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General Terms and Conditions of Trading by Forge Europa Limited

In the following sales terms and conditions (**Conditions**) reference to the Seller means Forge Europa Limited (registered in England under company number: 2902591). The Buyer shall mean the person firm or company, acting also in the name of and on behalf of its affiliated companies, who purchases Goods from the Seller. Reference to Goods shall mean the goods ordered by and supplied to the Buyer. The Order shall mean the Buyer's order for the Goods, as set out in the Buyer's purchase order.

Unless otherwise agreed in writing by an authorised director or manager of the Seller, these Conditions shall apply to any and all Orders placed by the Buyer for Goods with the Seller.

1. Acceptance of Orders

- 1.1 Quotations are valid for 30 days from the date they are issued by the Seller, unless otherwise stated, and represent no obligation until the Seller accepts the Order in accordance with clause 1.2
- 1.2 The Order by the Buyer constitutes an offer by the Buyer to purchase Goods in accordance with these Conditions. The Order shall only be deemed to be accepted when the Seller issues written acceptance of the Order (**Order Confirmation**), at which point the contract between the Buyer and the Seller for sale and purchase of the Goods in accordance with these Conditions (**Contract**) shall come into existence.
- 1.3 It is the responsibility of the Buyer to establish the suitability of the Goods for the application and that any applicable specification is complete and accurate. It is the responsibility of the Buyer to ensure that the Goods conform to all relevant application specific product standards.
- 1.4 These Conditions apply to any Contract between the Buyer and the Seller to the exclusion of any other terms that the Buyer seeks to impose or incorporate (including, but not limited to, any penalty or liquidated damages provisions) or which are implied by trade, custom, practice or course of dealing.
- 1.5 All Orders must contain sufficient information to enable the Seller to supply the Goods required.
- 1.6 Any samples, drawings, descriptive matter or advertising produced by the Seller are produced for the sole purpose of giving an approximate idea of the Goods described in them. They do not form part of the Contract between the Seller and the Buyer.
- 1.7 The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not contained in the Contract.



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2. Prices

- 2.1 The prices contained in quotations issued [and the Order Confirmation] do not include transportation costs, insurance or any sales, use, excise or other taxes, duties, fees or assessments imposed by any jurisdiction which shall where applicable be charged in addition by the Seller. The Buyer will pay all applicable taxes, unless the Buyer provides the Seller with appropriate tax exemption certificates.
- 2.2 All prices and other terms are subject to correction for typographical or clerical errors.
- 2.3 The Seller reserves the right to make an additional charge for:
- (a) packaging; and
 - (b) preparation of formal release documentation and for Certificates of Conformity for Goods.
- 2.4 Prices are subject to change by the Seller at any time including but not limited to where the Buyer and/or The Seller state(s) the wrong price on the Order. Price changes shall become effective on the date given for such price change in a written notice to the Buyer.
- 2.5 The Seller may also, by giving notice to the Buyer at any time up to 10 days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond the Seller's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and manufacturing costs);
 - (b) any request by the Buyer to change the delivery date, quantities or types of Goods, or the specification;
 - (c) any delay caused by the instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

3. Delivery

- 3.1 Goods will be delivered to the address specified on the Order or such other location as the parties may agree (**Delivery Location**). Delivery dates are given in good faith and the Seller will make every effort to meet them but no liability is accepted for failure to deliver on a specified date or within a specified period. Time for delivery is not of the essence.
- 3.2 The Buyer agrees that any delay in delivery or failure to deliver products on the dates so specified shall not be grounds for the Buyer to terminate or refuse to comply with any provisions of the Contract or these Conditions. Delivery shall be completed upon the Goods' arrival at the Delivery Location (**Delivery**).



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- 3.3 The Seller may deliver Goods in instalments which shall be invoiced for and paid for separately.
- 3.4 It is the responsibility of the Buyer to check that Goods received are correct and of the right quantity upon Delivery. Notification of incorrect or short-delivered orders must be received **within three business days after Delivery** either by email to sales@forge-europa.co.uk or phone to +44 (0)1229 580000, otherwise the Buyer will be deemed to have accepted the Goods delivered.
- 3.5 If the Buyer fails to take delivery of the Goods, Delivery shall be deemed to have been completed at 9am on the third business day after the Goods arrival at the Delivery Location. The Seller shall store the Goods until Delivery takes place and shall charge the Buyer for all related costs and expenses (including insurance).
- 3.6 If the Seller requires the Buyer to return any packaging materials to the Seller, that fact will be clearly marked on the delivery note. The Buyer shall make any such packaging materials available for collection at such times as the Seller shall reasonably request and shall co-operate fully with the Seller to enable it to comply with its obligations under the Producer Responsibility (Packaging Waste) Regulations 2007, if applicable. Returns of packaging shall be at the Seller's expense.
- 3.7 If the Seller fails to deliver the Goods, its liability shall be limited to the cost and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- 3.8 The Seller shall have no liability for any lateness or any failure to deliver the Goods to the extent that such failure or lateness is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of Goods.

