

# Terms and Conditions of Sale, Open Safety Equipment Ltd

## 1. CURRENT FORCE-MAJEURE EVENTS

### CONFLICTS

Armed conflicts have the potential to cause disruption due to related sanctions affecting supply chains and travel restrictions. The Seller makes reasonable measures to forecast these impacts and take mitigating action, but some potential to impact project timescales and costs remain.

## 2. Definitions

In these terms:

- "Seller" means Open Safety Equipment Limited, a company registered in Scotland Registered number SC 347 708, with facilities at 6 Newhailes Industrial Estate, Musselburgh, EH21 6SY, and 374 Estrada Nacional, Sesimbra, Portugal (hereinafter Seller);
- "Buyer" means the entity purchasing the Goods from the Seller, identified by being the entity raising a Purchase Order on the Seller and is the entity responsible for making payment to the Seller, whether they be a distributor, dealer, stockist, or End-User, including any successors thereof;
- "End-User" is the end-customer for the Buyer who uses the goods, and to whom the Buyer may resell, distribute or ship the goods to;
- "Goods" means the goods, products and materials manufactured, imported, supplied and/or delivered for or by Seller to Buyer, as such were approved by Seller in reply to Buyer's order and accordingly listed in the Order Confirmation;
- "Order Confirmation", means the instrument issued by Seller, such as a confirmation invoice or initial invoice bearing the same reference number of the Buyer's order, specifying among any other terms the items of Goods, their price and quantity to be supplied to Buyer;
- "Shipment" means the release of the goods to the Buyer, and occurs upon the Goods leaving the Seller's premises;
- "Contract" means the contract for the supply of Goods which have been ordered by Buyer and specified in Seller's Order Confirmation, which contract is concluded based on these Terms and Conditions of Sale unless otherwise specified in the Order Confirmation.

## 3. Payment

Payment for Goods with value over GBP £2,000 is 50% upon order acceptance and 50% due on or prior to Shipment unless otherwise agreed in writing.

Where credit is provided by the seller, for payment to be triggered by more than one event, e.g. 30 days from date of shipment or 7 days of the date of acceptance, the earlier of the listed events is the date by which payment is due to be made.

No discount may be taken unless the discount is stated on the invoice from the seller.

Payments received after the due date specified in the Order Confirmation shall bear a service charge which will accrue from the due date whether inscribed on the relevant invoice or otherwise agreed, at the maximum lawful interest rate applicable, and if none – at the annual rate of 5% above the base rate from time to time of the central bank of the place of Buyer's incorporation.

All payments shall be made to Seller's designated bank account in the same currency and for the same amounts as specified in the Order Confirmation

#### **4. Prices, Duties and Taxes**

Unless otherwise specifically stated on the Quotation and Order Confirmation issued by the Seller, prices quoted exclude VAT or other taxes, packaging, and are Ex-works (Inco terms 2010 as amended).

Duties, VAT, taxes, fees, levies and other compulsory payments applicable to the sale of Goods, as well as packaging, freight, insurance and delivery charges, shall all be borne and paid in full by Buyer, unless otherwise expressly stipulated in the Order Confirmation.

Packaging shall be chargeable to the Buyer if the Buyer does not provide suitable Packaging. Freight shall be chargeable to the Buyer if the Buyer fails to collect a finished order within a reasonable period of time without prior agreement for storage.

The country for the Ex-Works supply may be the UK, USA or Portugal: the specific country will be stated on the Order Confirmation. If the country is not stated then it is the United Kingdom.

Prices are based, inter alia, on production costs for supplies, labour, deliveries, duties and services current on the order date. In the event of material increase in any such costs, Seller reserves the right to either adjust the prices for Goods accordingly, or to cancel any certain part of the sales relating to undelivered Goods.

#### **5. Delivery**

Delivery dates indicated on the Order Confirmation are subject to reasonable adjustment.

Proper Delivery occurs upon any of the following events occurring:

- 1.** The acceptance of shipment by a the Buyer or their agent, e..g a carrier or
- 2.** Delivery of the goods by the Seller to the Buyer's premises constitutes proper delivery.
- 3.** Delivery of the goods by the Seller to the seller's freight agent or Customs clearance agent or other party appointed by the Buyer to receive their goods.

Risk associated with the Goods shall pass to Buyer on uplift of the goods or Proper Delivery or with the passing of title in the Goods as by receipt by the Seller of full payment for the goods, whichever event occurs first. Unless otherwise specified in writing in the Order Confirmation, all charges, expenses or taxes associated with the delivery shall be paid by the Buyer.

