

VIACON (UNITED KINGDOM) LIMITED TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS 16TH NOVEMBER 2022

The customer's attention is drawn in particular to the provisions of Condition 10.

1. Definitions and interpretation

1.1 In these Conditions, the following definitions apply:

"Business Day"	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
"Cancellation Fees"	has the meaning given in Condition 4;
"Conditions"	the terms and conditions set out in this document as amended from time to time in accordance with Condition 12.3;
"Contract"	the contract between ViaCon and the Customer for the sale and purchase of the Goods consisting of these Conditions and the Key Terms Document;
"Customer"	the person or firm who purchases the Goods from ViaCon;
"Deposit"	the deposit (if any) set out in the Key Terms Document;
"Force Majeure Event"	has the meaning given in Condition 11;
"Goods"	the goods (or any part of them) set out in the Key Terms Document;
"Intellectual Property Rights"	patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use and protect the confidentiality of, confidential information (including know-how and trade secrets and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
"Key Terms Document"	the document issued to the Customer which details among other things the Goods, Specification, volumes, price, delivery, recommendations and procedures for wide loads and movement orders, payment terms and insurance details;
"Order"	the Customer's order for the Goods, as set out in the Key Terms Document;
"Specification"	the specification for the Goods, including any related plans and drawings, that is set out in the Key Terms Document; and
"ViaCon"	ViaCon (United Kingdom) Limited (registered in England and Wales with company number 02173337).

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1.2 In these Conditions, the following rules apply:

- 1.2.1 a reference to a statute or statutory provision is a reference to such statute or provision as amended, re-enacted or superseded. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.2 any phrase introduced by the terms **"including"**, **"include"**, **"in particular"** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.2.3 a reference to **"writing"** or **"written"** includes emails.

2. **Basis of contract**

- 2.1 The Key Terms Document sets out the basis of the Order by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.
- 2.2 If there is any inconsistency between any of the provisions of the Key Terms Document (together with these Conditions), and the Customer's written acceptance of the order, and/or any other document provided to ViaCon by the Customer, then the Key Terms Document and these Conditions shall prevail. The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any document that is inconsistent with the Key Terms Document and these Conditions.
- 2.3 The Customer may only vary the Order if the Customer notifies ViaCon in writing prior to the earlier of any order placement by ViaCon for materials for the purpose of (wholly or partly) fulfilling the Order and/or the written approval by the Customer of the designs for manufacture. Thereafter the Customer shall not vary the Order without ViaCon's express written consent. ViaCon reserves the right to charge the Customer reasonable charges for such variation.
- 2.4 If the Customer cancels the Order:
 - 2.4.1 prior to ViaCon manufacturing the Goods, then the Customer shall be charged the price of the raw materials and any reasonable associated costs; or
 - 2.4.2 after the manufacturing process has started, then the Customer shall be liable for the Price of the Goods in full and in accordance with Condition 8 (**Price and Payment**),

(the **"Cancellation Fees"**).

- 2.5 Any drawings, descriptive matter or advertising produced by ViaCon and any descriptions or illustrations contained in ViaCon's catalogues or brochures (if any) are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 ViaCon shall not be responsible for the procurement of any licences, consents or permissions required for the ownership, installation and/or operation of the Goods. The Customer shall be responsible for obtaining the same prior to delivery of the Goods.

3. **Goods**

- 3.1 The Goods are described in the Specification.
- 3.2 ViaCon reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

4. **Delivery**

- 4.1 ViaCon shall provide with a delivery note each delivery of the Goods.

