

### 1. Interpretation

The definitions and rules of interpretation in this condition apply in these conditions.

**Buyer:** the person, firm or company who purchases the Goods from the Company.

**Company:** BM Catalysts Limited (Company Number: 01673421) (formerly known as Belton Massey Limited) and whose registered office is Reed Mill, Sheepbridge Lane, Mansfield, Nottingham. NG18 5DL.

**Contract:** any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions.

**Goods:** any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

**Territory:** any country the Buyer has advised the Company they supply Goods to.

**Working Days:** all days other than Saturdays, Sundays and public holidays in England.

- 1.1 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.2 Words in the singular include the plural and in the plural include the singular.
- 1.3 A reference to one gender includes a reference to the other gender.
- 1.4 Condition headings do not affect the interpretation of these conditions.

### 2. Application of terms

- 2.1 Subject to any variation under condition 3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These conditions apply to all the Company's sales and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of the Company. 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 shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.4 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.
- 2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.
- 2.6 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.7 Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 14 days only from its date, provided that the Company has not previously withdrawn it.

### 3. Variation of Terms

- 3.1 These conditions apply to all the Company's sales and any variations to these conditions shall have no effect unless expressly agreed in writing and signed by a director of the Company.
- 3.2 In the event that the Buyer is in breach of any of these conditions or the terms of the variations agreed pursuant to clause 3.1 the Company reserves the right to withdraw its agreement to the variations and revert to these conditions on notice to the Buyer.

### 4. Cancellation

No order which has been accepted by the Company may be cancelled by the Buyer unless agreed in writing by a director of the Company. Such agreement by the Company shall be on the condition that the Buyer will indemnify the Company in full against all loss (including loss of profit), costs (including the costs of all labour and materials used), damages, charges and expenses incurred by the Company as a result of the cancellation.

### 5. Description

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 described in them. They shall not form part of the Contract and this is not a sale by sample.

### 6. Delivery

- 6.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place when the Goods leave the Company's premises whether carried by the Company, the Buyer or an independent carrier.

- 6.2 The Buyer shall be responsible for taking delivery of the Goods on receipt of notice from the Company confirming that the Goods are ready for delivery
- 6.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
- 6.4 Subject to the other provisions of these conditions the Company shall not be liable for any 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 similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 60 days.
- 6.5 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
  - (a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
  - (b) the Goods shall be deemed to have been delivered; and
  - (c) the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 6.6 The Buyer shall be responsible for providing at its own expense adequate and appropriate equipment and manual labour for unloading the Goods.
- 6.7 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 6.8 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

### 7. Non-delivery

- 7.1 The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 7.2 Any claim that the Company has failed to deliver the specified quantity or type of Goods must be notified to the Company in writing within five Working Days of the agreed scheduled date for delivery. The Company is not liable in default of notification within such period.
- 7.3 The Company is not responsible for Goods damaged or lost in transit.
- 7.4 Any period stated by the Company for delivery of Goods is an estimate only and time for delivery of Goods is not of the essence.
- 7.5 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods. The Company shall not accept debit notes from the Buyer.

### 8. Risk/title

- 8.1 The Goods are at the risk of the Buyer from the time of delivery.
- 8.2 Ownership of the Goods shall 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:
  - (a) the Goods; and
  - (b) all other sums which are or which become due to the Company from the Buyer on any account.
- 8.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
  - (a) hold the Goods on a fiduciary basis as the Company's bailee;
  - (b) 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;
  - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
  - (d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.
- 8.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
  - (a) any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
  - (b) any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 8.5 The Buyer's right to possession of the Goods shall terminate immediately if:
  - (a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether

voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

- (b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
  - (c) the Buyer encumbers or in any way charges any of the Goods.
- 8.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 8.7 The Buyer authorises the Company to recover from the Buyer any overdue payment for the Goods using any payment details held by the Company from time to time and without further reference or notification to the Buyer.
- 8.8 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.
- 8.9 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 shall 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.
- 8.10 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 8 shall remain in effect.

## 9. Price

- 9.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Company's price list published on the date of delivery or deemed delivery.
- 9.2 The price for the Goods shall be exclusive of any Value Added Tax, Customs Levy, Import Tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.

