

SIKA
TERMS AND CONDITIONS

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1. INTERPRETATION

In these Terms and Conditions the following expressions will have the following meanings unless inconsistent with the context:

"Bespoke Goods" means any Goods which are made to measure, bespoke, or otherwise manufactured to a unique specification.

"Buyer" the person(s), firm or company whose order for the Goods or Services is accepted by the Company in accordance with these Terms and Conditions.

"Company" Sika Limited (Company number:226822) whose registered office is located at Watchmead, Welwyn Garden City, Herts, AL7 1BQ and whose Sika Sarnafil operating office is located at Watchmead, Welwyn Garden City, Herts, AL7 1BQ

"Confidential Information" means all information in respect of the business of the Company including, but not limited to, know-how, prices or other matters connected with the Goods or Services (which shall include any instructions or procedures, instruction manuals, user guides and other information which is supplied by the Company with the Goods or Services) and any other information of whatever nature which, if disclosed, will be liable to cause harm to the Company.

"Contract" any contract between the Company and the Buyer for the sale and purchase of the Goods or Services formed in accordance with Condition 2.

"Delivery Point" the place where delivery of the Goods is agreed to take place, as set out in the Company's written acknowledgement of order.

"Final Inspection Certificate" A Certificate issued for the benefit of a third party at the completion of the Services.

"Goods" any goods which the Company supplies to the Buyer (including any of them or any part of them) under a Contract.

"Guarantee" a guarantee or Final Inspection Certificate for or related to the Goods in a form to be provided by the Company in favour of a third party nominated by the Buyer.

"Guarantee Period" the on-going period of protection provided to a third party as set out in a Guarantee.

"Intellectual Property Rights" all intellectual and industrial property rights including patents, know-how, registered trade marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions

"Services" any services which the Company performs for the Buyer under a Contract, which are ancillary to the supply of Goods.

"Service Point" the place at which the Services are to be performed, as set out in the Company's written acknowledgement of order.

"Specific Delivery Requirement" any goods, which are required to be delivered by a type of vehicle specified by the Buyer.

"Terms and Conditions" the standard terms and conditions of sale set out in this document together with any special terms agreed in writing between the Buyer and the Company.

"Trademark" the SARNAFIL trademark registered in the United Kingdom under trademark number 1046240.

"Working Day" any day other than Saturday or Sunday or a public or bank holiday in England.

2. FORMATION AND INCORPORATION

- 2.1 Subject to any variation under Condition 14.5, the Contract will be upon these Terms and Conditions, to the exclusion of all other terms and conditions and all previous oral or written representations including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order or similar document, whether or not such document is referred to in the Contract.
- 2.2 Each order or acceptance of a quotation for Goods or Services will be deemed to be an offer by the Buyer to purchase Goods or Services upon these Terms and Conditions. The Contract is formed when the Buyer receives confirmation that the order is accepted by the Company. Such confirmation may either be given orally or in writing. No contract will come into existence until such confirmation has been given by the Company.
- 2.3 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.4 Acceptance of delivery of the Goods or commencement of the performance of the Services will be deemed conclusive evidence of the Buyer's acceptance of these Terms and Conditions.
- 2.5 Subject to Condition 6.5, the Buyer may not cancel the Contract. The Company may cancel the Contract at any time prior to delivery of the Goods or commencement of the performance of the Services.

3. DESCRIPTION OF THE GOODS AND SERVICES

- 3.1 The description of the Goods will be as set out in the Company's price list. All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods represented by or described in them. They will not form part of the Contract and this is not a sale by sample.
- 3.2 The Company may make any change to the specification,