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- 4.2 ViaCon shall deliver the Goods to the location set out in the Order (whether on an ex works basis or otherwise) or such other location as the parties may agree ("**Delivery Location**") at any time after ViaCon notifies the Customer that the Goods are ready.
- 4.3 The Customer shall provide all necessary delivery instructions documents, licences, authorisations, labour and equipment to enable the Goods to be safely unloaded at the Delivery Location. The Customer is responsible for safely unloading the Goods and shall take photographic evidence of such on the date of delivery. The Customer shall provide the photographic evidence to ViaCon within two Business Days of delivery.
- 4.4 Upon delivery of the Goods to the Delivery Location, the Customer must arrange for suitably qualified authorised representative to inspect the Goods and confirm the Customer's satisfaction with the quality of the Goods. Following acceptance of the Goods by the Customer, ViaCon shall not be liable for any inherent latent defects which may be present in the Goods, and which are identified at a later date (either before or after installation), or for any patent defects which were present at the date of delivery, but not identified by the Customer. For the avoidance of doubt, the provisions of section 14A of the Limitation Act 1980 relating to latent damage shall not apply to the Contract.
- 4.5 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.6 Any dates quoted for delivery within the Key Terms Document are an approximate only, and the time of delivery is not of the essence. Without prejudice to the foregoing, ViaCon shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide ViaCon with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.7 If ViaCon fails to deliver the Goods, its liability shall be limited to the cost of replacement goods of similar description and quality in the cheapest market available, less the price of the Goods, subject always to Conditions 4.6 and 10.
- 4.8 If the Customer fails to accept delivery of the Goods either (i) on delivery dates specified in the Key Terms Document (and the Goods are ready for delivery), or if later (ii) within three Business Days of ViaCon notifying the Customer that the Goods are ready for delivery, or (iii) ViaCon is unable to deliver them due to the Customer's breach of Condition 4.3 then, except where such failure or delay is caused by a Force Majeure Event or ViaCon's failure to comply with its obligations under the Contract:
- 4.8.1 delivery of the Goods shall be deemed to have been completed at 09:00 on the third Business Day after either the scheduled delivery date or the day on which ViaCon notified the Customer that the Goods were ready; and
- 4.8.2 ViaCon shall store the Goods until actual (not deemed) delivery takes place and charge the Customer for all related costs and expenses.
- 4.9 If 5 Business Days after the day on which ViaCon notified the Customer that the Goods were ready for delivery the Customer has not requested delivery of them, ViaCon may invoice the Customer for 100% of the price of the Goods. ViaCon reserves the right to:
- 4.9.1 deduct the Deposit (if any) against the charges in this Condition 4.9; and
- 4.9.2 charge the Customer all costs and expenses related to storage of the Goods where storage impacts upon ViaCon's production processes or other manufacturing and storage operations.
- 4.10 Where the Customer continues to fail to request delivery of the Goods following the application of Condition 4.9 ViaCon may at its sole discretion resell or otherwise dispose of part or all of the Goods and (if it has not invoiced the Customer pursuant to Condition 4.9) charge the Customer for any shortfall below the price of the Goods together with the costs of sale or disposal, [or (if it has invoiced the Customer pursuant to Condition 4.9), set off the receipts (less costs of sale or disposal) from the invoice].
- 4.11 ViaCon may deliver the Goods by instalments (typically under a site delivery schedule for a particular Delivery Location), in which event ViaCon may invoice at the end of each month for the aggregate of all instalments delivered in that month (save where the Key Terms Document specifies otherwise). Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

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5. Quality

5.1 Subject to Condition 5.3, ViaCon warrants that on delivery the Goods shall:

- 5.1.1 conform in all material respects with the Specification; and
- 5.1.2 be free from material defects in design, material and workmanship.

5.2 Subject to Condition 5.3, if:

- 5.2.1 the Customer gives notice in writing to ViaCon within a reasonable time of delivery, and in any event prior to installation of the Goods, that some or all of the Goods do not comply with the warranty set out in Condition 5.1; and
- 5.2.2 ViaCon is given a reasonable opportunity to examine the Goods,

ViaCon shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 ViaCon shall not be liable for any Goods' failure to comply with the warranty set out in Condition 5.1 in any of the following events:

- 5.3.1 the Customer makes any further use of such Goods after giving notice in accordance with Condition 5.2;
- 5.3.2 the defect arises because the Customer failed to follow ViaCon's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- 5.3.3 the defect arises as a result of ViaCon following any drawing, design or Specification supplied by the Customer;
- 5.3.4 the Customer alters or repairs such Goods without the written consent of ViaCon;
- 5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;
- 5.3.6 the Customer fails to provide photographic evidence of the Goods at delivery as per Condition 4.3;
- 5.3.7 if the Customer has initiated the installation process; or
- 5.3.8 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this Condition 5, ViaCon shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in Condition 5.1.

5.5 Where ViaCon has examined the Goods in accordance with Condition 5.2.2 but is not liable for the Goods as per Condition 5.4, ViaCon reserves the right to charge the Customer for reasonable expenses of such examination including but not limited to travel costs.

5.6 For the avoidance of doubt, ViaCon will only manufacture and supply the Goods. The Customer shall be solely liable for installing the Goods; and although ViaCon can give guidance on installation, if required, in giving such guidance, ViaCon shall have no liability to the Customer or any third parties for any defects, errors or omissions with the installation of the Goods, or for any losses or liabilities incurred by the Customer or any third party arising out of the Goods and/or the installation of the Goods.