#### **6. Retention of Title**

Title shall pass to Buyer only upon full payment by Buyer for the Goods and following payment of any other outstanding debt by Buyer to Seller. Buyer shall, at Seller's request, take any measures necessary under applicable law to protect Seller's title in the Goods, and lawfully notify Buyer's present or potential creditors of Seller's title on and interest in the Goods. Buyer acknowledges that so long as title has not been transferred in the Goods, it holds the Goods as bailee and fiduciary agent for the Seller and shall safely and securely store and keep the Goods separate and in good condition, clearly showing the Seller's ownership of the Goods and shall respectively record the Seller's ownership of the Goods in its books. Notwithstanding the above, Buyer may use Goods for its own use, or sell Goods, as fiduciary agent for the Seller, to a third party in the normal course of business by bona fide sale at market value, whereby proceeds of such storage, usage or sale of Goods, as the case may be, shall, to the extent of the amount being owed by Buyer to Seller at the time of receipt of such proceeds, be held by Buyer on trust for Seller and specifically ascertained, until payment in full for all payable debts by Buyer to Seller.

## **7. Warranty**

- a) Seller warrants that Goods sold hereunder meet their descriptions or specifications, subject to use, storage and application thereof in accordance with and based on Seller's standard tolerances, instructions of use and recommendations.
- b) Seller's products are designed for use in environments that are intrinsically hazardous and which carry a significantly higher risk of mortality and injury than normal office conditions. Accidents are inevitable in these environments, and those accidents will occur more frequently than under normal office conditions. Seller seeks to exceed the performance set down by regulators and standards to minimise those risks, but cannot guarantee absolutely to have done so in every single possible case. Responsibility for ensuring the safety, suitability and safe use of the equipment rests solely and exclusively with the Buyer.
- c) Unless otherwise restricted by mandatory applicable law, THE WARRANTY SET FORTH HEREIN IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF MERCHANTABILITY, QUALITY AND FITNESS FOR USE AND FOR PURPOSE, ANY ADVICE AND RECOMMENDATION AND ANY OBLIGATIONS OR LIABILITIES WHICH MAY BE IMPUTED TO SELLER, ANY AND ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED, DENIED AND EXCLUDED. BUYER EXPRESSLY AGREES THAT NO WARRANTY THAT IS NOT SPECIFICALLY STATED IN THIS AGREEMENT WILL BE CLAIMED OR OTHERWISE ADHERED TO BY BUYER AND/OR BY ANYONE ACTING ON BUYER'S BEHALF AND/OR BY ANYONE DERIVING THE LEGALITY OF ITS CLAIM FROM BUYER, NOR THAT WILL ANY SUCH WARRANTY BE VALID. SELLER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT, ANY OTHER LIABILITY IN CONNECTION WITH THE SALE, USE OR HANDLING OF ANY AND ALL GOODS SPECIFIED OR CONTEMPLATED BY THIS CONTRACT. NO WARRANTY IS MADE WITH RESPECT TO ANY OF THESE GOODS WHICH HAVE BEEN SUBJECT TO ACCIDENT, NEGLIGENCE, ALTERATION, IMPROPER CARE, IMPROPER STORAGE, IMPROPER MAINTENANCE, ABUSE OR MISUSE.

## **8. Claims and Liability**

- a) Unless Seller shall within 30 days after delivery of the Goods, receive from Buyer written notice of any matter or thing by reason whereof it is alleged that Goods are not in accordance with the Contract, Goods delivered shall be deemed to have been supplied, delivered and accepted in all respects in full conformity with the Contract and Buyer shall be entitled neither to reject the same nor to raise any claim for damages or for other remedy in respect of any alleged negligence and/or breach of warranty and/or any condition.
- b) In any claim, brought subject to the conditions above, Buyer must prove to the satisfaction of Seller that it followed Seller's instructions for use, care, storage, maintenance, handling and application of the Goods.
- c) Unless otherwise specifically restricted by mandatory applicable law, Seller's liability under any claim and in connection with any possible allegation, whether based on negligence, contract, or any other cause of action, shall be limited to either (i) the replacement of the Goods or the supply of equivalent goods; (ii) the repair, or payment of the cost of repair, of the Goods; or (iii) credit in an amount equal to the purchase price specified in Seller's pertinent invoice, or in an amount of equivalent goods, all at Seller's sole option. Buyer acknowledges that the remedy available to him as specified herein, is in lieu of any remedies that may be otherwise available to him, now or in the future, whether in law or in equity, relating to any loss or damage, whether directly or indirectly, arising from the purchase and/or the use of Goods, including without limitation, any actual or contingent damages, loss of production, loss of profit,

loss of use, loss of contracts or any other consequential or indirect loss whatsoever, whether pecuniary or non-pecuniary. Should any limitation on Seller's liability hereunder be held ineffective under applicable law, then Seller's liability shall in any event be limited to the minimum amount of damages to which Seller may limit its liability, where such is greater than the purchase price as specified in Seller's pertinent invoice.