## 10. Payment

- 10.1 Subject to conditions 3, 10.2 and 10.7, payment of the price for the Goods is due in pounds sterling upon presentation of the Company's invoice, unless an alternative currency has been previously agreed between the Company and the Buyer, in which case the price for the Goods will be due in the agreed currency upon presentation of the Company's invoice. Notwithstanding any variation to payment terms granted by concession under condition 3 all monies owing are payable on demand.
- 10.2 Even where the Company agrees to either invoice and/or that the Buyer may pay in a currency other than pounds sterling, the Company reserves the right at any time by notification to the Buyer to revert all unpaid invoices to pounds sterling at the exchange rate quoted by the European Central Bank at the date of the invoice in which case the Buyer agrees to pay all amounts due in pounds sterling.
- 10.3 If the Buyer receives an invoice which it reasonably believes includes a sum which is not properly due it shall notify the Company of the amount disputed within ten Working Days of receipt of the invoice (**Invoice Dispute Notification**). The Company will not be liable for the repayment of any overcharged sum where the Company has not received a valid Invoice Dispute Notification. Where the Buyer does provide a valid Invoice Dispute Notification the Buyer shall still be obliged to pay the relevant invoice before the due date of the invoice (and interest shall accrue in respect of its non-payment). If the Company determines in its sole discretion that an invoice which is the subject of a valid Invoice Dispute Notification includes a sum which is not properly due the Company shall issue a credit note in respect of any overpaid sum including interest accrued in respect of the overpaid sum at the rate of the annual rate of 4% above the base lending rate from time to time of National Westminster Bank plc, accruing on a daily basis until payment is made.
- 10.4 Time of payment shall be of the essence.
- 10.5 No payment shall be deemed to have been received until the Company has received cleared funds.
- 10.6 If the Buyer fails to make any payment to the Company on the due date:  
(i) all other sums payable to the Company shall immediately become due; and  
(ii) the Company may suspend performance of the Contract and any other contract with the Buyer.
- 10.7 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 10.8 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount,

abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer. The Company may set off against any sum due by it to the Buyer under this Contract and/or under any other contract between the parties, any sum due to it whether under this Contract and/or any other contract between the parties.

- 10.9 For the avoidance of doubt, any defect found in the Goods (once accepted by the Company) which does not affect the remainder of the Goods supplied under the Contract or render the performance of the Contract substantially different to that which was entered into shall not entitle the Buyer to withhold or delay payment for the Goods which are not affected by the defect.
- 10.10 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of National Westminster Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment.
- 10.11 The Company reserves the right to pass on to the Buyer any 3<sup>rd</sup> party fees incurred by the Company pursuant to collection of any outstanding debt by the Buyer

## 11. Warranty

- 11.1 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.
- 11.2 All warranties, conditions, guarantees and representatives implied by statute, common law or otherwise are hereby excluded by Supplier to the fullest extent permitted by law.
- 11.3 The liability of the Company under any warranty claim pursuant to condition 11.2 will be limited to 3 months from the date the goods are first invoiced, for all Goods manufactured by the Company, unless otherwise specified in writing.
- 11.4 If any of the Goods do not conform with the Guarantee in 11.2 and are within the timescales in 11.3 the Company shall, at the Company's discretion, offer a repair or replacement of the goods or offer a refund of the price of such Goods at the pro rata Contract rate.
- (a) In the event of a repair or replacement, the Company will cover the cost of shipping the Goods to the Buyer.
- 11.5 The Company shall not be liable for a breach of the warranty in condition 11.2 unless:  
(a) the Buyer gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit to the carrier, within 5 days of the time when the Buyer discovers or ought to have discovered the defect; and  
(b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business.
- 11.6 The return of any Goods for alleged emissions failure must be accompanied by:  
(a) the Company's official returns form, duly completed; and  
(b) a copy of the failure certificate issued by the MOT (or other authorised) testing centre showing the gas analysis figures resulting in the failure.
- 11.7 The Company shall not be liable for a breach the warranty in condition 11.2 if:  
(a) the Buyer or the Buyer's customer makes any further use of such Goods after giving such notice; or  
(b) the defect arises because the Buyer failed to follow the Company'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;  
(c) the Buyer alters or repairs such Goods without the written consent of the Company; or  
(d) the fault arises from any cause beyond the control of the Company including by way of example (but not limited to):  
(i) the application of exhaust paste to any part of the exhaust system in front of the catalytic converter or DPF; or  
(ii) poor fitting of the catalytic converter or DPF to a vehicle by way of example (but not limited to) over-tightening or non-usage of spring bolts; or  
(iii) external damage as a result of hitting an object on the road.
- 11.8 Notwithstanding condition 11.3 the Company reserves the right to deal with a warranty claim under condition 11.2 as it sees fit in the event that the Buyer has failed to pay to the Company any sums due pursuant to the Contract.
- 11.9 If the Company complies with conditions 11.2 and 11.7 it shall have no further liability for a breach of any of the warranties in condition 11.2 in respect of such Goods.
- 11.10 Notification by the Buyer that they intend to return the Goods for any reason other than under a warranty claim must be notified to the Company within 3 working days of the date of the invoice (unless otherwise agreed by a director of the Company in writing). The Company reserves the right to refuse a return of Goods under 11.10 or at the Company's discretion to issue a credit for returns of Goods which do not relate to warranty claims or incorrect delivery at a reduced value to cover costs, including but not limited to, packaging costs, carriage costs, loss of profit and administrative costs..

