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## Brady Corporation Limited (Trading as Seton) - standard terms and conditions of sale [JANUARY 2015]

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### 1 APPLICABLE TERMS

#### 1.1

Buyer's (the Buyer) order placement constitutes an offer to purchase goods of Brady Corporation Limited of Wildmere Industrial Estate, Banbury, Oxfordshire, OX16 3JU (the Seller) and Seller's order acknowledgement constitutes acceptance of the Buyer's order. Buyer's order acknowledgement provides the weblink to these Terms and Conditions on Seller's website and incorporates by reference these Terms and Conditions into the purchase agreement between Buyer and Seller. Any quotation given by Seller for the sale of goods is an invitation to the Buyer to make an offer only and no order placed by the Buyer with the Seller in pursuance of a quotation or otherwise shall be binding on the Seller unless and until it is accepted in writing by the Seller's acceptance of order form or despatch note or delivery note, or the goods are despatched or the work is commenced.

#### 1.2

Any contract made with the Seller for the sale of goods or work shall incorporate and be subject to these conditions and any representation or warranty, written or orally made or given prior to the contract is hereby expressly excluded and all brochures, specifications, drawings, catalogues, particulars, shapes, descriptions and illustrations, price lists and other advertising matter are intended only to present a general idea of the goods described therein.

#### 1.3

Specifications quoted by the Seller must be treated as approximate only and the Seller reserves the right to amend without notice at any time prior to delivery, the specifications, material and/or process of manufacture of its product.

### 2 THE PRICE

2.1 All prices are exclusive of transport, packing and VAT. ([FOB site of shipment](#))

2.2 The Seller reserves the right to vary its prices without notice to the Buyer and the price payable by the Buyer shall be the price ruling at the date of delivery.

2.3 Prices in relation to a given quantity of goods apply only on the basis that there is a continuous production run of that quantity unless specifically otherwise stated, such continuous run being at the Seller's discretion. If the Buyer reduces the quantity of goods ordered, which necessitates a production run of a lesser quantity, the price applicable to the lesser quantity shall apply and if not covered by quotation, reasonable adjustment of price shall be made by the Seller.

2.4 We will Price Match on any in-stock, identical, new products being sold by another supplier at the same time. Applies to UK mainland deliveries only. We may ask for proof of your quoted price. We reserve the right to withdraw our Price Match at any time without written notification.

### 3 PAYMENT

#### 3.1

Unless otherwise agreed in writing all accounts must be paid within 30 (thirty) days of invoice date. If at the date on which the Seller is ready to despatch or deliver the goods the Buyer delays delivery for any reason, the Seller may present invoices for full settlement on that date, in default of payment and without prejudice to any other rights or remedies the Seller reserves the right to demand payment of all outstanding balances whether or not due and/or cancel all outstanding orders. Interest shall be charged on outstanding balances at the rate of 8.0% over base rate of the Bank of England from time to time in accordance with the Late Payment of Debts Act. The Buyer shall not be entitled to withhold or set-off payment for goods delivered or work done for any reason whatsoever.

#### **4 CREDIT**

##### 4.1

This contract shall be subject to the provision that if at any time thereafter the Seller is advised of circumstances casting doubt on the Buyers creditworthiness or satisfactory security for payment is not given on request or the Buyer is in default in payment for other goods, the Seller may require payment of the whole or part of the purchase price from the Buyer in advance and of the full price of all other goods sold to the Buyer by the Seller and pending such payments this contract shall be suspended. In the event of such payments not being made within a reasonable period stipulated by the Seller, the Seller may cancel the Buyers order without liability and the Buyer shall be responsible for any resulting loss to the Seller.

##### 4.2

In the event of any breach of these conditions of sale not being remedied by the Buyer within 7 (seven) days of the Sellers written notice requesting such remedy or upon the Buyer entering into an composition arrangement with its creditors or passing a resolution for winding up or entering into a liquidation (whether voluntary or compulsory) or any similar arrangement or a receiver is appointed of the Buyers assets, the Seller shall be entitled without prejudice to its other rights hereunder to suspend all further deliveries and/or determine the contract or any unfulfilled part thereof and the Buyer shall be responsible for any resulting loss to the Seller.

