

Hoppecke Asia Pacific Pte Ltd - Standard Conditions for Sale

In these Conditions, "Hoppecke" shall mean Hoppecke Asia Pacific Pte Ltd., a company incorporated in Singapore.

1. Formation of contract

- 1.1. By submitting to Hoppecke, an order form for a purchase of goods (the "**Order Form**"), the Purchaser (i.e.; the submitter of the Order Form) accepts and agrees to these terms and conditions (hereafter referred to as the "**Conditions**"). All Order Forms are subject to acceptance by Hoppecke, at its sole discretion. Acceptance by Hoppecke will be made by way of issuance by Hoppecke of its standard order acknowledgment form to the Purchaser.
- 1.2. Each Order Form which is so accepted by Hoppecke and these Conditions shall constitute the entire contract legally binding between Hoppecke and the Purchaser, and each of such individual legally binding contract shall hereafter be referred to in these Conditions as an "**Order**".
- 1.3. Unless specified otherwise in these Conditions, these Conditions shall prevail over any conflicting or additional terms or conditions (if any) contained on or referred to in an Order Form or other documents or correspondence from the Purchaser, and supersedes and prevail over all prior discussions, agreements, understandings or arrangements between the Purchaser and Hoppecke in connection with the Purchaser's purchase of goods.
- 1.4. These Conditions shall not be varied (in writing or verbally), unless expressly agreed in writing by a person authorised to sign on Hoppecke's behalf.

2. Cancellation of Order

- 2.1. Orders placed by the Purchaser and accepted by Hoppecke may not be cancelled except with the consent in writing by a person authorised to sign on Hoppecke's behalf, subject to any cancellation fees that Hoppecke may in its sole discretion impose.
- 2.2. Without prejudice to Condition 2.1 above, if the Order is cancelled after it has been accepted by Hoppecke and the goods have been delivered to the address specified by the Purchaser in the Order, the Purchaser shall indemnify Hoppecke against all costs and expenses incurred or suffered as a result of acting upon the Order and/or the cancellation of the Order.

3. Specification

- 3.1. All goods supplied by Hoppecke shall be in accordance with (i) the latest edition of the relevant Product Description as may be published from time to time by Hoppecke on www.hoppecke.com (copies of which are available from Hoppecke upon request) and (ii) those further specifications or descriptions (if any) expressly listed or set out on the face of the Order Form which is so accepted by Hoppecke. No other specification, descriptive material, written or oral representation, correspondence or statement, promotional or sales literature shall form part of or be incorporated by reference into the Order.
- 3.2. If the Purchaser has requirements on the specifications or descriptions on the goods to be manufactured by Hoppecke, any design or instruction furnished or given by the Purchaser for such purpose shall not be such as will cause Hoppecke to infringe any Intellectual Property

Rights (as defined in Condition 11.4).

4. Acceptance of Goods

- 4.1. The Purchaser shall be deemed to have accepted all goods upon their delivery by Hoppecke or collection of the goods from Hoppecke (as the case may be).

5. Delivery and risk

- 5.1. Unless otherwise stated in the Order Form, the price quoted includes delivery to the Singapore address specified by the Purchaser in the Order Form which is so accepted by Hoppecke, provided that Hoppecke reserves the right to increase the price by such amount necessary to cover any increase in transport costs effected before the date of delivery or any additional costs that will be incurred as a result of a change in the address specified by the Purchaser in the Order Form.
- 5.2. Any time or date for delivery given by Hoppecke is given in good faith, but is an estimate only. Hoppecke shall not be held responsible for any loss or damage suffered as a result of the failure to meet any delivery date, whether agreed to by the parties to the Order or otherwise. The Purchaser shall not be relieved of performance because of Hoppecke's failure to meet any estimated delivery dates.
- 5.3. If through circumstances beyond Hoppecke's control (including without limitation lack of shipping instructions from the Purchaser or Force Majeure (as defined in Condition 9.2)) after the goods are ready for delivery, the delivery of goods becomes impracticable or impossible in Hoppecke's sole opinion, Hoppecke shall be entitled to arrange storage on behalf of the Purchaser, whereupon delivery shall be deemed to have taken place. Delivery to the Purchaser of the relevant warehouse receipt shall be deemed to be delivery of the goods for the purposes of this Condition 5.3. All charges incurred by Hoppecke for storage or insurance shall be paid by the Purchaser without set-offs or deductions.
- 5.4. Notwithstanding anything in Condition 6, all risk in the goods, including liability for loss or damage, shall pass to the Purchaser (i) upon delivery of the goods to the address specified by the Purchaser in the Order Form, (ii) upon delivery of the warehouse receipt; or (iii) if delivery of the goods are arranged to be collected by the Purchaser, upon the date of collection of the goods by the Purchaser (as the case may be). Any loss or damage that occurs after the goods have been delivered or collected (as the case may be) shall not relieve the Purchaser from performing any obligation under these Conditions.
- 5.5. Hoppecke reserves the right to make partial delivery of the goods without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered.