d) Buyer, for himself and for any other party which may claim either under or through Buyer, or independently of Buyer, including Buyer's employees, directors, officers, representatives, affiliates and personnel, shall indemnify and hold Seller harmless, from and against any claim or liability for damages for negligence including but not limited to, any claim in connection with the design, manufacture, use, care, storage, delivery, application or maintenance of any Goods sold hereunder, whether alleged to have been committed by Seller or by any other person whatsoever. Buyer's undertaking as specified in this subsection shall extend and inure to the benefit of Seller and of Seller's successors at any time, as well as to Seller's affiliates, personnel, representatives, managers, directors and officers. Nothing contained herein shall take effect to exclude or limit liability where liability may not be excluded or limited under applicable law, including, without limitation, for death, personal injury and fraudulent misrepresentations.

e) Any and all warranties, undertakings, guarantees or assurances provided herein by Seller, are specifically limited to Buyer herein, and not imputed by Seller, whether directly or indirectly, expressly or impliedly, to any other person or entity, including any subsequent buyer or user, bailee, licensee, assignee, employee and agent of Buyer.

f) Items supplied as subassemblies for incorporation into other products, or for integration by the Buyer into a product or device are supplied subject to the Buyer performing all acts to ensure the safety, legal compliance and suitability of the produce or device produced by the Buyer.

g) Buyer is responsible for ensuring necessary Export Licences are obtained. Where the Seller provides a service to apply for an Export Licence on the behalf of the Buyer this does not waive the Buyer's responsibility to obtain Export Licences. Where an Export Licence that is required by UK Law has not been obtained for any reason, all Goods that require a licence shall be held by the Seller without penalty or loss to the Seller, until such Export Licence is received or the Buyer directs the Seller to ship those goods to an End-User that does not require an Export Licence or directs the Seller to ship those goods to the Distributor's premises within the UK to be held until the Export Licence has been received. The Seller does not warrant that it can procure any Export Licence though will make all reasonable efforts to do so if the Seller is providing any service to obtain an Export Licence.. The Buyer is responsible for ensuring their End-User understands that Export Licences are issued by government agencies outside the control of the Seller or Buyer. Where the End-User assesses there to be a risk in obtaining Export Licences, the Seller can apply for an Export Licence in advance of an order, upon receipt of a deposit equal to 10% of the proposed order value or an undertaking to place the order with the Seller when the Export Licence has been received.

h) Buyer shall provide information on request to the Seller to enable the Seller to meet its legal obligations in verifying that the End User is the End User stated by the Buyer and that the goods are not intended to be diverted. Where there is a reasonable grounds to suspect the Goods are at risk of being diverted or used for a purpose other than that stated in the Purchase Order, the Seller may hold the Goods until that risk is removed, without penalty or loss to the Seller.

## **9. Default**

Upon failure of Buyer to pay any amounts due to Seller, or in the event of any breach or

anticipated breach by Buyer of any Contract with Seller, or if Buyer shall either (i) become insolvent, (ii) call a meeting of its creditors, or (iii) make any assignment for the benefit of creditors, or if (iv) a bankruptcy, insolvency, reorganization, receivership or reorganization proceeding shall be commenced by or against Buyer, then, in each such occasion, Seller may, at its sole discretion, opt to (1) cancel this and any other Contract with Buyer (without waiving any of Seller's rights to pursue any remedy against Buyer); (2) claim return of any Goods in the possession of Buyer, the title of which has not passed to Buyer, and enter Buyer's premises (or the premises of any associated company or agent where such Goods are located), without liability for trespass or any alleged damage, to retake possession of such Goods; (3) defer any shipment hereunder; (4) declare forthwith due and payable all outstanding bills of Buyer under this or any Contract; and/or (5) sell all or part of the undelivered Goods, without notice at public and/or on private sale, while Buyer shall be responsible for all costs and expenses of such sale and be liable to Seller for any shortfall in the discharge of the amounts due to Seller.