## 12. Limitation of liability

- 12.1 Subject to condition 6, condition 7 and condition 11, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- (a) any breach of these conditions;
  - (b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
  - (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 12.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract. This condition does not exclude or restrict the liability of the Company towards any buyer who is a consumer within the Unfair Contract Terms Act 1977 or the Unfair Terms in Consumer Contracts Regulations 1999.
- 12.3 Nothing in these conditions excludes or limits the liability of the Company:
- (a) for death or personal injury caused by the Company's negligence; or
  - (b) under section 2(3), Consumer Protection Act 1987; or
  - (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
  - (d) for fraud or fraudulent misrepresentation.
- 12.4 Subject to condition 12.2 and condition 12.3:
- (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
  - (b) the Company shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused including, by way of example but not limited to, claims by the Buyer in respect of labour costs) which arise out of or in connection with the Contract.
- 12.5 It is the Buyer's obligation to acquaint itself and to comply with all applicable legislation, regulations, requirements and restrictions imposed by law or by governmental and other authorities or corporations relating to the possession, use, import, export, or resale of the Goods. It is the Buyer's obligation to ensure that no Goods are exported or imported in violation of the laws of any jurisdiction into or through which the Products are transported. Save in respect of death or personal injury arising from the Company's negligence, the Company can accept no liability for any loss or damage (by way of example but not limited to fines, court action, loss of business, depletion of goodwill or compensation claims) incurred by the Buyer resulting from any violation of any such legislation, regulations or legal requirements by the Buyer or any other party.
- 13. Safety**
- It is the responsibility of the Buyer to ensure that the Buyer and (if relevant) its customers are suitably trained in the fitting of exhaust systems and that staff comply with all relevant good practice and safety procedures.
- 14. Assignment**
- 14.1 The Company may assign the Contract or any part of it to any person, firm or company.
- 14.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 15. Force majeure**
- The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 90 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.
- 16. General**
- 16.1 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.
- 16.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 16.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 16.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of

any subsequent breach or default and shall in no way affect the other terms of the Contract.

- 16.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 16.6 If the Buyer enters into an agreement with any third party, which results in a change of commercial terms for the Company, the Company reserves the right to amend the prices and commercial terms offered to the Buyer.
- 16.7 The Buyer must inform the Company if they sell the Goods outside of their Territory.
- 16.8 The Buyer must ensure they have adequate transport insurance for any Goods purchased Ex Works.
- 16.9 If this agreement is translated and there are any inconsistencies in the translation, the English language version takes precedence.

**17. Governing Law & Jurisdiction**

- 17.1 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law.
- 17.2 Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England & Wales over any claim or matter arising out of or in connection with the Contract or these conditions.

**18. Communications**

- 18.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or electronic communication (including e-mail):
- (a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or
  - (b) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.
- 18.2 Communications shall be deemed to have been received:
- (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
  - (b) if delivered by hand, on the day of delivery; or
  - (c) if sent by fax or electronic communication on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
- 18.3 The company reserves the right to record telephone conversations and monitor all communications between the buyer and the company including its employees or other appointed representatives.

**19. Export terms**

- 19.1 Exports for the purposes of these conditions are defined as exports of Goods to those territories which are not subject to United Kingdom Value Added Tax (VAT) jurisdiction.
- 19.2 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 of INCOTERMS and these Conditions, the latter shall prevail.
- 19.3 The provisions of this condition 19 shall (subject to any special terms agreed in writing between the Buyer and the Company) apply notwithstanding any other provision of these conditions.
- 19.4 Unless otherwise agreed in writing between the Buyer and the Company, the Goods shall be delivered Ex Works. The Company shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 19.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Company's premises before shipment. The Company shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.
- 19.6 Unless otherwise required by the Company, payment of all amounts due to the Company shall be made by an irrevocable letter of credit, in a form acceptable to the Company, to be opened by the Buyer in favour of the Company and confirmed by a bank in the United Kingdom acceptable to the Company within 14 days of shipment of the Goods unless otherwise agreed in writing by a director of the Company.

These terms and conditions have been drafted in the English language. By signing these terms and conditions you accept that, regardless of any translation of these terms and conditions into any language other than English, the English Language version shall prevail in the event of any conflict between the English Language version and the translated version.

**Agreement to BM Catalysts Limited Terms & Conditions**

Signature: .....

Print Name: .....

Position: .....

Company: .....

Date: .....