#### **5 EXPORT TERMS**

##### 5.1

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 of Incoterms and these conditions, the latter shall prevail.

##### 5.2

Where goods are supplied for export from the United Kingdom, the provisions of this clause 5 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these conditions.

##### 5.3

The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the goods into the country of destination and for the payment of any duties thereon.

##### 5.4

Unless otherwise agreed in writing between the Buyer and the Seller, the goods shall be delivered fob the air or sea port of shipment and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

#### 5.5

The Buyer shall be responsible for arranging for inspection of the goods at the Seller's premises before shipment. The Seller 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.

#### 5.6

Payment of all amounts due to the Seller shall be made by irrevocable letter of credit opened by the Buyer in favour of the Seller and confirmed by a bank acceptable to the Seller unless the Seller has agreed in Writing on or before acceptance of the Buyer's order to waive this requirement.

#### 5.7

The Buyer undertakes not to offer the goods for resale in any other country notified by the Seller to the Buyer at or before the time the Buyer's order is placed, or to sell the goods to any person if the Buyer knows or has reason to believe that that person intends to resell the goods in any such country.

### **6 RISK**

The risk in respect of all goods sold under the contract shall pass to the Buyer upon shipment of the goods by the Seller, its servants or agents.

### **7 TITLE**

Title will transfer upon shipment of the goods.

### **8 DESPATCH/DELIVERY**

#### 8.1

Any dates given in the contract for despatch or delivery of goods or completion of the work (as the case may be) shall constitute estimates of expectation only and shall not be binding unless the contract otherwise expressly provides in writing and subject to the provisions of sub-clauses 8.4 and 8.5 below the Buyer shall accordingly accept delivery of the goods when tendered and the work when completed.

#### 8.2

The method and route of despatch of the goods shall be selected by the Seller which shall endeavour to take into account in such selection the preferences of the Buyer.

There may be an additional delivery charges based on non-mainland UK locations and in the instances of non-stock items being delivered (such as bulky, heavy or hazardous goods)

#### 8.3

If notwithstanding the Seller's endeavours, the Seller fails to despatch or deliver the goods or to complete the work by such date, such failure shall not constitute a breach of the contract and the Buyer shall not be entitled to claim compensation for such failure or for any consequential loss or damage resulting therefrom.

#### 8.4

Subject to the provisions of sub-clause 8.3 above, where despatch or delivery or completion of the work is delayed by more than 30 (thirty) days beyond the date given in the contract, the Buyer shall grant the Seller a reasonable extension period and, if upon the expiry of the extension period the goods have not been despatched or delivered or the work has not been completed, the Buyer may forthwith by notice in writing terminate the contract and in such circumstances the Buyer shall pay at the contract rate for all goods sold or work done by the Seller to the actual date of termination and neither party shall have any further liability to the other in respect of the goods undelivered or work not completed.

#### 8.5

If at the date on which the Seller is ready to despatch or deliver the goods the Buyer delays acceptance thereof for any reason whatsoever, the goods will be stored by the Seller but the Buyer shall pay to the Seller an amount equivalent to what the Buyer would be liable to pay if the goods had in fact been despatched or delivered together with reasonable storage charges for the period of delay and the cost of any additional handling and transporting incurred. If on the expiry of 30 (thirty) days after the date on which the Seller is ready to despatch or deliver the goods the Buyer has not accepted the goods, the Seller reserves the right immediately to cancel the Buyers order. This cancellation shall entitle the Seller to dispose of the goods and obtain from the Buyer compensation for loss of profit in addition to any other sums due to the Seller under these conditions.

#### 8.6

Claims in respect of incomplete or incorrect supplies or of goods damaged in transit must be notified to the Seller as soon as possible and in any event not later than 7 (seven) days after receipt of the goods at the place of destination.

#### 8.7

Claims in respect of non-delivery of goods must be made as soon as possible and in any event within 7 (seven) days of the receipt by the Buyer of the Sellers invoice.

#### 8.8

When deliveries are spread over a period, each consignment will be despatched and each notice will be treated as a separate account and payable accordingly.