4. Billing and Payment

- 4.1 The Seller shall invoice the Buyer for the Goods on or at any time after Delivery of such Goods or relevant instalment or on such other terms as are expressly agreed by the Seller and the Buyer.
- 4.2 Payment by Buyers with established ledger accounts will be due within thirty (30) days after the date of the invoice. Payment by all other Buyers must be in cash upon placing the Order. Time of payment is of the essence.
- 4.3 The Seller reserves the right to change, limit the amount of, or withdraw any credit extended to the Buyer at any time.
- 4.4 Prompt payment of all accounts is a condition precedent of further deliveries. Payment should be in the currency on the invoice or telegraphic transfer (**TT**) unless otherwise stated.



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- 4.5 The payment for Goods held by the Seller at the Buyer's request for more than 7 days which otherwise would have been despatched will become due within 30 days from the date when the request was made.
- 4.6 If the Buyer fails to make payment due to the Seller under the Contract by the due date for payment (**due date**) then the Buyer shall pay interest on the overdue amount at the rate of 4% per annum above the base rate from time to time of HSBC Bank plc or 6% per annum whichever is greater. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount. The Buyer shall pay the interest together with the overdue amount.
- 4.7 The Buyer shall pay all sums due under the Contract without any deduction or withholding save as required by law and the Buyer shall not be entitled to any set-off, credit or counterclaim against the Seller to justify withholding payment of any amount in whole or in part.

5. Description and Technical Information

- 5.1 The Seller reserves the right to make without notice any modifications, improvements or alterations to Goods described in the Seller's literature and/or websites or specification provided that such modifications, improvements or alterations meet the parameters supplied by the Seller to the Buyer.
- 5.2 The Seller shall make every effort to ensure the accuracy of technical data and literature relating to goods but accepts no liability for typographical or clerical errors.

6. Specification

To the extent that goods are manufactured in accordance with a specification supplied by the Buyer, the Buyer shall indemnify the Seller against all liabilities, costs, expenses, damages and losses suffered or incurred by the Seller in connection with any claim made against the Seller for actual infringement of the third party's intellectual property rights arising out of or in connection with the Seller's use of such specification.

7. Cancellation

Cancellation of Orders will not be accepted unless the Seller is notified in writing at least ninety (90) days prior to the date of dispatch. This period may be extended at the Seller's direction and will be specified on the Seller's quotation, in relation to bespoke or significant orders. If the Buyer amends or cancels an Order, its liability to the Supplier shall be limited to payment to the Supplier of all costs incurred by the Supplier in fulfilling the Order up until the date of amendment or cancellation.



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8. Title and Risk

- 8.1 The risk in the Goods shall pass to the Buyer on Delivery.
- 8.2 Title to the Goods shall not pass to the Buyer until the Supplier has received payment in full (in cash or cleared funds) for:
- (a) the Goods;
 - (b) any other goods that the Seller has supplied to the Buyer, in respect of which payment has become due.
- 8.3 Until title to the Goods has passed to the Buyer, the Buyer shall:
- (a) hold the Goods and all items incorporating the Goods in a fiduciary capacity as the Seller's bailee;
 - (b) store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Buyer's property;
 - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (d) in the event of a sale of the Goods by the Buyer, hold the proceeds of sale in such a way as to be identifiable as the property of the Seller;
 - (e) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; and
 - (f) notify the Seller if it becomes subject to any of the events listed in clause 12.2,

but the Buyer shall be entitled to resell or use the goods in the ordinary course of business

- 8.4 If before title to the Goods passes to the Seller the Buyer becomes subject to any events listed in clause 12.2, or the Seller reasonably believes that such an event is about to happen, the Seller or its representative shall in addition to all other rights be entitled to enter the premises where the goods may be (whether the premises of the Buyer or any third party) and recover possession of them.

9. Intellectual Property

The sale of the Goods or the provisions of services including all technical and product design services hereunder does not convey any express or implied licence under any patent, copyright, trademark or other proprietary rights owned or controlled by the Seller, whether relating to the products sold or any manufacturing process or other matter. All intellectual property rights are expressly reserved by the Seller. All designs, drawings, test results, samples, data and information supplied by the Seller to the Buyer remain the property of



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the Seller.

10. Quality

10.1 The Seller warrants that on Delivery, and for a period of 12 months from the date of Delivery (**Warranty Period**), the Goods shall:

- (a) conform in all material respects with their description;
- (b) be free from material defects in design, material and workmanship; and
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

10.2 Subject to clause 10.3, if:

- (a) the Buyer gives notice in writing to the Seller during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 10.1;
- (b) the Seller is given a reasonable opportunity of examining such Goods; and
- (c) the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Buyer's cost,

the Seller shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

10.3 The Seller shall not be liable for Goods' failure to comply with the warranty set out in clause 10.1 in any of the following events:

- (a) the Buyer makes any further use of such Goods after giving notice in accordance with clause 10.2;
- (b) the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, use, frequency of use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Seller following any drawing, design or specification supplied by the Buyer;
- (d) the Buyer damages the Goods as a result of the storage, testing, manufacturing or installation process or alters, or repairs such Goods without the written consent of the Seller;



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- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;
- (f) the Goods differ from their description or any specification provided by the Buyer to the Seller as a result of changes made to ensure they comply with applicable statutory or regulatory requirements; or
- (g) in the case of LED Drivers and Power Supplies, when the number of defective products is at or below a failure rate of 0.2% per 1000 hours operation.