- design, materials or finishes of the Goods which are:
- 3.2.1 required to conform with any applicable safety, statutory or regulatory requirement; or
- 3.2.2 do not materially affect their quality or performance.
- 3.3 The Company will only perform Services which are ancillary to, or relating to, Goods provided under a Contract.
- 3.4 The Services will only be performed by the Company at the Service Point.
- 3.5 The Company shall use all reasonable endeavours to perform the Services:
- 3.5.1 to the standard required for the issue of a Final Inspection Certificate;
- 3.5.2 promptly, but time shall not be the essence for the performance of the Services.
- 3.6 The Company shall have the right to make any changes to the Services which are necessary to comply with applicable safety, statutory or regulatory requirements, or which do not materially affect the nature or quality of the Services, and the Company shall notify the Buyer in any such event.
- 4. PRICE AND PAYMENT**
- 4.1 The price for the Goods or Services will be the price set out in the Company's published price list current at the date of delivery of Goods or performance of Services or as otherwise notified by the Company to the Buyer prior to the Contract being made. Orders for Goods valued below £2000 (before VAT) are exclusive of any costs of packaging and carriage, VAT and any other applicable sales tax or duty which will be added to the sum in question. Orders for Goods valued greater than £2000 (before VAT) and which are to be dispatched from the Company's warehouse within the United Kingdom are inclusive of any costs of packaging and carriage within the United Kingdom but exclusive of VAT and any other applicable sales tax or duty will be added to the sum in question.
- 4.2 The Company may invoice the Buyer for the Goods on or at any time after dispatch, or for the Services on or at any time after performance commences and payment is due in pounds sterling by the last day of the next calendar month following the date of invoice, or upon termination of the Contract, whichever occurs first.
- 4.3 Time for payment will be of the essence. No payment will be deemed to have been received until the Company has received cleared funds.
- 4.4 All payments to be made by the Buyer under the Contract will be made in full without any set-off, restriction or condition and without any deduction for or on account of any counterclaim.
- 4.5 If any sum payable under the Contract is not paid when due then, without prejudice to the Company's other rights under the Contract: that sum will bear interest from the due date until payment is made in full, both before and after any judgment, at a combined rate of the Bank of England base rate from time to time and the rate provided by the Late Payment of Commercial Debts (Interest) Act 1998 as amended from time to time; and the Company will be entitled to suspend deliveries of the Goods or performance of the Services until the outstanding amount has been received.
- 4.6 The Company reserves the right to recoup any sum, resulting from costs incurred from legal proceedings to recover the sum payable under the Contract.
- 4.7 Any invoice queries must be communicated to the Company within 10 (ten) Working Days of receipt of the invoice by the Buyer.
- 5. INSTALMENTS**
- The Company may deliver the Goods, or perform Services, by separate instalments. Each instalment will be a separate Contract and no cancellation or termination of any one Contract relating to an instalment will entitle the Buyer to repudiate or cancel any other Contract or instalment unless otherwise notified by the Company. Each separate instalment will be invoiced and paid for in accordance with the provisions of the Contract.
- 6. DELIVERY OF GOODS**
- 6.1 Delivery of the Goods within the UK mainland will be CPT Delivery Point INCOTERMS 2010 (save that carriage may be charged to the Buyer in accordance with Condition 6.4 and/or Condition 6.5).
- 6.2 Delivery of the Goods to Northern Ireland, the Scottish Isles, the Channel Islands or the Isle of Man will be made FOB Delivery Point INCOTERMS 2010.
- 6.3 Delivery of the Goods outside the UK will be made FAS Delivery Point INCOTERMS 2010, except that risk shall pass to the Buyer at the time that the Goods leave the Company's premises.
- 6.4 Delivery of the Goods will be accepted at any time of day. At the sole discretion of the Company, overnight deliveries or deliveries at specified times may be agreed in certain circumstances. Notwithstanding condition 6.1, such deliveries shall be subject to an additional charge being raised by the Company. If the Buyer fails to take delivery, or provide any necessary documents, the Goods will be deemed to have been delivered and the Company, without prejudice to its other rights, may at its option:
- 6.4.1 store or arrange for storage of the Goods until actual delivery or sale and charge the Buyer for all related costs and expenses (including, without limitation, storage and insurance); and/or
- 6.4.2 following written notice to the Buyer, sell any of the Goods at the best price reasonably obtainable in the circumstances and charge the Buyer for any shortfall below the price under the Contract.
- Excessive waiting times may also be charged to the Buyer in certain circumstances.
- 6.5 The Company will use reasonable endeavours to deliver Goods 5 (five) Working Days after the date on which the order is confirmed by the Company, but the time of delivery will not be of the essence of a Contract. Notwithstanding condition 6.1, carriage will be charged on deliveries required within 5 (five) Working Days, or deliveries with specific time or vehicle type stipulations. If, despite those endeavours, the Company is unable for any reason to fulfil any delivery of Goods on a specified date, the Company will