#### 8.9

At the option of the Seller, goods sold to the Buyer may be delivered in two or more instalments and, in that event, each instalment shall be deemed to form a separate contract and failure to deliver or defective delivery of any one instalment shall not constitute a breach of contract in respect of other instalments.

#### 8.10

On special orders, the Seller reserves the right to delivery up to 5 (five) per cent over or under the quantity order, and to invoice for full quantity delivered.

### **9 CONTRACTS FOR WORK**

#### 9.1

If the contract is for and includes work to be done by the Seller whether of installation commissioning repair rectification or improvement, then, unless the contract otherwise provides, the following additional provisions shall apply thereto:

##### 9.1.1

The Seller shall be obliged to carry out such work only during the Seller's normal working hours, if the Buyer requests that overtime be worked and the Seller agrees thereto, such overtime shall be paid for by the Buyer at the rate stipulated by the Seller.

If the work is to be carried out at the Buyer's premises or on the Buyer's request at the premises of any other person, then the Buyer shall undertake to provide or to procure the provision of

- a) proper and safe storage and protection of all goods, tools, plant equipment and materials on site;
- b) free and safe access to the site and to the place at which the work is to be carried out;
- c) all facilities and services necessary to enable such work to be carried out safely and expeditiously; and
- d) (if such work includes the installation of any goods) all builders work, foundations, cutting away and making good required and the ready availability of all plan and equipment so as to permit the goods to be tested forthwith on completion of such work.

9.2

The Buyer shall pay to the Seller the amount of any expense incurred by the Seller by reason of any breach by the Buyer of its undertakings in sub-clause 9.1 above (but without prejudice to the Seller's rights to recover further damages therefor) and a certificate of the Seller's auditors certifying such amounts shall be conclusive and binding upon the Buyer and the Seller.

## **10 WARRANTY**

10.1

The goods sold or work carried out by the Seller pursuant to the contract shall as soon as practicable and in any event within 30 (thirty) days after delivery thereof be inspected and tested by the Buyer. The Buyer shall lodge with the Seller in writing within 7 (seven) days after the conclusion of the said inspection and testing any claims in respect of defects which are apparent upon such inspection and testing.

10.2

Defects which are not detectable by a careful examination within 30 (thirty) days after delivery shall be notified as soon as they are discovered but in any event no later than 12 (twelve) months after the delivery of the goods to the end user or (in the case of fixed installation of goods), the delivery, installation and commissioning of the goods for their end user.

10.3

The Seller shall make good either by repair or replacement or renewal at its option defects which under proper storage and use appear in the goods or work within the time limits set out in Sub-Clauses 10.1 and 10.2 above and which arise solely from faulty material or workmanship; provided that:-

10.3.1

Such defects have not been caused by misuse, neglect, accident, improper storage installation or handling, frost damage or by repair or alteration not effected by the Seller (including the attachment or connection to the goods of any devices or accessories other than those distributed or officially recommended by the Seller) or non-compliance with the Sellers operators instructions manual.

10.1.3.2

In the event that the Buyer shall agree with the Seller that the Buyer will provide the labour necessary to carry out such repair replacement or renewal, then the Buyer shall be entitled to be paid for the said labour at a rate not exceeding the Sellers current labour rate.

#### 10.3.3

This warranty shall only apply to goods sold within the U.K.

#### 10.3.4

The Buyer at all times shall have used in the operation of the goods only the proper electrical supply voltage, an uncontaminated water supply, and suitable chemicals.

#### 10.4

The Sellers liability under Clause 10.3 hereof shall be in lieu of any warranties and conditions whether express or implied by statute common law or otherwise however, which warranties and conditions are hereby expressly excluded.

#### 10.5

WITHOUT PREJUDICE TO THE GENERALITY OF THE FOREGOING, NOTHING HEREIN CONTAINED SHALL OPERATE TO EXCLUDE ANY WARRANTY OR CONDITION IMPLIED BY STATUTE IN THE EVENT OF THE BUYER DEALING AS A CONSUMER AS DEFINED BY SECTION 12 OF THE UNFAIR CONTRACT TERMS ACT 1977. IN SUCH A CASE THE BUYERS STATUTORY RIGHTS ARE UNAFFECTED BY THESE TERMS AND CONDITIONS.