5.7 Each party agrees that all terms implied to give efficacy to this Contract, or implied by law including without limitation to sections 13 to 15 of the Sale of Goods Act 1979, or through custom, usage or course of dealing are, to the fullest extent permitted by law, excluded from the Contract.

5.8 These Conditions shall apply to any repaired or replacement Goods supplied by ViaCon.

6. Title and risk

6.1 Risk in the Goods shall pass to the Customer on completion of delivery of such Goods.

6.2 Title to the Goods shall pass to the Customer upon ViaCon receiving payment in full (in cash or cleared funds) for the Goods.

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- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 6.3.1 store the Goods for which it has not paid separately from all other goods held by the Customer so that they remain readily identifiable as ViaCon's property;
 - 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - 6.3.4 obtain an endorsement of ViaCon's interest in the Goods on its insurance policy, subject to the insurer being willing to make the endorsement, and on request allow ViaCon to inspect the insurance policy;
 - 6.3.5 notify ViaCon immediately if it becomes subject to any of the events listed in Condition 9.1;
 - 6.3.6 give ViaCon such information relating to the Goods as ViaCon may require from time to time; and
 - 6.3.7 permit or procure permission for ViaCon, its agents and authorised representatives to enter any premises of the Customer or of any third party where the Goods are stored in order to inspect whether the Customer is in compliance with this condition 6.3 and/or recover the Goods.
- 6.4 Subject to condition 6.5, the Customer may use the Goods in the ordinary course of its business (but not otherwise) before ViaCon receives payment for the Goods.
- 6.5 If before title to the Goods passes to the Customer the Customer becomes subject to an Insolvency Event (as defined in Condition 9.1), then, without limiting any other right or remedy ViaCon may have:
- 6.5.1 the Customer must immediately notify ViaCon of the event; and
 - 6.5.2 ViaCon may at any time:
 - 6.5.2.1 require the Customer to deliver up all Goods in its possession which have not been used or installed or irrevocably incorporated into another product; and
 - 6.5.2.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
7. **Intellectual Property**
- 7.1 The Customer acknowledges that all Intellectual Property Rights used by or subsisting in the Goods are and shall remain the sole property of ViaCon or (as the case may be) the third party rights owner.
 - 7.2 The Customer shall indemnify, keep indemnified and hold harmless ViaCon from and against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit and loss of reputation whether arising in tort (including negligence), in contract or otherwise and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by ViaCon as a result of or in connection with any claim made against ViaCon for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with ViaCon's use of the Specification to the extent that the Specification has been provided by the Customer). This Condition 7.2 shall survive termination of the Contract.
 - 7.3 ViaCon may inform third parties that it provides or has provided the Goods to the Customer. The Customer licenses ViaCon to use its name and logo(s) for this sole purpose.
8. **Price and payment**
- 8.1 Subject to Condition 8.2, the price of the Goods shall be the price set out in the Key Terms Document.
 - 8.2 If the Customer does not provide its approval for the production of the Goods within the fixed price quotation period specified in the Key Terms Document then ViaCon reserves the right to adjust the price to reflect any increase in the cost of the Goods that is due to any factor beyond ViaCon's control (including foreign exchange fluctuations, increases in taxes and duties and increases in labour, materials and other manufacturing costs). ViaCon also reserves the right to adjust the price in connection with any delay caused by any instructions of the Customer or failure of the Customer to give ViaCon adequate or accurate information or instructions.
 - 8.3 The price of the Goods is:

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- 8.3.1 inclusive of packaging; and
- 8.3.2 exclusive of amounts in respect of value added tax ("VAT"), which the Customer shall pay to ViaCon at the prevailing rate.
- 8.3.3 ViaCon shall invoice the Customer for the Goods in accordance with the provisions in the Key Terms Document or, in absence of such provisions, on delivery of the Goods.
- 8.4 ViaCon reserves the right to charge the Customer a Deposit. Where relevant, ViaCon shall not start the manufacturing process until the Customer has paid the Deposit in full. If the Customer cancels the Order in accordance with Condition 2.5 then ViaCon shall offset the Deposit against any Cancellation Fees.
- 8.5 The Customer shall pay the invoice in full and in cleared funds within 20 Business Days of the date of the invoice (or if different, in accordance with the credit terms set out in the Key Terms Document). Payment shall be made to the bank account nominated in writing by ViaCon. Time of payment is of the essence.
- 8.6 Payment shall fall due in accordance with Condition 8.6 and ViaCon shall accordingly be entitled to sue for the price once it is due, despite the fact that title to the Goods may not have passed to the Customer.
- 8.7 If the Customer fails to make any payment due to ViaCon under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above National Westminster Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount. The Customer shall indemnify, keep indemnified and hold harmless ViaCon in respect of any loss, liability, damage, costs and expenses (including, without limitation, legal costs) suffered or incurred by ViaCon in recovering any unpaid and overdue sums.
- 8.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). ViaCon may at any time, without limiting any other rights or remedies, set off any amount owing to it by the Customer against any amount payable by ViaCon to the Customer.

