer's premises, subject to the Buyer preparing a clear area for the Goods to be positioned in and piping, electricity and air being available.

5.9 In the event the Buyer does not comply with clause 5.8 Valdemark will charge £75 per hour waiting time in addition to the installation charge.

5.10 Delivery will be charged at cost once known with commissioning.

5.11 In the event the Buyer collects the Goods from Valdemark, risk of damage or loss of the Goods shall pay to the Buyer on collection.

## 6 Export terms

6.1 This clause 6 shall apply where the Goods are sold for export from the United Kingdom.

6.2 The Price shall be deemed to be a FOB price, and the Buyer shall accordingly be responsible for complying with any legislation or regulations governing the export of the Goods from the United Kingdom and the importation of the Goods into the country of destination, and for the payment of any duties on them.

6.3 Unless otherwise agreed in writing between the Buyer and Valdemark, the Goods shall be delivered FOB the air or sea port of shipment specified in the Schedule, and Valdemark shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

6.4 The Buyer shall be responsible for arranging for inspection of the Goods at Valdemark's Premises before shipment. Valdemark shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

## 7 Risk, property and insurance

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer on Delivery or collection by the Buyer from Valdemark's premises.

7.2 Subject to clause 7.3, the property in the Goods shall pass to the Buyer on Delivery, provided that Valdemark has received in full the Price and all other sums payable under this agreement.

7.3 If the Goods are to be delivered before the Price is paid in full, then:

7.3.1 notwithstanding Delivery and the passing of risk in the Goods, or any other provision of this agreement, the property in the Goods shall not pass to the Buyer until Valdemark has received in full the Price and all other sums payable under this agreement; and

7.3.2 until such time as the property in the Goods passes to the Buyer:

(a) the Buyer shall hold the Goods as Valdemark's fiduciary agent and bailee, and shall keep the Goods separately stored, protected and insured and identified as Valdemark's property;

(b) if this agreement is terminated for any reason before the property in the Goods passes to the Buyer, Valdemark may at any time require the Buyer to deliver up the Goods to Valdemark and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the Goods are stored and repossess the Goods; and

(c) the Buyer shall not be entitled to pledge, part with possession of or charge the Goods, but if the Buyer does so then all sums owing by the Buyer to Valdemark shall (without limiting any other right or remedy of Valdemark) become immediately due and payable.

7.4 Valdemark shall not be under any obligation to insure the Goods after risk of damage to or loss of the Goods has passed to the Purchaser.

## 8 Warranties and liability

8.1 Valdemark warrants to the Purchaser that:

8.1.1 it has the power and authority to enter into and to perform its obligations under this agreement; and

8.1.2 the details of the Goods given in the specification 1 are correct.

8.2 Except as expressly provided in 8.5 of this agreement, all warranties, conditions or other terms implied by statute or common law as to the quality, fitness for any purpose (whether made known to Valdemark or not) or correspondence with description of the Goods or otherwise are excluded to the fullest extent permitted by law.

8.3 Except in respect of death or personal injury caused by Valdemark's negligence, or liability for defective products under the Consumer Protection Act 1987, Valdemark shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of this agreement, for loss of profit, contracts, goodwill or anticipated savings or wasted expenditure, or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation (whether caused by the negligence of Valdemark, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with this agreement or at all) or their use or resale by the Buyer, and the entire liability of Valdemark under or in connection with this agreement shall not exceed the Price.

8.4 Valdemark shall not be deemed to be in breach of this agreement, or have any liability to the Buyer, to the extent that it is prevented from carrying out its obligations under this agreement by any act or event beyond its reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond Valdemark's reasonable control:

8.4.1 act of God, explosion, flood, tempest, fire or accident;

8.4.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

8.4.3 acts, restrictions, regulations, byelaws, prohibitions or measures of any kind on the part of any governmental or local authority;

8.4.4 import or export regulations or embargoes;

8.4.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of Valdemark or of a third party);

8.4.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;

8.4.7 power failure or breakdown in machinery.

8.4.8 non delivery of Goods from manufacturer

8.5 Valdemark will provide the Goods with 12 months warranty on all mechanical parts with the exception of electrical and electron parts and those subject to normal wear and tear. The warranty period starts from dispatch of the Goods to the Buyer.

8.6 The warranty at 8.5 above will be immediately terminated upon the Buyer replacing, modifying, or repairing the Goods without prior consent of Valdemark.

8.7 In the event a technician attends the Buyer's premises pursuant to clause 8.5 the Buyer will pay the technicians charge.

8.8 Notwithstanding clause 8.5 above, replacement parts or Goods which have to be replaced due to incorrect use of the machine will be charged to the Buyer.

## 9 Intellectual property rights

9.1 The Purchaser acknowledges that all Intellectual Property rights throughout the world in respect of the Goods are reserved to Valdemark.

9.2 Valdemark warrants that to the best of its knowledge the Goods do not infringe the Intellectual Property rights of any third person.

## 10 Confidentiality and announcements

10.1 Neither party shall disclose to any other person or use for an unauthorised purpose any confidential information disclosed by or obtained from the other party pursuant to or in connection with this agreement, except to the extent that the information is now or subsequently becomes public knowledge through no fault of the party in question or is required to be disclosed by law or a regulatory authority.

10.2 Neither party shall make a public or press announcement regarding the subject matter or terms of this agreement except with the written approval of the other party or as required by any regulatory authority.

