Coler Supply Solutions (intl) Ltd.
THE COMPANY OF EXCELLENCE
2 Manor Road Ind Est,Manor Rd,
Atherstone,CV9 1QY.
TEL (4 LINES): 01827-712910 FAX: 01827-721676
EMAIL: info@coler.co.uk WEB: www.coler.co.uk

NQA ISO9001 REGISTERED COMPANY
UKAS QUALITY MANAGEMENT 015
Certificate No. 3609
POSITIVE ABOUT DISABLED PEOPLE

CONDITIONS OF SALE
COLER SUPPLY SOLUTIONS Intl LTD

1. **Interpretation**

In these conditions of sale:

1.1 The following expressions shall have the meanings set Opposite them unless the context otherwise requires:

"The Buyer" the person, firm or company with whom the Contract is made;

"The Contract" the contract between the Seller and the Buyer for the sale of the Goods into which these conditions of sale are incorporated;

"The Goods" the goods which the Seller is to supply in accordance with these conditions of sale;

"The Seller" Coler Supply Solutions Intl Ltd

"Writing" and "written" shall include e-mail and facsimile transmission;

1.2 any reference in these conditions of sale to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time;

1.3 any references to the singular includes the plural and reference to a gender includes every gender;

1.4 the headings are inserted for convenience only and shall not affect the interpretation of these conditions of sale;

2. **Basis of Sale**

2.1 These conditions of sale apply to all contracts for the sale of goods entered into by the Seller. They apply in preference to and supersede any terms and conditions of the Seller and any terms referred to, offered or relied on by either party whether in negotiation or at any stage in the dealings between the Seller and Buyer with reference to the Goods. Nor will the Seller be bound by any standard or printed terms by the Buyer in any of its documents.

2.2 No variation to these conditions of sale shall be effective unless agreed in writing between the authorized representatives of the Buyer and the Seller.

The Sellers employees or agents are not authorized to make any representations concerning the Goods unless confirmed by the Seller in writing . In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed and that it shall not have any right of action against the Seller arising out of or in connection with any such representation except in the case of fraud.

2.3 The seller will take all reasonable steps to ensure that any raw materials purchased will be as per the specifications agreed with the buyer at the time of purchase. However the seller will not accept any liability for the issuance of incorrect materials submitted. The raw material is purchased from a third party and the seller can only trust the information given to us from the relevant third party as accurate without the request of additional testing from the buyer at cost and within a reasonable timeframe from point of order.

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

2.5 In entering into this Contract the Buyer assumes responsibility for the Goods being sufficient for its purpose. As the Seller is not responsible for system design and as the Buyer has greater knowledge of his own requirements the Seller shall not accept any responsibility for the performance or suitability of the Goods in their final operating environment whether or not details of the final operating environment have been made available to the Seller.

Any typographical, clerical or other error or omission in any sales literature, written quotation or confirmation or acknowledgment of the Seller, price list, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

2.6 The Seller reserves the right to copyright against any unique research and design carried out by the seller that is aimed at the improvement of the buyers product/project provided the buyer had given the seller pre-authorization to adapt or improve that specified product/project.

2.7 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) placed by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

2.8 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damage, costs and expenses awarded against or incurred by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Sellers use of the Buyers specification.

2.9 The Seller reserves the right at any time to change the design, construction and/or specification of the Goods if such change is required to conform with any applicable statutory or EC requirements. In addition, the Seller operates a policy of continuous product improvement and the Seller reserves the right to change the design, construction and/or specification of the Goods at any time if such change will in the opinion of the Seller at the time that such change is made improve or enhance the design, quality or performance of such Goods.

2.10 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of the cancellation.

3. Guarantee and Sellers Liability in respect of the Goods

3.1 The Seller guarantees the Goods in accordance with the terms of its applicable guarantee for such Goods as in force from time to time. The Sellers liability under its guarantees is limited as stated in each relevant guarantee.