6. Title

- 6.1. Title to the goods shall not pass to the Purchaser but shall be retained by Hoppecke until the full payment of the purchase price of the goods has received by Hoppecke in full from the Purchaser.
- 6.2. All costs to be incurred by reason of the shipment of the goods to an address specified by the Purchaser that is outside Singapore will be at the Purchaser's costs.

- 6.3. Until such time as title in the goods is passed to the Purchaser:
- 6.3.1. Hoppecke shall have absolute authority to repossess, sell or otherwise deal with or dispose of all any or part of the goods in which title remains vested in Hoppecke;
 - 6.3.2. for the purpose specified in Condition 6.3.1 above, Hoppecke or any of its agents or authorised representatives shall be entitled at any time and without notice to enter upon any premises in which the goods or any part thereof is installed, stored or kept, or is reasonably believed so to be; and
 - 6.3.3. Hoppecke shall be entitled to seek equitable remedies (including, without limitation, injunctive proceedings) to prevent the Purchaser from selling, transferring or otherwise disposing of the goods.
- 6.4. Notwithstanding the foregoing, risk in the goods shall pass on delivery or collection (as the case may be) of the same to or by (as the case may be) the Purchaser in accordance with Condition 5.

7. Payment

- 7.1. When only goods are sold, Hoppecke shall be entitled to issue a payment claim or invoice for the purchase price of the goods, or such part thereof, whether before, upon or after delivery. The Purchaser shall satisfy the payment claim or invoice within 21 days of its issuance days (or such other period specified in the Order Form) without set-offs or deductions.
- 7.2. Where both goods and services are provided by Hoppecke, then upon receipt of the payment claim or invoice by Hoppecke, the Purchaser shall have 21 days to make a payment response or satisfy the claim in full. The Purchaser shall satisfy the payment claim or invoice within 21 days of its issuance (or such other period specified in the Order Form), without set-offs or deductions.
- 7.3. If the Purchaser does not pay to Hoppecke the purchase price in full without set offs or deductions by the due date, Hoppecke shall thereafter be entitled, without prejudice to any other rights set out in the Order Form or the invoice relating to the Order Form, including but not limited to the right to charge interest, to suspend any further duties and obligations in the Order and any other unfulfilled order.
- 7.4. The Purchaser indemnifies Hoppecke for any and all expenses incurred by Hoppecke in enforcing its rights against the Purchaser under the Order.

8. Damage in transit

- 8.1. Hoppecke will replace free of charge any goods proved to Hoppecke's satisfaction to have been damaged in transit provided that within 24 hours after delivery both Hoppecke and the carriers have received from the Purchaser notice in writing of the occurrence of the damage and also, if and so far as practicable, of its nature and extent.

9. Force majeure

- 9.1. Hoppecke shall not be under any liability for any failure to perform any of its obligations under the Order due to *Force Majeure*. Following notification by Hoppecke to the Purchaser of the

occurrence of a Force Majeure event, Hoppecke shall be allowed a reasonable extension of time for the performance of its obligations. In the event of a Force Majeure event or events causing a delay or foreseeable delay in excess of thirty (30) consecutive days in performance of the Order, Hoppecke reserves the right to terminate the Order, and will not be liable for any costs or expenses incurred by the Purchaser.

- 9.2. For the purposes of Conditions 5.3 and 9.1, "*Force Majeure*" means fire, explosion, flood, lightning, Act of God, act of terrorism, war, rebellion, riot, sabotage, or official strike or similar official labour dispute, or events or circumstances outside the reasonable control of the party affected thereby.

10. Guarantee

- 10.1. For goods which are manufactured by Hoppecke or which bear one of Hoppecke's trade marks, Hoppecke shall be entitled, at its absolute discretion, to either repair or replace the defective goods or refund the purchase price of the defective goods pursuant to Condition 10.2, provided that:

10.1.1. the defects arise from proper use of the goods within 12 months from the date of delivery;

10.1.2. notice in writing of the defects complained of shall be given to Hoppecke upon the appearance of such defects;

10.1.3. such defects shall be found to Hoppecke's reasonable satisfaction to have arisen solely from Hoppecke's faulty design, workmanship or materials; and

10.1.4. the defective goods shall be returned to Hoppecke's factory at the Purchaser's expense if so requested by Hoppecke.

