

## ELG CARBON FIBRE LIMITED

### TERMS & CONDITIONS OF SALE (DECEMBER 2012 VERSION)

The Buyer's attention is particularly drawn to the provisions of condition 8.

#### 1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

"**Buyer**" the person or firm who purchases the Goods from the Seller, whose details are set out in the Order.

"**Commencement Date**" has the meaning set out in condition 2.2.

"**Conditions**" these terms and conditions as amended from time to time in accordance with condition 11.7.

"**Contract**" the contract between the Seller and the Buyer for the supply of Goods comprising the Conditions and the Order

"**Delivery Location**" has the meaning set out in condition 3.2.

"**Force Majeure Event**" an event beyond the reasonable control of the Seller including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Sellers or subcontractors.

"**Goods**" the recycled chopped and/or milled carbon fibre goods as more fully detailed in the Order.

"**Order**" the Buyer's order for the supply of Goods.

"**Seller**" ELG CARBON FIBRE LIMITED registered in England and Wales with company number 05191512

1.2 In these Conditions, a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

#### 2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Buyer to purchase Goods in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Seller issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 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 set out in the Contract.

2.4 Any samples, photos, drawings, illustrations, descriptive matter or advertising issued by the Seller and any descriptions of the Goods contained in the Seller's catalogues or brochures or on the Seller's website are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.6 Any quotation given by the Seller shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.

#### 3. DELIVERY OF GOODS

3.1 The Seller shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Buyer and Seller reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

3.2 Delivery of the Goods shall take place as follows:

3.2.1 If the Buyer wishes the Seller to deliver the Goods to a specific location, it shall notify the Seller prior to the Contract being made and the Seller shall confirm in writing if it agrees to deliver the Goods to the requested location and the cost of such delivery. If the Buyer and Seller agree that the Goods will be delivered by the Seller to the location required by the Buyer, this shall be specified in the Order. The location for delivery shall be known as "**Delivery Location**".

3.2.2 If the parties do not agree to the Goods being delivered to a specific location, the Buyer shall collect the Goods from the Seller's premises or as otherwise agreed by the parties in writing (the "**Delivery Location**"). The Goods shall be collected by or on behalf of the Buyer on the date specified in the Order or if no date is specified within 14 days of the Seller notifying the Buyer that the Goods are ready.

3.3 Where the Goods are to be delivered to the location requested by the Buyer pursuant to condition 3.2.1, delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location. Where the Goods are to be collected by the Buyer, pursuant to condition 3.2.2, delivery of the Goods shall be completed on the loading of the Goods at the Delivery Location.

3.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Seller shall not be liable for any delay in delivery of the Goods that 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 the Goods.

3.5 If the Buyer fails to accept or take delivery of the Goods within 14 days of the Seller notifying the Buyer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Seller's failure to comply with its obligations under the Contract in respect of the Goods:

3.5.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the 5<sup>th</sup> working day following the day on which the Seller notified the Buyer that the Goods were ready; and

3.5.2 the Seller shall store the Goods until delivery takes place, and charge the Buyer for all related costs and expenses (including insurance).

3.6 If, 5 working days after the Seller notified the Buyer that the Goods were ready for delivery, the Buyer has not accepted or taken delivery of them, the Seller may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Buyer for any excess over the price of the Goods or charge the Buyer for any shortfall below the price of the Goods.

3.7 The Buyer shall not be entitled to reject the Goods if the Seller delivers up to and including 5 per cent more or less than the quantity of Goods ordered, but a pro-rata adjustment shall be made to the Order invoice on receipt of notice from the Buyer that the wrong quantity of Goods was delivered.

3.8 The Seller may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

3.9 If part of the Goods are not delivered, there is a shortage of the Goods which exceeds 5% of the Goods ordered or the Goods have been damaged in transit, then the Buyer must notify the Seller of this within 3 days of delivery and within 5 days from the date of delivery provide full details in writing to the Seller in respect of the non-delivery, shortfall or damage.