3.2 Save as provided in condition 3.1 and subject to condition 3.3 the Seller will be under no liability under the Contract, in tort or otherwise for any personal injury, death, loss or damage of any kind whatsoever whether direct or indirect and whether consequential or otherwise (including but not limited to loss of profits, loss of business or contracts, loss of operating time or loss of use whether foreseeable or not) resulting from any defect in the Goods or from any work done in connection with any such defect or as a result thereof and the Seller hereby excludes all conditions, warranties and stipulations, express or implied, statutory, customary or otherwise to the fullest extent permitted by law which but for such exclusion would or might subsist in favour of the Buyer.

3.3 The Seller does not exclude liability for:

3.3.1 any breach of the implied condition that the seller has or will have the right to sell the Goods when property therein is to pass;

3.3.2 when the Buyer deals as a consumer (as defined in section 12 of the Unfair Contract Terms Act 1977), any breach of the implied terms relating to the conformity of the Goods with their description or sample, as to their quality or fitness for a particular purpose;

3.3.3 Death or personal injury resulting from its negligence or that of its employees.

4. Price

4.1 The price of the Goods shall be the price listed in the Sellers published price quotation in force at the time that the Buyer places an order with the Seller, which shall prevail over any previously quoted, estimated or agreed price.

4.2 The price is exclusive of any applicable value added tax which the Buyer shall pay to the Seller.

4.3 Where the Seller agrees to deliver the Goods otherwise than at the Sellers premises the Buyer shall pay the Sellers charges for transport, packaging and insurance.

5. Payment

5.1 Where no account has been opened in advance by the Seller in respect of the Buyer, the Seller will not be obliged to deliver the Goods until the Buyer has paid the amount shown on the pro-forma invoice relating to the Goods.

5.2 Where an account has been opened for the Buyer, the Seller may in its absolute discretion set and on written notice to the Buyer alter the Buyers credit limit or terminate the Buyers account facilities and the Seller reserves the right not to deliver the Goods if the price thereof increases the amount owed by the Buyer to the Seller beyond the Buyers credit limit from time to time.

5.3 Where an account has been opened for the Buyer and the price of the Goods together with all other indebtedness of the Buyer to the Seller does not exceed the Buyers credit limit from time to time, the price of the Goods will be paid by the Buyer by the end of the month following the month in which the Sellers invoice is issued. The time of payment shall be of the essence of the Contract.

5.4 If the Buyer fails to make any payment by the due date then, without prejudice to any other right or remedy available to the Seller, the Seller may without liability:

5.4.1 Suspend any further deliveries to the Buyer or cancel the Contract or any other contract between the Seller and the Buyer:

5.4.2 Charge the Buyer interest (both before and after any judgement) on the amount unpaid at the rate of 2% per annum above the base rate from time to time of Barclays Bank Plc until payment in full is made:

5.4.3 Appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may in its absolute discretion think fit (not with standing any purported appropriation by the Buyer).

5.5 The Seller shall be entitled to payment for all installments of Goods delivered to the Buyer notwithstanding that the remainder of the Goods shall not have been delivered.

5.6 The Buyer shall not be entitled to withhold payment of any amount payable under the Contract because of any disputed claim of the Buyer in respect of faulty goods or any other alleged breach of contract whether in respect of the Contract or any other contract between the Buyer and the Seller nor shall the Buyer be entitled to set off against any amount payable under the Contract to the Seller any monies owed by the Seller to the Buyer on any account whatsoever, whether such a right is conferred on the Buyers by statute or otherwise.

6. **Delivery**

6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Sellers premises agreed between the Seller and the Buyer at any time after the Seller has notified the Buyer that the Goods are ready for collecting or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.

6.2 Where the Seller agrees to deliver a large consignment of goods other than at the Sellers premises the Buyer shall be responsible for off-loading such goods from the Sellers delivery vehicle at the agreed place of delivery. The Seller shall on request at any time provide a copy of its guidelines from time to time for the movement of such goods.