- be deemed not to be in breach of the Contract, nor (for the avoidance of doubt) will the Company have any liability to the Buyer for direct, indirect or consequential loss (all three of which terms includes, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused (including as a result of negligence) by any delay or failure in delivery of Goods except as set out in this condition. Any delay in delivery of Goods will not entitle the Buyer to cancel the order unless and until the Buyer has given 10 (ten) Working Days' written notice to the Company requiring the delivery of the Goods and the Company has not fulfilled the delivery of the Goods within that period. If the Buyer cancels the order in accordance with this Condition 6.5 then, save as excluded under Condition 6.6:
- 6.5.1 the Company will refund to the Buyer any sums which the Buyer has paid to the Company in respect of the Goods which have been cancelled;
- 6.5.2 and the Buyer will be under no liability to make any further payments under Condition 4 in respect of the Goods that have been cancelled.
- 6.6 Notwithstanding, the provisions of Condition 6.5, the Company will be under no obligation to:
- 6.6.1 to refund the Buyer any sums which the Buyer has paid to the Company in respect of the Bespoke Goods which have been cancelled under Condition 6.5; and
- 6.6.2 waive any outstanding further payments due by the Buyer in respect of Bespoke Goods which have been cancelled under Condition 6.5.
- 6.7 The Buyer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for off- loading the Goods.
- 6.8 A £10.00 handling charge will be made in addition to the carriage charge for overnight dispatch of Goods. This service is offered as resources allow and is subject to available transport.
- 6.9 The type of vehicle used to deliver Goods and the method of packaging of the Goods for delivery will be at the discretion of the Company.
- 6.10 Any change required by the Buyer to the delivery vehicle and/or the method of packaging the Goods for delivery selected by the Company will constitute a Specific Delivery Requirement. The Buyer will incur any additional costs for a Specific Delivery Requirement.
- 6.11 The Buyer will provide a full and correct address, including postcode, for the delivery of the Goods.
7. RISK/TITLE IN THE GOODS
- 7.1 Risk of damage to or loss of the Goods will pass to the Buyer in accordance with Condition 6.
- 7.2 Ownership of the Goods will not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- 7.2.1 the Goods; and
- 7.2.2 all other sums which are or which become due to the Company from the Buyer on any account, whether for Goods or Services.
- 7.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:
- 7.3.1 hold the Goods on a fiduciary basis as the Company's bailee;
- 7.3.2 store the Goods (at no cost to the Company) separately from all other Goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
- 7.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 7.3.4 maintain the Goods in satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company, and will whenever requested by the Company produce a copy of the policy of insurance.
- 7.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
- 7.4.1 any sale will be effected in the ordinary course of the Buyer's business at full market value and the Buyer will account to the Company accordingly; and
- 7.4.2 any such sale will be a sale of the Company's property on the Buyer's own behalf and the Buyer will deal as principal when making such a sale.
- 7.5 The Buyer's right to possession of the Goods will terminate immediately if any of the circumstances set out in Condition 11.1 occur.
- 7.6 The Company will be entitled to recover payment for the Goods notwithstanding that title in any of the Goods has not passed from the Company.
- 7.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 7.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer will be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.
- 7.9 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this Condition 7 will remain in effect.
8. LIABILITY OF COMPANY
- 8.1 The Company will, free of charge, within a period of 12 months from the date of delivery of Goods, or where a Guarantee has been issued, for the Guarantee Period, which are proved to the reasonable satisfaction of the Company to be missing, damaged or defective due to defects in material or design (other than a design made, furnished or specified by the Buyer), repair, or at its option provide or replace, such Goods. This obligation will not apply where:
- 8.1.1 the Goods have been improperly altered in any