10.4 Except as provided in this clause 10, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 10.1.

10.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

10.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Seller.

11. Limitation of Liability

11.1 Nothing in these Conditions shall limit or exclude the Seller's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) defective products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

11.2 Subject to clause 11.1, the Seller shall under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:

- (a) any loss of profit; or
- (b) any indirect or consequential loss,

arising under or in connection with the Contract.

11.3 The Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of



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statutory duty, or otherwise, shall in no circumstances exceed three times the price of the Goods.

12. Insolvency

12.1 If the Buyer becomes subject to any of the events listed in clause 12.2, or the Seller reasonably believes that the Buyer is about to become subject to any of them and notifies the Buyer accordingly, then, without limiting any other right or remedy available to the Seller, the Seller may cancel or suspend all further deliveries under the Contract or under any other contract between the Buyer and the Seller without incurring any liability to the Buyer, and all outstanding sums in respect of Goods delivered to the Buyer shall become immediately due.

12.2 For the purposes of clause 12.1, the relevant events are:

- (a) the Buyer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Buyer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
- (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Buyer, other than for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
- (d) (being an individual) the Buyer is the subject of a bankruptcy petition or order;
- (e) a creditor or encumbrancer of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 21 days;
- (f) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Buyer;
- (g) (being a company) a floating charge holder over the Buyer's assets has become entitled



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to appoint or has appointed an administrative receiver;

- (h) a person becomes entitled to appoint a receiver over the Buyer's assets or a receiver is appointed over the Buyer's assets;
- (i) any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.2 (a) to clause 12.2 (h) (inclusive);
- (j) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
- (k) the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- (l) (being an individual) the Buyer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

12.3 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.

13. Change of Control

13.1 In this clause 13, the following definitions apply:

Control: in relation to a body corporate, the power of a person to secure that the affairs of the body corporate are conducted in accordance with the wishes of that person (or persons):

- (a) by means of the holding of shares, or the possession of voting power, in or in relation to that or any other body corporate; or
- (b) by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating that or any other body corporate,

and a **Change of Control** occurs if a person who controls any body corporate ceases to do so or if another person acquires control of it.

13.2 If there is a Change of Control of the Buyer, the Seller shall be entitled with immediate effect to terminate or vary any terms of credit previously allowed by the Seller to the Buyer.

13.3 The Buyer shall inform the Seller in writing if a Change of Control occurs with respect to the Buyer within 5 business days of such Change of Control.

13.4 The Buyer shall indemnify and keep indemnified the Seller against any loss, damage, costs or



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expenses incurred by the Seller in the event that the Buyer fails to notify the Seller of a Change of Control under clause 13.3.

14. WEEE Regulations

- 14.1 With respect to all Goods supplied by the Seller which are subject to the Waste Electrical and Electronic Equipment Regulations 2006 (as amended from time to time) (**WEEE Regulations**) the Buyer shall be responsible for all liabilities for the collection, treatment recovery and environmentally sound disposal of all such Goods to the extent that they become waste electrical or waste electronic equipment at any time after purchase by the Buyer.
- 14.2 The Buyer indemnifies the Seller against all costs, claims, liabilities and damages incurred by the Seller in relation to any liability under WEEE Regulations in relation to the Goods purchased by the Buyer

15. Assignment

The Seller may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Buyer may not assign, transfer, charge, subcontract or deal in any manner with all or any of its rights or obligations under the Contract without the prior written consent of the Seller.

16. Force Majeure

The Seller shall not be liable to the Buyer in any manner or be deemed to be in breach of the Contract because of any delay in performing or any failure to perform any of its obligations under the Contract if the delay or failure was due to any cause beyond the Seller's reasonable control (**Force Majeure Event**).

- 17. Each provision of these terms will be treated as a separate independent clause** and the unenforceability of any one provision will in no way impair the enforceability of any other provision. If any provision is held to be unenforceable, such provision will be construed by the appropriate judicial body by limiting or reducing it to the minimum extent necessary to make it legally enforceable.

18. Third Party Rights

A person who is not a party to a Contract shall not have any rights under it.

19. Notices

- 19.1 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, sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-



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mail.

- 19.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 19.1; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business 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, one Business Day after transmission provided that where the notice is sent by e-mail, the sender does not recall the e-mail or receive any notice of non-delivery.
- 19.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

20. Governing Law

These conditions shall be constructed and governed with English Law and any dispute or difference arising between the Seller and the Buyer concerning these shall be submitted to the exclusive jurisdiction of the English Courts.