6.3 Any dates quoted for the delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in writing.

6.4 The Seller may make delivery by installments. Where goods are to be delivered in installments each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the installments in accordance with these conditions or any claim by the Buyer in respect of any one or more installments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.5 Where delivery of the Goods is to be made by the Seller in bulk, the Seller reserves the right to deliver up to 5 per cent more or 5 per cent less than the quantity ordered and the quantity so delivered shall be deemed to be the quantity ordered.

6.6 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery, then without prejudice to any other right or remedy available to the Seller, the Seller may:

6.5.1 Store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

6.5.2 Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Buyer for any shortfall below the price under the Contract.

7. **Loss or Damage in Transit and Non-Delivery**

No claim for damage to any Goods or for any shortages in the Goods delivered will be considered by the Seller unless it is advised of such claim in writing within 3 days of the date of delivery of the Goods or such part thereof as are actually delivered. In the absence of such advice, the Buyer will be deemed to have accepted the Goods. No claim for non-delivery will be considered by the Seller unless it is advised in writing within 14 days of the date of the Sellers invoice. Any claim for damage, shortages or non-delivery shall be also notified by the Buyer to the carrier (if any) in the manner and within the appropriate time limit prescribed by the carrier's terms and conditions, as advised by the Seller to the Buyer. In the event of a failure by the Buyer to give the appropriate notices then any claim which the Buyer may otherwise have pursuant to this condition will be deemed to have waived and will be absolutely barred.

8. **Risk and Property**

8.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

8.1.1 In the case of Goods to be delivered at the Sellers premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or

8.1.2 in the case of Goods to be delivered otherwise than at the Sellers premises, at the time of delivery to the premises or place agreed between the Buyer and the Seller or if the Buyer wrongfully fails to take delivery of the Goods at such premises or place at the time when the Seller has tendered delivery of the Goods.

8.2 Notwithstanding delivery and/or the passing of risk in the Goods the property in the Goods shall not pass to the Buyer until the price of the Goods has been paid in full and payment has been made to the Seller of all sums due or owing from the Buyer to the Seller on any account whatsoever.

8.3 Until such time as property in the Goods passes to the Buyer in accordance with condition 8.2:

8.3.1 the Buyer shall hold the Goods as the Sellers fiduciary agent and bailee, shall not obliterate any identifying mark on the Goods or their packaging and shall keep the Goods separate from any other goods of the Buyer or third parties, properly stored, protected and insured and identified as the Sellers property and the Seller shall be entitled to enter the Buyers premises during the Buyers normal business hours upon reasonable notice to verify the Buyers compliance with this condition; and

8.3.2 Subject to condition 8.4, the Buyer shall be entitled to use or sell the Goods in the ordinary course of its business.

8.4 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

8.5 Where the Seller is unable to determine whether any goods are the Goods the Buyer shall be deemed to have sold all goods of the kind sold by the Seller to the Buyer in the order in which they were invoiced to the Buyer.

8.6 The Seller may at any time after payment of any amount payable under the Contract has become due take possession of the Goods (which for the avoidance of doubt shall include the right to stop the Goods in transit) and remove them and the Buyer shall be deemed to have granted irrevocable authority to the Seller to enter upon the Buyers premises or other premises where the Goods may be and, by the Sellers employees or agents, take possession of the Goods and (if necessary) dismantle the Goods from anything to which they are attached.

8.7 The Seller shall have the right to maintain an action against the Buyer for the price of the Goods notwithstanding that property in the Goods has not passed.

8.8 Nothing in the Contract shall constitute the Buyer the agent of the Seller in respect of any re-sale of the Goods by the Buyer so as to confer upon a third party any rights against the Seller.

9. **Trade Marks**

The Buyer shall not remove, alter, deface or tamper with any of the marks, names, numbers or other means if identification used on the Goods or allow anyone else to do so.