## 11 Termination

11.1 Without limiting any other right or remedy which it might have, either party may terminate this agreement at any time by notice to the other party if:

11.1.1 the other party is in breach of this agreement and, if the breach is capable of remedy, does not remedy the breach within 21 Business Days after receiving a notice specifying the breach and requiring it to be remedied, or

11.1.2 an encumbrancer takes possession of, or a receiver or administrative receiver is appointed over or takes possession of, any of the property or assets of the other party; or

11.1.3 the other party makes a deed of arrangement, composition or voluntary arrangement (within the meaning of the Insolvency Act 1986) with its creditors; or

11.1.4 a moratorium (within the meaning of the Insolvency Act 1986) comes into force in respect of the other party; or

11.1.5 the other party enters administration (within the meaning of the Insolvency Act 1986), goes into liquidation (except for the purposes of amalgamation or re-construction and so that the resulting company effectively agrees to be bound by or assume the obligations imposed on the other party under this agreement) or has a winding-up order made against it; or

11.1.6 anything similar to any event specified above under the law of any foreign jurisdiction occurs in relation to the other party; or

11.1.7 the other party ceases, or threatens to cease, to carry on business.

11.2 For the purposes of clause 11.1.1, a breach shall be considered capable of remedy if the party in question can comply with the provision in question in all respects other than as to the time of performance (provided that the time of performance is not of the essence).

11.3 The rights given by this clause 11 to terminate this agreement for any breach shall not affect any other right or remedy of either party in respect of the breach concerned or any other breach.

## 12 Entire agreement

12.1 This agreement constitutes the entire agreement and understanding of the parties and supersedes any previous agreement or understanding between them relating to the subject matter of this agreement, to the exclusion of any other terms and conditions subject to which any quotation or estimate has been given by Valdemark, or accepted or purported to be accepted by the Buyer, or any order has been given or purported to be given by the Buyer.

12.2 The Buyer acknowledges that Valdemark's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by Valdemark in writing. In entering into this agreement the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

12.3 Any advice or recommendation given by Valdemark or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by Valdemark is followed or acted upon entirely at the Buyer's own risk, and accordingly Valdemark shall not be liable for any such advice or recommendation which is not so confirmed.

12.4 Any typographical, clerical or other error or omission in any sales literature or other document or information issued by Valdemark shall be subject to correction without any liability on the part of Valdemark.

12.5 No variation of this agreement shall be valid unless agreed in writing by the parties.

12.6 Nothing in this agreement is intended to limit or exclude any liability for fraudulent misrepresentation.

### 13 Nature of agreement

13.1 Valdemark may assign the benefit of this agreement to a person who acquires substantially all of its business.

13.2 Subject to clause 13.1, this agreement is personal to the parties, and neither party may assign, mortgage, charge (otherwise than by way of a floating charge), sub-license, or otherwise transfer or deal in, or create any trust over, any of its rights, or sub-contract or otherwise delegate any of its obligations, under this agreement.

13.3 A person who is not a party to this agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this agreement.

13.4 If a party fails to exercise, or delays in exercising, a right under this agreement, it shall not be deemed to have waived that right.

13.5 If a party waives its right in relation to a breach of this agreement, it shall not be deemed to have waived its rights in relation to a subsequent breach of the same or any other provision of this agreement.

13.6 The rights of each party under this agreement are cumulative and additional to any other right or remedy.

13.7 Each party shall do everything reasonably necessary to give effect to the provisions of this agreement.

13.8 If any part of this agreement is held illegal or unenforceable by a court of competent jurisdiction, that part shall be deemed not to form part of this agreement and the enforceability of the remainder of this agreement shall not be affected.

13.9 This agreement may be executed in more than one counterpart and shall come into force once each party has executed such a counterpart in identical form and exchanged it with the other.

13.10 Except as otherwise provided in this agreement, each party shall pay its own costs in connection with this agreement.

### 14 Applicable law, jurisdiction and arbitration

14.1 English law shall apply to the whole of this agreement.

14.2 Subject to clause 14.3, each party submits to the exclusive jurisdiction of the English courts and waives any right it may have to object to an action being brought in those courts, or to claim that the action brought in those courts has been brought in an inconvenient forum, or that those courts do not have jurisdiction; but, for the benefit of Valdemark, the parties agree that Valdemark may bring any action arising out of or in connection with this agreement, or enforce any judgment, in the courts of any other jurisdiction.

14.3 Any dispute arising under or in connection with this agreement or the sale of the Goods shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the British Chamber of Commerce.

### 15 Notices

15.1 A notice relating to this agreement will be validly given only if it is in writing and delivered personally or by courier, or sent by first class post (or air mail if overseas), recorded delivery or fax, to the intended recipient at the address or fax number set out in this agreement or such other address or fax number as the party in question may specify by notice. A notice shall not be valid if sent by email or similar electronic means.

15.2 In the absence of evidence of earlier receipt, a notice is deemed given:

15.2.1 if delivered personally or by courier, when left at the relevant address;

15.2.2 if sent by post other than airmail, two days after posting it;

15.2.3 if sent by airmail, six days after posting it; and

15.2.4 if sent by fax, on completion of transmission, provided that the transmitting fax machine prints out a successful transmission report.

15.3 If a notice would otherwise be deemed under clause 15.2 to have been given on a day which is not a Business Day, the notice shall instead be deemed to be given on the next Business Day.

15.4 The address and email of each party for sending notices is:

15.4.1 For Valdemark: Unit 13, 30 the Downs, Altrincham, Cheshire, WA14 2PX, UK.  
Telephone: +44 (0) 161 706 0388 – email [valdamark@live.com](mailto:valdamark@live.com)

15.4.2 for the Buyer: [\_\_\_\_\_]