#### 4. QUALITY OF GOODS

4.1 The Goods are described in the Order.

4.2 The Buyer acknowledges that the Goods are the product of recycled carbon fibre. The Seller gives no guarantees or assurances regarding the carbon fibre properties of the Goods. The Seller undertakes regular, random testing of the Goods to assess the number of carbon fibres in parts of the Goods. However the Buyer acknowledges that this sample testing is completely random and cannot be representative of the carbon fibre properties in the whole of the Goods. This is reflected in the price charged for the Goods.

4.3 The Seller will provide to the Buyer, with the Goods, a "Certificate of Analysis". The Certificate of Analysis is provided for background information purposes only. No warranty or guarantee in respect of the quality of the Goods is offered with the Certificate of Conformity. The Certificate of Conformity is in no way representative of the quality or properties of the carbon fibre in the Goods.

4.4 The Seller warrants that on delivery the Goods shall conform in all material respects with their description; and be free from material defects in workmanship.

4.5 Subject to condition 4.4, the Seller shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full provided:

4.5.1 the Buyer gives notice in writing within a reasonable time, and in any event within one month of the Goods being delivered, of discovery that some or all of the Goods do not comply with the warranty set out in condition 4.4;

4.5.2 the Seller is given a reasonable opportunity of examining such Goods; and

4.5.3 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.

4.6 The Seller shall not be liable for the Goods' failure to comply with the warranty in condition 4.4 if:

4.6.1 the Buyer makes any further use of such Goods after giving a notice in accordance with condition 4.5;

4.6.2 the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

4.6.3 the Buyer alters or repairs such Goods without the written consent of the Seller;

4.6.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;

4.6.5 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

4.7 Except as provided in this condition 4, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in condition 4.4.

4.8 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Seller under condition 4.5.

#### 5. TITLE AND RISK

5.1 The risk in the Goods shall pass to the Buyer on completion of delivery.

5.2 Title to the Goods shall not pass to the Buyer until the Seller has received payment in full (in cash or cleared funds) for:

5.2.1 the Goods; and

5.2.2 any other goods that the Seller has supplied to the Buyer in respect of which payment has become due.

5.3 Until title to the Goods has passed to the Buyer, the Buyer shall:

5.3.1 hold the Goods on a fiduciary basis as the Seller's bailee;

5.3.2 store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;

5.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

5.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Seller's behalf from the date of delivery;

5.3.5 notify the Seller immediately if it becomes subject to any of the events listed in condition 9.1.2; and

5.3.6 give the Seller such information relating to the Goods as the Seller may require from time to time,

but the Buyer may resell or use the Goods in the ordinary course of its business.

5.4 If the Goods are processed or mixed by the Buyer with other materials so that the Goods are no longer identifiable, then the title to such Goods shall pass to the Buyer, provided that if the Buyer sells the Goods (when combined with other materials) to a third party, then the proceeds of such sale shall be held by the Buyer on trust for the Seller until all sums due under condition 5.2 have been paid to the Seller.

5.5 If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in condition 9.1.2, or the Seller reasonably believes that any such event is about to happen and notifies the Buyer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Seller may have, the Seller may at any time require the Buyer to deliver up the Goods and, if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

#### 6. BUYER'S OBLIGATIONS

The Buyer shall ensure that the terms of the Order are complete and accurate and that any information required by the Seller in order to supply the Goods is provided in a timely and professional manner.

#### 7. CHARGES AND PAYMENT

7.1 The price for Goods shall be the price set out in the Order. Unless specified otherwise in the Order, the price of the Goods is exclusive of all costs and charges of insurance and transport of the Goods.

7.2 The Seller reserves the right to increase the price of the Goods by giving notice to the Buyer at any time before delivery, to reflect any increase in the cost of the Goods to the Seller that is due to:

7.2.1 any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered; or

7.2.2 any delay caused by any instructions of the Buyer in respect of the Goods or failure of the Buyer to give the Seller adequate or accurate information or instructions in respect of the Goods.