- 10.2. Refund: Hoppecke shall be entitled at its absolute discretion to refund the purchase price of the defective goods if such purchase price shall already have been paid by the Purchaser to Hoppecke, or, if such purchase price has not been so paid, to relieve the Purchaser of all obligation to pay the same by the issue of a credit note in favour of the Purchaser in the amount of such purchase price.

- 10.3. In respect of all goods manufactured and supplied to Hoppecke by third parties, Hoppecke will pass on to the Purchaser (in so far as possible) the benefit of any warranty given to Hoppecke by such third parties and will (on request submitted to Hoppecke in writing) supply to the Purchaser details of the terms and conditions of such warranty and copies of any relevant product information sheets, technical data sheets or product leaflets issued by such third parties and the Purchaser shall be solely responsible to the entire exclusion of Hoppecke for complying with all of these.

- 10.4. Unless otherwise stated in the Order Form, Hoppecke's liability under this Condition 10 shall be to the exclusion of all other liability to the Purchaser whether contractual, tortious or otherwise for defects in the goods or for any loss or damage to or caused by the goods, and all other conditions, warranties, stipulations or other statements whatsoever concerning the goods, whether express or implied, by statute, at common law or otherwise howsoever, are hereby excluded; in particular (but without limitation of the foregoing) Hoppecke grants no

warranties regarding the fitness for purpose, performance, use, nature or quality of the goods, whether express or implied, by statute, at common law or otherwise howsoever.

11. Intellectual property rights

- 11.1. If any claim is made against the Purchaser for infringement of intellectual property rights arising directly from the use (or sale) by the Purchaser of the goods, Hoppecke shall, subject to Conditions 11.2 and 11.3, be entitled to conduct any ensuing litigation and of all negotiations for a settlement of the claim. Hoppecke will bear the costs of any payment (either by way of a lump sum or a continuing royalty payment) made in settlement, or as a result of an award in a judgment against Hoppecke in the event of litigation.
- 11.2. The benefit of Condition 11.1 is granted to the Purchaser by Hoppecke only where the Purchaser:
 - 11.2.1. has notified Hoppecke in writing of any such claim being made or action threatened or brought against it as soon as the Purchaser becomes aware of the claim;
 - 11.2.2. does not make any admission of liability or take any other action in connection therewith;
 - 11.2.3. permits Hoppecke to have the conduct of the claim pursuant to Condition 11.1;
 - 11.2.4. gives all reasonable information, co-operation and assistance to Hoppecke (including without limitation lending its name to proceedings) in relation to the conduct of the claim (at Hoppecke's expense);
 - 11.2.5. where it is a condition of any settlement made by Hoppecke, or judgment awarded against the Purchaser, pursuant to Condition 11.1, the Purchaser shall return or destroy, as applicable, all infringing goods still under its control subject to a refund by Hoppecke of any payment for such goods already made (less a reasonable allowance for depreciation of the goods by reason of their use (if any) by the Purchaser prior to their return or destruction as aforesaid).
- 11.3. Condition 11.1 shall not apply to (i) any infringement caused by Hoppecke having followed a design or instruction furnished or given by the Purchaser, (ii) to any use of the goods in a manner or for a purpose which shall have been specifically prohibited in writing by Hoppecke, or (iii) to any infringement which is due to the use of such goods in association or combination with any other product.
- 11.4. For the purposes of Condition 3.2 and this Condition 11, the capitalised term "Intellectual Property Rights" means Patents, Registered Designs, Unregistered Designs, Registered Trademarks and Copyright only, having effect in Singapore.
- 11.5. The foregoing states Hoppecke's entire liability to the Purchaser and the Purchaser's sole and exclusive remedies against the Purchaser in connection with claims based on or resulting from the infringement of Intellectual Property Rights, of any kind whatsoever, of third parties.

12. Installation

- 12.1. If installation of any goods is required by Hoppecke, the Purchaser shall notify Hoppecke in writing of the same, and unless otherwise agreed in writing, the Purchaser agrees to pay Hoppecke its standard lump sum installation charges, or man-hour charges associated with the goods in question (a copy of the aforementioned charges are available from Hoppecke upon request). The Purchaser shall at its own expense prepare the location in respect of the operational conditions necessary to carry out the installation and commissioning, if applicable.
- 12.2. The Purchaser shall give Hoppecke at least 14 days written notice of when it requires the goods to be installed. Cancellation charges, to be determined by the Purchaser at its own discretion, shall be applicable if the Purchaser fails to give at least 72 hours notice (notice to be given within the weekday business hours of 9am and 4 pm) to Hoppecke that a confirmed installation date is to be postponed.
- 12.3. The Purchaser shall accord to Hoppecke, full and safe access to the location for the installation of the goods, and shall provide adequate free working space and such other facilities as may be necessary for the installation of the goods. The Purchaser shall also inform Hoppecke of any circumstances that will prevent installation from being properly and conveniently carried out, (including but not limited to, for e.g. no lift access if installation is not carried out in the ground floor; narrow access to machinery; no available electrical points; no lighting at the installation site etc.)
- 12.4. For the avoidance of doubt, the term "installation" used in this Condition 12 shall include the filling of batteries, the work associated with the installation of batteries; the work associated with making any battery operationally ready.
- 12.5. The disposal, dismantling and re-delivery of batteries, are separately chargeable items by Hoppecke to the Purchaser.