- way whatsoever, or have been subject to misuse or unauthorised repair;
- 8.1.2 the Goods have been improperly installed or connected;
- 8.1.3 any maintenance requirements relating to the Goods have not been complied with;
- 8.1.4 the Buyer has failed to notify the Company of any defect(s) or missing item(s) from the order acknowledgement within 48 hours of delivery where the defect(s) or missing item(s) should be apparent on reasonable inspection, or within 48 hours of the same coming to the knowledge of the Buyer where the defect(s) or missing item(s) is not that which should be apparent on reasonable inspection, and in any event no later than 12 months from the date of delivery;
- 8.1.5 where a guarantee has been issued, and has been breached by the third party beneficiary of the Guarantee within the Guarantee Period
- 8.2 Any Goods which have been replaced by the Company will belong to the Company. Any repaired or replacement Goods will be liable to repair or replacement under the terms specified in Condition 8.1 for the unexpired portion of the 12 month period from the original date of delivery of the replaced Goods or where a Guarantee has been issued, for the Guarantee Period.
- 8.3 In the event of any breach of the Company's express obligations under Conditions 6.5, 8.1 and 8.2 above the remedies of the Buyer will be limited to damages.
- 8.4 The Company does not exclude its liability (if any) to the Buyer:
- 8.4.1 for breach of the Company's obligations arising under section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982;
- 8.4.2 for personal injury or death resulting from the Company's negligence;
- 8.4.3 under section 2(3) Consumer Protection Act 1987;
- 8.4.4 for any matter which it would be illegal for the Company to exclude (or to attempt to exclude) its liability; or
- 8.4.5 for fraud.
- 8.5 Except as provided in Conditions 6.5 and 8.1 to 8.4, the Company's liability to the Buyer (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any injury, death, damage or direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused arising out of or in connection with:
- 8.5.1 any of the Goods, or the manufacture or sale or supply, or failure or delay in supply, of the Goods by the Company or on the part of the Company's employees, agents or sub-contractors;
- 8.5.2 any of the Services, or their performance, or failure or delay in performance, of the Services by the Company or on the part of the Company's employees, agents or sub-contractors;
- 8.5.3 any breach by the Company of any of the express or implied terms of the Contract;
- 8.5.4 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods;
- 8.5.5 any use made by the Buyer of any of the Services, or of any product incorporating any of the Services; or
- 8.5.6 any statement made or not made, or advice given or not given, by or on behalf of the Company or otherwise under the Contract,
- shall be limited to the invoiced value of the Goods.
- 8.6 Except as set out in Conditions 6.5 and 8.1 to 8.5, the Company hereby excludes to the fullest extent permissible in law, all conditions, warranties and stipulations, express (other than those set out in the Contract) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Buyer.
- 8.7 Each of the Company's employees, agents and sub-contractors may rely upon and enforce the exclusions and restrictions of liability in Conditions 6.5 and 8.3 to 8.6 in that person's own name and for that person's own benefit, as if the words "its employees, agents and sub-contractors" followed the word Company wherever it appears in those conditions save each reference in Condition 8.5.1.
- 8.8 The Buyer agrees to indemnify, keep indemnified and hold harmless the Company from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgments which the Company incurs or suffers as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance by the Buyer of the terms of the Contract. Where a Guarantee has been issued, such indemnity shall continue until the end of the Guarantee Period.
9. GUARANTEE
- 9.1 Where the Company provides a Warranty additional to the guarantee in Condition 8 hereof, the Buyer may request that the Warranty be provided in favour of an interested third party nominated by the Buyer.
- 9.2 The Warranty shall be on such terms and in such form as the Company considers appropriate.
- 9.3 The Warranty shall only be provided when all payments due from the Buyer have been received and if in association with a Final Inspection Certificate, when the Company has been given all reasonable opportunity to carry out a technical audit.

9.4 The Buyer acknowledges that in the event of a claim being brought against the Company under, and in accordance with the terms of a Warranty, which is solely or partially due to the installation of the Goods not having been carried out in accordance with the Company's recommendations or with the skill and care expected of an experienced contractor, the Buyer shall indemnify the Company and shall;

9.4.1 recognise the continuing obligations of the Company and the Buyer to remedy defects in the Goods for the Guarantee Period; and

9.4.2 not seek to rely on and, if and to the extent necessary, expressly waive any entitlement to rely on the provisions of the Limitation Act 1980 in defence of such claim.

10. FORCE MAJEURE

The Company will not be liable to the Buyer for any failure or delay or for the consequences of any failure or delay in performance of the Contract, if it is due to any event beyond the reasonable control of the Company including, without limitation, acts of God, war, industrial disputes, protests, fire, tempest, explosion, an act of terrorism and national emergencies and the Company will be entitled to a reasonable extension of time for performing such obligations in such circumstances.

11. TERMINATION

11.1 The Company may by written notice terminate the Contract immediately if the Buyer:

11.1.1 is in material breach of any of the terms of the Contract. Failure to pay any sums due in accordance with Condition 4.2 is a material breach of the terms of the Contract which is not capable of remedy.