7.3 The Seller shall invoice the Buyer for the Goods. The Buyer shall pay each invoice submitted by the Seller:

7.3.1 in accordance with the payment terms specified on the invoice or in the absence of such terms, within [30] days of the date of the invoice; and

7.3.2 in full and in cleared funds to a bank account nominated in writing by the Seller, and time for payment shall be of the essence of the Contract.

7.4 All amounts payable by the Buyer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Seller to the Buyer, the Buyer shall, on receipt of a valid VAT invoice from the Seller, pay to the Seller such additional amounts in respect of VAT as are chargeable on the supply of the Goods at the same time as payment is due for the supply of the Goods.

7.5 Without limiting any other right or remedy of the Seller, if the Buyer fails to make any payment due to the Seller under the Contract by the due date for payment (Due Date), the Seller shall have the right to charge interest on the overdue amount at the rate of five per cent per annum above the current HSBC Bank Plc's base lending rate or at ten per cent per annum, whichever is lower, accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

7.6 The Buyer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Buyer shall not be entitled to assert any credit, set-off or counterclaim against the Seller in order to justify withholding payment of any such amount in whole or in part. The Seller may, without limiting its other rights or remedies, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.

#### 8. LIMITATION OF LIABILITY: THE BUYER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

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

8.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

8.1.2 fraud or fraudulent misrepresentation;

8.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or

8.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or

8.2 Subject to condition 8.1:

8.2.1 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 any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

8.2.2 without limitation to the terms of condition 8.2.1, the parties acknowledge that the Buyer (or its third party suppliers, agents or sub-contractors) will combine the Goods with other products. The Seller accepts no liability for any indirect or consequential losses arising under or in connection with the Contract due to the Goods being mixed or combined with other products, even if the Buyer made the Seller aware of its intentions in relation to the Goods; and

8.2.3 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 statutory duty, or otherwise, shall in no circumstances exceed the value of the Goods supplied under the Contract.

8.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

8.4 This condition 8 shall survive termination of the Contract.

#### 9. TERMINATION

9.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

9.1.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 21 days after receipt of notice in writing of the breach;

9.1.2 the other party suspends, or threatens to suspend, payment of 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; the other party or makes a proposal for or enters into any compromise or arrangement with its creditors; 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 other party (being a company); the other party (being an individual) is the subject of a bankruptcy petition or order; a creditor or encumbrancer of the other party 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 14 days; 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 other party (being a company); a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver; a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party.

9.1.3 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 9.1.2

9.1.4 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or

9.1.5 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

9.2 Without limiting its other rights or remedies, the Seller may terminate the Contract:

9.2.1 by giving the Buyer 1 months' written notice;

9.2.2 with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under this Contract on the due date for payment.

9.3 Without limiting its other rights or remedies, the Seller shall have the right to suspend all further deliveries of the Goods under the Contract or any other contract between the Buyer and the Seller if:

9.3.1 the Buyer fails to make pay any amount due under this Contract on the due date for payment; or

9.3.2 the Buyer becomes subject to any of the events listed in condition 9.1.2, or the Seller reasonably believes that the Buyer is about to become subject to any of them.

#### 10. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

10.1 the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has yet been submitted, the Seller may submit an invoice, which shall be payable by the Buyer immediately on receipt;

10.2 the Buyer shall return all of the Goods which have not been fully paid for. If the Buyer fails to do so, then the Seller may enter the Buyer's premises and take possession of them. Until they have been returned, the Buyer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

10.3 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

10.4 conditions which expressly or by implication have effect after termination shall continue in full force and effect.

#### 11. GENERAL

11.1 Force majeure:

11.1.1 The Seller shall not be liable to the Buyer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

11.1.2 If the Force Majeure Event prevents the Seller from providing any of the Goods for more than 6 weeks, the Seller shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Buyer.

11.2 Notices:

11.2.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

11.2.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second business day after posting, or 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, on the next business day after transmission.

11.2.3 This condition 11.2 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this condition, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

11.3 Waiver and cumulative remedies:

11.3.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

11.3.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.

11.4 Severance: if a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

11.5 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

11.6 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

11.7 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Seller.

11.8 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts in England and Wales.