10. **Force Majeure**

The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Sellers obligations in relation to the Goods if the delay or failure is due to any cause beyond the Sellers reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Sellers reasonable control: act of God, explosion, lightning, flood, tempest, fire or accident, war or threat of war, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations, by-laws, prohibitions, or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lockouts or other industrial actions or trade disputes (whether involving employees of the Seller or any third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery; power failure or breakdown in machinery.

11. **Cancellation and Suspension of the Contract**

11.1 This condition applies if:

11.1.1 The Buyer is in breach of any of its obligations under the Contract or any other contract between the Buyer and the Seller, or

11.1.2 Unforeseen events including (without prejudice to the generality of the foregoing) those referred to in condition 10 materially affect the commercial effect of the Contract; or

11.1.3 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

11.1.4 An encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

11.1.5 The Buyer ceases or threatens to cease to carry on business; or

11.1.6 The Seller reasonably apprehends that any of the events mentioned in conditions 11.1.3, 11.1.4 or 11.1.5 is about to occur in relation to the Buyer; or

11.1.7 the Seller receives notice of any claim alleging that the Goods or any part thereof or any process applied to the Goods infringe any patent, copyright, design right, trademark or other industrial or intellectual property rights of any other person.

11.2 If this condition 11 applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract by notice to the Buyer without any liability to the Buyer and if the Goods have been delivered but not paid for then the price of the Goods shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

12. **Export Terms**

12.1 In these conditions 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these conditions, but if there is any conflict between the provisions if Incoterms and these conditions, the latter shall prevail.

12.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this condition 12 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these conditions.

12.3 Unless otherwise agreed in writing between the Buyer and the Seller, the Goods shall be delivered ex-works the Sellers premises agreed between the Seller and the Buyer.

12.4 The Buyer shall be responsible for arranging for testing and inspection of the Goods before they leave the Sellers premises and the Seller shall have no liability in respect of any defect in the Goods which would have been apparent from such inspection.

12.5 Unless otherwise agreed in writing by the Seller payment of all amounts due to the Seller shall be made in sterling by irrevocable letter of credit opened by the Buyer in favour of the Seller and confirmed by a leading London bank acceptable to the Seller within 10 days of the Sellers acceptance of the Buyers order and upon presentation of the required documents to a London bank.

13. **Assignment and Subcontracting**

The Seller shall be entitled at all times to assign its rights under the Contract (in whole or in part) or to subcontract any part of the work or services to be provided under the Contract as it deems necessary or desirable.

14. **Tooling**

All tools (including but not limited to dies, gauges, ties, fixtures, moulds and patterns) and any patterns or drawings charged by the Seller, whether itemized separately or included in the price for items shall exclude a 10% ownership right.
This amount will be calculated and deducted on the total sale cost on quotation and invoice. In the event tooling is to be returned or used by a second party other than Coler Supply Solutions Ltd or associated Companies, this additional charge based on the 10% manufacturers/suppliers ownership entitlement, will be invoiced for full and final payment prior to the return of the tooling.

15. **General**

15.1 The termination of the Contract howsoever arising shall be without prejudice to any rights and duties of either party which may have accrued prior to termination.

15.2 The Sellers rights contained in condition 8 (but not the Buyers rights) shall continue beyond the discharge of the parties primary obligations under the Contract following its termination by the Seller or breach by the Buyer.

15.3 Any notice required or permitted to be given by either party to the other under these conditions shall be in writing addressed to that other party as its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

15.4 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

15.5 If the provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions and the remainder of the provision in question shall not be affected.

16. **Proper Law and Jurisdiction**

The Contract shall be governed by the laws of England and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.

Coler Supply Solutions (intl) Ltd
Unit 2,
Manor Road Industrial Estate,
Manor Road,
Atherstone,
CV9 1QY

Phone-01827-712910
Fax-01827-721767

www.coler.co.uk
info@coler.co.uk