#### 10.6

Save as aforesaid and save in respect of death or personal injury resulting from the negligence of the Seller its servants or agents, the Seller shall not be liable for any claim or claims for direct or indirect consequential or incidental injury loss or damage made by the Buyer against the Seller whether in contract or tort (including negligence on the part of the Seller its servants or agents) arising out of or in connection with any defect in the goods or work or any act, omission, neglect or default (whether or not the same constitutes a fundamental breach of the contract or breach of a fundamental term thereof) of the Seller its servants or agents in the performance of the contract.

#### 10.7

The Sellers obligations contained in this Clause shall apply only to the Buyer but the Buyer shall not be prevented from having recourse to them solely by reason of the Buyer selling the goods in the normal course of its business to a third party. Application for transfer to subsequent purchasers of the goods of the benefit of this warranty for its unexpired period will be considered by the Seller upon submission of a written request.

#### 10.8

The Buyer accepts as reasonable that the Sellers total liability for any goods or work which are defective shall be as set out in these conditions: in fixing that limit the Seller has had regard to the contract price of the goods, the nature of the goods, the use they will receive and the resources available to each party including servicing facilities and insurance cover, to meet any liability.

## **11 SAFETY**

### 11.1

The Seller will make available on written request such information or the design and construction of the goods as is in its possession to ensure that as far as is reasonably practicable it is reasonably safe and without risk to health when properly used.

## **12 INTELLECTUAL PROPERTY**

### 12.1

The copyright subsisting or which subsequently subsists in all documents, drawings, specifications, designs, programmes or any other material prepared by the Seller whether readable by humans or by machines in respect of the goods or work shall belong to the Seller absolutely and they shall not be reproduced or disclosed or used in its original or translated form by the Buyer without the Seller's written consent for any purpose other than that for which they were furnished.

### 12.2

Notwithstanding any implied warranty or condition as to title or otherwise in relation to the goods supplied hereunder, the Seller shall not be liable to indemnify the Buyer in respect of any claim made or threatened against the Buyer by a third party whether by legal proceedings or otherwise based on a right claimed under letters, patent, trade-mark, copyright (whether registered as a design or not) or breach of confidence unless:

#### 12.2.1

the Seller shall have been promptly notified of the claim or threat and no admissions shall have been made by the Buyer such as would prejudice the defence of any such claim or threat; and

#### 12.2.2

the goods shall have been designed by the Seller or made to its design and in any event the Seller's liability shall be limited to damages and costs awarded by a court of competent jurisdiction in proceedings conducted in accordance with the wishes of the Seller or such sum as may be paid in compromise of such proceedings with the assent of the Seller.

### 12.3

The Buyer shall indemnify the Seller against any and all liabilities, claims and costs incurred by or made against the Seller as a direct or indirect result of carrying out any work required to be done on or to the goods in accordance with the requirements or specifications of the Buyer involving any infringement or alleged infringement of any rights of any third party.

## **13 DATA PROTECTION**

### 13.1

Each party shall comply with its respective obligations under the Data Protection Act 1998 (DPA) in relation to all Personal Data (as defined in the DPA) that is processed by it in the course of performing its obligations under this Agreement.

### 13.2

Without prejudice to the generality of clause 13.1, the Company shall maintain sufficient technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and to prevent any loss, destruction or unauthorised disclosure of Personal Data.

## **14 NO QUIBBLE RETURNS**

### 14.1

The Seller will credit the purchase price of goods provided that:

#### 14.1.1

The goods have not been made to the Buyers specification;

#### 14.1.2

The goods do not meet the Buyers requirements;

#### 14.1.3

They are returned to the Seller in unused and undamaged condition and in the original packaging within 30 (thirty) days of delivery with a Returns Note (part of the Delivery Note that accompanies the goods) and an Authorisation Code (obtained by dialling 0800 585501). The Seller will credit the purchase price of goods provided that:

#### 14.1.4

Returned items direct shipped from the Sellers supplier (with the exception of faulty or incorrect goods) will be subject to a restocking fee depending on carriage cost incurred to deliver and to uplift goods;

#### 14.1.5

Any credits or refunds will be made only after receipt and inspection of the goods.

