



TERMS AND CONDITIONS OF SALE

1. INTERPRETATION

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

Conditions: the terms and conditions set out in this document.

Contract: the contract between Eriez and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person, firm or company who purchases the Goods from Eriez.

Delivery Location: the delivery address or location set out in the Order.

Eriez: Eriez Magnetics Europe Limited (registered in England and Wales with company number 01397255) whose registered office is at Bedwas House Industrial Estate, Bedwas, Caerphilly CF83 8YG, UK.

Force Majeure: has the meaning given in clause 10.

Goods: the goods (or any part of them) set out in the Order.

Order: the Customer's order for the Goods, as set out in the Customer's written acceptance of Eriez's quotation or proposal.

Order Acknowledgment: the standard form acceptance of order used by Eriez from time to time.

Specification: any specification for the Goods, including any related plans and drawings, that is referred to or forms part of the Order and whether prepared by or on behalf of Eriez, the Customer or jointly.

Working Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

2. BASIS OF CONTRACT

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

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.3 The Order shall only be deemed to be accepted when Eriez issues a written acceptance of the Order in the form of an Order Acknowledgment, at which point the Contract shall come into existence.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Eriez which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter, or advertising produced by Eriez and any descriptions or illustrations contained in Eriez's catalogues or brochures are produced 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.

2.6 A quotation or proposal for the Goods given by Eriez shall not constitute an offer. A quotation or proposal shall be valid for acceptance for a period of 30 Working Days only from its date of issue unless any other period is stipulated in the quotation or proposal.

2.7 If there is any conflict between the provisions of these Conditions and any other provision in the Contract, the other provision in the Contract shall prevail.

3. GOODS

3.1 The Goods are described in the Contract, including any Specification.

3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify Eriez against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Eriez in connection with any claim made against Eriez for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Eriez's use of the Specification. This clause 3.2 shall survive termination of the Contract.

3.3 Eriez reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

3.4 Eriez shall not be responsible for the installation of the Goods.

3.5 Any design, copyright work, invention, discovery or other intellectual property made, created or produced by Eriez in the course of fulfilling its obligations under the Contract (including any Specification or plans or drawings or equivalent materials produced by Eriez and forming part of the Contract) belong solely and exclusively to Eriez and the Customer will make no claim on the same.

4. DELIVERY

4.1 Eriez shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Contract, all relevant Customer and Supplier 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 Contract is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

4.2 The terms EXW, FCA, CPT, CIP, DAT, DAP, DDP, FAS, FOB, CFR or CIF used in the Contract shall have the meanings set out in Incoterms 2010 published by the International Chamber of Commerce and the Goods shall be delivered to the Delivery Location, and delivery shall take place, in accordance with that term.

4.3 The Customer shall give notice in writing to Eriez within five (5) Working Days of delivery (time shall be of the essence in this regard) for any claim the Goods have not been delivered in the correct quantity.

4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Eriez shall not be liable for any delay in delivery of the Goods caused by a Force Majeure Event or the Customer's failure to provide Eriez with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If the Customer fails to take delivery of the Goods within 10 Working Days of Eriez notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Eriez's failure to comply with its obligations under the Contract:

4.5.1 delivery of the Goods shall be deemed to have been completed at 09.00 on the 10th Working Day after the day on which Eriez notified the Customer that the Goods were ready; and

4.5.2 Eriez shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.6 If 15 Working Days after the day on which Eriez notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, Eriez may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.7 Eriez may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. QUALITY

5.1 Eriez warrants that, to the point Eriez completes its responsibilities under the Contract (if any) for the delivery of the Goods, the Goods will not be damaged during the delivery process.

5.2 Eriez warrants that on delivery, and for a period of twelve (12) months from the date of delivery (**Warranty Period**), the Goods shall be free from material defects in materials and workmanship

5.3 Subject to clause 5.4, if:

5.3.1 the Customer gives notice in writing to Eriez within five (5) Working Days of delivery that the Goods do not comply in whole or in part with either or both (as the case may be) of the warranties set out respectively in clauses 5.1 and 5.2 (to the extent that such non-compliance is reasonably detectable within such period);

5.3.2 in the case of the warranty set out in clause 5.2, after the expiry of the period set out in clause 5.3.1, the Customer gives notice in writing to Eriez during the remainder of 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 5.2;

5.3.3 Eriez is given a reasonable opportunity of examining such Goods; and

5.3.4 the Customer (if asked to do so by Eriez) returns such Goods to Eriez's place of business at the Customer's cost and risk, Eriez shall, at its option, repair or replace any damaged or defective Goods, or refund the price of the damaged or defective Goods in full and this shall be the Customer's sole remedy against Eriez in respect of the damaged or defective Goods.