## **10. Independent Delivery**

Each delivery of Goods shall (without prejudice to Seller's rights under clause 8 herein above) be considered a separate contract and the failure of any delivery shall not violate any contract as to deliveries of other Goods and payment therefor.

## **11. Cancellation**

Orders manufactured in whole or in part, pursuant to Buyer's specifications, may not be cancelled by the Buyer except with Seller's prior written consent and on terms which compensate Seller for any resulting losses, and will be a minimum of the next scheduled stage payment in the contract plus all prior payments.

If the Buyer changes the specification of the goods after work has commenced on the order, the consequences of that change shall be borne by the Buyer including additional costs or additional time. These consequences of a change shall be advised to the Buyer at the earliest opportunity to enable the Buyer to decide whether the Buyer wishes to proceed with the change.

In the event of either party appointing a liquidator or Administrator, all contracts and obligations between the parties shall be terminated forthwith.

## **12. No-Assignment and No Rebranding**

No rights or obligations of Buyer arising out of this Contract may be assigned without the express prior written consent of Seller.

It is forbidden to rebrand any of the Seller's products or represent the Seller's product(s) as those of another party.

## **13. Distributors and Agents**

A distributor or agent is any person in the sales chain between the Seller and the End User.

All distributors and agents shall ensure the same level of safety as Open Safety provide to direct customers, to the End Users they serve, including provision of the Seller's service packs, Seller's safety notices, spares and servicing for all of the Seller's products sold in the territory they cover.

Distributors and agents do not have exclusive sales rights unless otherwise agreed in writing. Exclusivity is not sole and exclusive unless otherwise agreed in writing. Where a distributor or agent is assigned an exclusive sales right by the Seller for a territory, that right is subject to time limits agreed between the parties and is subject to these terms and conditions.

Any distribution agreement may be terminated by the Seller with thirty days notice in the event the distributor or agent fails to make reasonable progress, or if the distributor or agent permits a serious safety breach to occur such as failure to ensure the goods are properly serviced or if parts or safety documents are substituted with those from third parties, or without notice if it becomes

known to the Seller that the Distributor or their agents commits any unlawful act in relation to the sale of the Seller's products including but not limited to payment of bribes or the intent to divert supply to an End User other than that named on the relevant Export Licence.

#### **14. Training**

Where training is required to use the Seller's product, that training shall be provided only by the Seller or instructors the Seller has appointed.

Instructors appointed by the Seller shall obtain approval from the Seller for each course of training that is provided. All instructors shall follow course directions and training standards set down by the Seller and their authorisation to train may be rescinded in the event of a breach.

#### **15. Force Majeure**

Should Seller be prevented from effecting deliveries of the Goods or any of them by reason of either an "act of god", insurrection, riot, war hostilities, terror attacks, warlike operations, pandemic, government sanction, epidemic, piracy, death or serious illness, arrests, restraints or detentions by any competent authority, strikes or combinations or lock-out of workmen, fire, floods, droughts, earthquakes, permanent or temporary delay or inability to obtain labour, material or services through Seller's usual and regular sources, or any other circumstances (whether of a nature similar to those specified, or not) beyond the absolute control of the Seller, then, in each such cases, the obligation of the Seller to effect deliveries hereunder shall be suspended until after such prevention shall cease to continue. Should any deliveries under this Contract be suspended under this clause for more than 90 days – either party may withdraw from this Contract and be relieved from any liability; provided however, that Buyer shall nevertheless accept delivery and pay for such Goods once the Seller is able to deliver in accordance with the period(s) of shipment named in this Contract and shall pay for all goods ordered by the Buyer that are ready for shipment at the date of the suspension or cancellation. Seller shall not be liable for, and be relieved from, any loss or damages of any kind resulting from the causes mentioned herein above.

#### **16. Advice**

Any provisions specified or implied by herein or elsewhere notwithstanding, any advice, recommendation, information, assistance or service provided by Seller in relation to the Goods or in respect of their use or application is given in good faith, shall be deemed accepted by Buyer without imputation of any liability to Seller, and it shall be the responsibility of Buyer to confirm the accuracy and reliability of the same in light of the use of which Buyer makes or intends to make of the Goods.