#### 14.1.6

The Seller reserves the right to levy a 15% handling charge on any goods returned for credit.

#### 14.1.7

No credit will be given by the Seller in respect of delivery, postage or transit charges levied by the Seller, or incurred by the Buyer.

### 14.2

In the case of return of goods made to the Buyers specification where conditions 14.1.2 to 14.1.7 inclusive are met, the Seller will credit the purchase price of the goods subject to a handling charge of 40%.

## **15 TOOLS, NEGATIVES AND PLATE CHARGES**

### 15.1

All tools, negatives and plates are and will remain at all times the property of the Seller. Any tools, negatives and plates will be maintained free of charge by the Seller while being used in production and for a period of 24 (twenty-four) months following the date of last use. Following the expiry of this period these items will be destroyed unless specific written arrangements are made.



## 16 ARTWORK

### 16.1

All artwork, submitted by the Buyer is subject to the Sellers approval. Additional charges for any retouching and/or rework will be notified and invoiced to the Buyer.

### 16.2

One photo proof will be furnished for each item. Additional proofs can be made on request. Corrections after photo proof has been submitted will involve additional cost.

## 17 FREE GIFTS & PROMOTIONS

Qualification for gifts and promotions are based on net order and excludes VAT and delivery charges. Offer valid only while stocks last. Gift Code and Key Code must be used at time of order. This offer is not to be used in conjunction with any other offer or discount. Offers must be requested at time of order and cannot be redeemed against existing orders. Only 1 free gift may be claimed per order or per customer. We reserve the right to withdraw the offer at any time. Gifts have no alternate cash value. We reserve the right to offer alternate gifts of equal or greater value in the event the advertised item is no longer available. For the avoidance of doubt, all corporate gifts will be the property of the corporate purchaser and not its employees or representatives.

**For the avoidance of doubt, all promotional gifts will be the property of the corporate purchaser and not its employees or representatives.** The Buyer agrees to cooperate with Seller to ensure compliance by Buyer's employees and other representatives with Seller's gift policy. Notwithstanding the foregoing, Buyer acknowledges and agrees that Buyer assumes full responsibility for compliance with applicable law relating to promotional gifts by its employees and other representatives. Government agencies are not eligible for promotional gifts.

## 18 GENERAL

### 18.1

#### Notices

#### 18.1.1

Any notice to be served under these conditions may be given orally in person or by telephone but must be confirmed in writing as soon as possible and in any event within 24 hours to the intended recipient either:-

- a) within the United Kingdom by prepaid first class post (when it will be deemed served at noon on the first working day after it was posted); or
- b) within the United Kingdom by prepaid first class post (when it will be deemed served at noon on the first working day after it was posted); or
- c) by personal delivery (when it will be deemed served when it is delivered).

#### 18.1.2

The address for service of notices shall be the party's address as shown in these conditions or as subsequently notified in writing.

### 18.2

#### Waiver

The waiver by the Seller of any breach of any term hereof shall not prevent the subsequent enforcement of that term and shall not be deemed a waiver of any subsequent breach.

18.3

#### Severance

Should one clause hereof be invalid the provisions of the remainder hereof shall not be affected and in such case the parties hereto shall co-operate to agree replacement terms which are legally valid in order to achieve as nearly as possible the original intentions of the parties particularly regarding the economic effect of such clause.

18.4

Titles - The titles of the clauses hereof shall not be taken into account in the construction hereof.

18.5

#### Governing Law

Any contract in which these terms relate shall be governed by English Law and the parties shall submit to the non-exclusive jurisdiction of the English Courts.

18.6

#### Entire Agreement

This document contains the whole terms of the contract and no alteration or variation of the terms of the contract shall be valid unless agreed and made in writing by an authorised officer of the Seller, and no waiver of any breach by either party of the terms of the contract shall prejudice the Seller's strict legal rights hereunder. In the event of any conflict between these terms and any other terms or conditions these terms will prevail.