5.4 Eriez shall not be liable for the failure of Goods to comply with the warranties set out in clauses 5.1 and 5.2 in any of the following events:

5.4.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 5.3;

5.4.2 the defect arises because the Customer failed to follow Eriez's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

5.4.3 the defect arises as a result of Eriez following any drawing, design or Specification supplied by the Customer;

5.4.4 the Customer (or any third party appointed by the Customer) alters or repairs such Goods without the written consent of Eriez or if any such alteration or repair is faulty or defective or uses parts not approved by Eriez;

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

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

5.5 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.

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by Eriez.

6. TITLE AND RISK

6.1 The risk in the Goods shall pass to the Customer on completion of Eriez's responsibilities under the Contract (if any) for delivery.

6.2 Title to the Goods shall not pass to the Customer until Eriez has received payment in full for:

6.2.1 the Goods; and

6.2.2 any other goods or services that Eriez has supplied to the Customer in respect of which payment has become due.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

6.3.1 hold the Goods on a fiduciary basis as Eriez's bailee;

6.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Eriez's property;

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

6.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

6.3.5 notify Eriez immediately if it becomes subject to any of the insolvency events listed in clause 8.1; and

6.3.6 give Eriez such information relating to the Goods as Eriez may require from time to time,

but the Customer may use the Goods in the ordinary course of its business.

6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the insolvency events listed in clause 8.1, or Eriez reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, without limiting any other right or remedy Eriez may have, Eriez may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. PRICE AND PAYMENT

7.1 The price of the Goods shall be the price set out in the Contract.

7.2 Eriez may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

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

7.2.2 any delay caused by any instructions of the Customer or failure of the Customer to give Eriez adequate or accurate information or instructions; or

7.2.3 any factor beyond the control of Eriez including, without limitation, foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs.

7.3 The price of the Goods is exclusive of the costs and charges of packaging, and any insurance and transport of the Goods, which shall be invoiced to the Customer.

7.4 The price of the Goods is exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from Eriez, pay to Eriez such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

7.5 Eriez may invoice the Customer for the Goods on or at any time after the completion of delivery.

7.6 The Customer shall pay the invoice in full and in cleared funds within 30 calendar days of the date of the invoice. Time of payment is of the essence.

7.7 If the Customer fails to make any payment due to Eriez under the Contract by the due date for payment (**due date**), then the Customer shall pay Eriez interest on the overdue amount at the rate prescribed by the Late Payment of Commercial Debts (Interest) Act 1998 applicable at the date this Contract is made. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

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

8. SUSPENSION AND TERMINATION

8.1 If the Customer becomes bankrupt or insolvent or (being a company) makes any arrangement with its creditors or has a receiver appointed or commences to be wound up (other than for the purpose of amalgamation or reconstruction) or enters into any scheme of arrangement or has an administrative receiver appointed (or if Eriez reasonably believes that the Customer is about to become subject to any of them) or if the Customer is in breach of the Contract then, without limiting any other right or remedy available to it, Eriez may suspend all further deliveries under the Contract without incurring any liability to the Customer or may terminate the Contract.

8.2 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination and, without limiting any claim by Eriez against the Customer, upon termination all outstanding sums in respect of Goods delivered to the Customer, or Goods manufactured or part manufactured but not yet delivered to the Customer, shall become immediately due. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

9. LIMITATION OF LIABILITY

9.1 Nothing in these Conditions shall limit or exclude Eriez's liability for:

9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

9.1.2 fraud or fraudulent misrepresentation;

9.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;

9.1.4 defective products under the Consumer Protection Act 1987; or

9.1.5 any matter in respect of which it would be unlawful for Eriez to exclude or restrict liability.

9.2 Subject to clause 9.1:

9.2.1 Eriez shall under no circumstances whatever be liable to the Customer, 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

9.2.2 Eriez's total liability to the Customer 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 price of the Goods.

10. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

11. GENERAL

11.1 Assignment and subcontracting.

11.1.1 Eriez 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.

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

11.2 Notices.

11.2.1 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-mail.

11.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2.1; if sent by pre-paid first class post or recorded delivery, at 09.00 on the first Working Day after posting; if delivered by commercial courier, on the date and at the time that the courier makes delivery; or, if sent by fax or e-mail, on the day of transmission.

11.3 Severance.

11.3.1 If any court or 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 to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

11.3.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

11.4 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. 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.

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

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

11.7 **Confidentiality.** The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature which the Customer may obtain as a result of entering into the Contract with Eriez and the Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of using the Goods in the ordinary course of the Customer's business.

11.8 **Headings.** Headings in these Conditions are for convenience only and shall not affect their interpretation.

11.9 **Governing law and jurisdiction.** The 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, the law of England and Wales, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.