#### **17. Entire Agreement**

This Contract comprises this document and a written Quotation, which together are the entire terms and conditions for sale of the Goods in any Purchase Order that is received pursuant to that Quotation. This shall be confirmed in the Order Confirmation issued by the Seller on receipt of the Buyer's Purchase Order. In the event of any conflict between the terms herein and any provisions included in the Quotation, the latter shall govern and prevail. Subject to the foregoing, nothing specified in, or referred to by, any other document, record or instrument whatsoever, which relates to and/or which otherwise subsists in connection with the sale of Goods herein, whether expressly or impliedly, including any written order, request or other standard or specific terms of any entity, shall or may be interpreted to attribute to Seller and/or to Seller's affiliates or representatives (i) any liability, obligation, commitment and/or undertaking, and/or (ii) any waiver in connection with or of any right, whether contractual, proprietary, in-person and/or equitable, including but not limited to, any and all intellectual property rights in connection with the Goods, which are and shall always remain in the Seller's exclusive and complete ownership under all circumstances whatsoever, notwithstanding any

sale of Goods hereunder and whether the Goods shall be standard Goods or manufactured to a specific order. The Buyer shall refrain at all times and for whatever purpose from infringing, contesting, disputing or questioning such rights, branding, patents, trademarks, titles or interests, nor shall it aid or allow others to do so, regardless of whether directly or indirectly. No modification or waiver of any provision hereof shall become valid and effective except upon a written instrument duly signed beforehand by Seller. No waiver by either party of any default of the other party shall be deemed a waiver of any subsequent or other default.

## **18. Law and Arbitration**

This Contract shall be governed by and construed in accordance with the laws of the state of Seller's incorporation. Any dispute arising out of or in connection with this Contract shall be finally settled by mediation in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce ("ICC"), as shall be in effect from time to time. The arbitration shall be held at such location in the state of Seller's incorporation as shall be determined by Seller, in its sole discretion. The mediator shall be mutually appointed by Seller and Buyer within 21 (twenty one) days following a written demand for mediation by either of the parties. Failing to reach an agreement regarding the nomination of a mediator, the head of the relevant ICC national committee (located in the Seller's country of incorporation; and absent such local committee in that specific country – the ICC UK Committee ([www.iccuk.net](http://www.iccuk.net))) shall appoint a mediator, trained in law and in mediating in commercial disputes, at the request of any of the parties, a copy of which request for the appointment of an arbitrator shall be provided by the requesting party to the other party. Awards may be enforced in accordance with the 1958 New York Convention and judgment may be entered upon any award in any court having jurisdiction over the parties and/or their assets. The mediator's fees shall be paid by both parties in equal parts unless otherwise determined by the mediator. This provision shall survive any termination of any of the terms and conditions herein, and shall be deemed to constitute an independent arbitration or mediation agreement between Buyer and Seller for all purposes and intents.

## **19. Diving Risks**

Diving is a hazardous activity with inherent dangers and risks.

Where equipment supplied by the Seller is used for diving, the Buyer assumes responsibility for all related and additional risks and their consequences.

The Buyer understands that performing an underwater or hyperbaric dive will expose the user to the risk of personal injury, property damage and/or death and that those risks require management and mitigation by the Buyer or the user. The Buyer understands that the success of the dive is dependent upon the functioning of the equipment intended to be used, the personal physical condition of the diver, the procedures followed and training.

Neither equipment, nor any physical preparation, nor any intended dive plan can be guaranteed to function perfectly at all times and the safety of a dive depends on planning for failures and managing those failures adequately, as well as carrying out procedures and operations competently.

The Buyer understands that the equipment, data, physiology and dive plan are subject to mechanical malfunction as well as operator error and that the Buyer and user is responsible to taking appropriate actions to mitigate those risks and manage the hazards they can create.

The Buyer is wholly and exclusively responsible for taking measures to mitigate all risks, including proper training, maintenance and use of bail out equipment. A means for the diver to measure depth is essential for the safe use of any diving equipment and the Buyer shall ensure every user of diving equipment carries such a means. A recompression chamber must be available for all

divers in the event of a mishap requiring medical treatment following a dive. Adequate supervision must be in place for all dives, such as a buddy system or communications with a dive supervisor.

The Buyer freely, voluntarily and expressly choose to assume all risks inherent in diving, including, but not limited to, risks of equipment malfunction and/or failure, including those which may result from some failure in design, assembly, and/or manufacture, as well as those risks arising from improper and/or negligent operation and/or use of the equipment & software, understanding full well that those risks may include personal injury, property damage, and/or death.

**Update History:**

March 2021: Alert for possible continued pandemic impact added

May 2022: Alert for Ukrainian conflict impact added removed alert for pandemic impact

Oct 2023: Downgraded Ukrainian conflict impact, and clarified grammar

Jan 2026: Clarified that payment trigger dates means the earliest of the listed events.