11.1.2 becomes bankrupt, insolvent, makes any composition with his creditors, has a receiver appointed under the Mental Health Act 1983 or dies;

11.1.3 has any distraint, execution or other

process levied or enforced on any of its property;

11.1.4 ceases to trade or appears in the reasonable opinion of the Company likely or is threatening to cease trade;

or

11.1.5 the equivalent of any of the above occurs to the Buyer under the jurisdiction to which the Buyer is subject.

11.2 The termination of the Contract howsoever arising is without prejudice to the rights, duties and liability of either the Buyer or the Company accrued prior to termination. The conditions which expressly or impliedly have effect after termination will continue to be in force notwithstanding termination, which shall include but shall not be limited to, the Buyer's obligations in relation to any Guarantee.

12. INTELLECTUAL PROPERTY

12.1 No right or licence is granted to the Buyer in respect of the existing Intellectual Property Rights of the Company, except the right to use, or re-sell the Goods in the Buyer's ordinary course of business.

12.2 All Intellectual Property Rights in or arising out of or in connection with the performance of Services shall be owned by the Company.

12.3 The Buyer will not without the Company's prior consent allow the Trademark or any other trade marks of the Company or other words or marks applied to the Goods to be obliterated, obscured or omitted nor will he add any additional marks or words.

13. DISTRIBUTION

13.1 If the Buyer purchases the Goods and resells them then the Company shall have no liability for nor shall any indemnity from the Company to the Buyer in these terms apply to any liability of the Buyer to the extent that such liability would not have existed had the Buyer sold the goods upon terms no less favourable than these terms and conditions.

14. GENERAL

14.1 Time for performance of all obligations of the Buyer is of the essence. Time for performance of all obligations of the Company is not of the essence.

14.2 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

14.3 If any condition or part of the Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from the Contract and will be ineffective, without, as far as is possible, modifying any other provision or part of the Contract and this will not affect any other provisions of the Contract which will remain in full force and effect.

14.4 No failure or delay by the Company to exercise any right, power or remedy will operate as a waiver of it, nor will any partial exercise preclude any further exercise of the same, or of any other right, power or remedy.

14.5 Save as set out in the Contract and Condition 8.1.5, these Terms and Conditions may only be varied or amended in writing and signed by a senior manager of the Company.

14.6 The Company may assign, delegate, license, hold on trust or sub-contract all or any part of its rights or obligations under the Contract.

14.7 The Contract is personal to the Buyer who may not assign, delegate, license, hold on trust or sub-contract all or any of its rights or obligations under the Contract without the Company's prior written consent.

14.8 The Contract contains all the terms which the Company and the Buyer have agreed in relation to the Goods and/or Services and supersedes any prior written or oral agreements, representations or understandings between the parties relating to such Goods and/or Services. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this Condition 14.8 will exclude any liability which one party would

otherwise have to the other party in respect of any statements made fraudulently.

Buyer is required to disclose by order of a court of competent jurisdiction.

14.9 Save as set out in Condition 8.7 the parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

14.10 Any notice in connection with the Contract will be in writing addressed to the other party at its registered office, or principal place of business and will be delivered by hand, or first class or special delivery post or Airmail. The notice will be deemed to have been duly served, if delivered by hand, when left at the proper address for service or if made by pre-paid, first class post or special delivery post, 48 hours after being posted or in the case of Airmail, 14 days after being posted.

14.11 The formation, existence, construction, performance, validity and all aspects whatsoever of the Contract or of any term of the Contract will be governed by English law. The English courts will have exclusive jurisdiction to settle any dispute which may arise out of, or in connection with the Contract. The parties agree to submit to that jurisdiction.

14.12 Where Part II of the Housing Grants, Construction and Regeneration Act 1996 applies, either party may refer any dispute or difference arising under this Agreement to adjudication. The adjudication procedures and the agreement for the appointment of an adjudicator shall be set out in the Model Adjudication Procedures published by the Construction Industry Council current at the date of reference. The nominating body shall be the Technology and Construction Solicitors' Association or any successor organisation.

14.13 The Buyer will keep confidential any and all Confidential Information that it may acquire. The Buyer will not use the Confidential Information for any purpose other than to perform its obligations under the Contract. The Buyer will ensure that its officers and employees comply with the provisions of this Condition 14.13. The obligations on the Buyer set out in this Condition will not apply to any information which is publicly available or becomes publicly available through no act or omission of the Buyer or if the