13. Commissioning of Goods

- 13.1. If the commissioning of any goods by Hoppecke is required by the Purchaser, and unless a specific form of commissioning is agreed by Hoppecke in writing, such commissioning shall be the standard tests normally carried out by Hoppecke on the goods in question.

14. Confidentiality

- 14.1. Both Hoppecke and the Purchaser shall each keep confidential and shall not without the prior consent in writing of the other disclose to any third party any technical or commercial information which it has acquired from the other as a result of discussions, negotiations and other communications between them relating to the goods and/or services and the Order.
- 14.2. The provisions of this Condition 14 survive termination of the Order.

15. Economic loss

- 15.1. Notwithstanding anything contained in the Order or in any document, in no circumstances shall Hoppecke be liable, in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof (i) for any loss of profit, business, contracts, revenues, or anticipated savings, or (ii) for any special indirect or consequential

damage of any nature whatsoever.

15.2. The provisions of this Condition 15 survive termination of the Order.

16. Limitation of liability

16.1. Notwithstanding anything contained in the Order, Hoppecke's liability to the Purchaser in respect of the Order, in contract, tort (including negligence or breach of statutory duty), restitution and or unjust enrichment or howsoever otherwise arising, shall be limited to double the purchase price of the goods and/or services specified in the Order without taking into account taxes or shipping charges.

16.2. Any claims by the Purchaser against Hoppecke arising from a breach by Hoppecke of the Order shall be brought or commenced at the latest within 12 months of when the claim arose or when the Purchaser ought to know of the claim. The Purchaser hereby acknowledges and confirms that claims brought or commenced outside such period shall be deemed waived, and released against Hoppecke.

16.3. The provisions of this Condition 16 survive termination of the Order.

17. Miscellaneous

17.1. The waiver or forbearance or failure of either Hoppecke or the Purchaser in insisting in any one or more instances upon the performance of any provisions of this Agreement shall not be construed as a waiver or relinquishment of that party's rights to future performance of such provision and the other party's obligation in respect of such future performance shall continue in full force and effect.

17.2. Save for related companies of Hoppecke, no term in the Order shall be enforceable by a person who is not a party to the same.

17.3. The Purchaser shall bear all taxes (including Goods & Services Tax), licensing and regulatory costs arising from the Order.

18. Termination

18.1. If the Purchaser:

18.1.1. fails to pay when due any sum payable under the Order; or

18.1.2. fails to observe or perform any of the provisions of the Order,

Hoppecke may (without prejudice to any other right or remedy) after 7 days notice to the Purchaser or such breach, terminate the Order and/or withhold delivery of services and/or stop any goods in transit and the payment of the price of any goods delivered shall become immediately due.

18.2. In the event of a Force Majeure event or events causing a delay or foreseeable delay in excess of thirty (30) consecutive days in performance of the Order, Hoppecke reserves the right to terminate the Order, and will not be liable for any costs or expenses incurred by the Purchaser.

- 18.3. The Customer shall not, in any event, have any right to terminate the Order at its convenience.
- 18.4. Where termination arises by reason of the Purchaser failing to satisfy its payment obligations hereunder, the Purchaser acknowledges and confirms the rights of Hoppecke pursuant to the provisions of Condition 6 and will co-operate and take all steps necessary as instructed by Hoppecke to enable Hoppecke to recover possession of the goods. The obligations of the Purchaser under this Condition 18.4 survive termination of the Order.
- 18.5. Termination of the Order will not relieve either party of its obligations that are expressly stated to survive termination, nor will expiration or termination relieve either party from any liability arising from any breach of the Order.

19. Applicable law

- 19.1. The Order shall be governed in all respects by the law of Singapore and subject to the exclusive jurisdiction of the Singapore Courts.
- 19.2. The United Nations Convention on the International Sale of Goods shall not apply to the Order.
- 19.3. All notices, documents or communications shall be in writing and delivered to the last known business address of the Purchaser or Hoppecke (as the case may be) or to such other addresses notified by either of them to the other in accordance with this Condition 19. Such notices shall be deemed good service and effective on the date delivered, if by hand, on the date deposited in the official postal system in its jurisdiction properly addressed, if by mail, or on the date of transmission, if by facsimile or e-mail.