9. Termination and suspension

- 9.1 Without limiting its other rights or remedies, ViaCon may terminate the Contract with immediate effect by giving written notice to the Customer if:
 - 9.1.1 the Customer fails to pay the Deposit within the time specified in the Key Terms Document;
 - 9.1.2 the Customer continues to fail to accept delivery of the Goods as per Condition 4.10;
 - 9.1.3 the Customer is declared or becomes insolvent, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, or any step is taken (including the making of an application, the entering into of a board resolution or the giving of any notice) by it or by any other person in respect of any of these circumstances (an **"Insolvency Event"**); or
 - 9.1.4 the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 9.2 Without limiting its other rights or remedies, ViaCon may suspend provision of the Goods under the Contract or any other contract between the Customer and ViaCon if the Customer becomes subject to an Insolvency Event,

or ViaCon reasonably believes that the Customer is about to become subject to an Insolvency Event, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 9.3 On termination of the Contract for any reason the Customer shall immediately pay to ViaCon all of ViaCon's outstanding unpaid invoices and interest.
- 9.4 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 9.5 Conditions which expressly or by implication survive termination of the Contract shall continue in full force and effect including Conditions 4.6, 5, 7 and 10 (**Limitation of Liability**).

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10. **Limitation of liability**

10.1 Nothing in these Conditions shall limit or exclude ViaCon's liability for:

10.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

10.1.2 fraud or fraudulent misrepresentation;

10.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or

10.1.4 any matter in respect of which it would be unlawful for ViaCon to exclude or restrict liability.

10.2 Subject to Condition 10.1:

10.2.1 ViaCon shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), misrepresentation, breach of statutory duty, or otherwise, for:

10.2.1.1 any indirect, special, consequential or pure economic loss or damage;

10.2.1.2 any loss of profits, anticipated profits, revenue or business opportunities; or

10.2.1.3 damage to goodwill

(in each case arising as a direct or indirect result of the relevant claim); and

10.2.2 ViaCon's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the Goods.

11. **Force majeure**

ViaCon shall not be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A "**Force Majeure Event**" means any event which hinders, delays or prevents performance of a party's obligations and which is either beyond that party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure or interruption of energy sources, other utility service or transport network, acts of God, war, threat of or preparation for war, armed conflict, terrorism, riot, civil commotion, interference by civil or military authorities, sanctions, embargo, export or import restriction, quota or prohibition, breaking off of diplomatic relations, national or international calamity, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosion, collapse of building structures, fire, flood, drought, storm, earthquake, volcanic eruption, loss at sea, epidemic, pandemic or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

12. **General**

12.1 **Assignment and other dealings**

12.1.1 ViaCon may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

12.1.2 The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of ViaCon.

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12.2 Entire agreement

The Contract (incorporating these Conditions) constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of ViaCon which is not set out in the Contract.

12.3 Variation

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by ViaCon.

12.4 Waiver

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of or prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12.5 Severance

If any provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision shall be deemed deleted. Any modification or deletion of a provision under this condition shall not affect the validity and enforceability of the rest of the Contract.

12.6 Notices

12.6.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

- 12.6.1.1 delivered by hand or by pre-paid first-class post or by a signed-for next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 12.6.1.2 sent by email to the email address specified in the Key Terms Document.

12.6.2 Any notice shall be deemed to have been received:

- 12.6.2.1 if delivered by hand, on signature of a delivery receipt or, if not signed for, at the time the notice is left at the correct address;
- 12.6.2.2 if sent by pre-paid first-class post, at 09:00 on the second Business Day after posting;
- 12.6.2.3 if sent by a signed-for next working day delivery service, at the time recorded by the delivery service; and
- 12.6.2.4 if sent by email, at 09:00 on the next Business Day after transmission.

12.6.3 This condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

12.7 Third party rights

No one other than a party to the Contract shall have any right to enforce any of its terms.

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12.8 Relationship

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between ViaCon and the Customer, constitute either party the agent of the other party or authorise either party to make or enter into any commitments for or on behalf of the other party.

12.9 Governing law

The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England.

12.10 Jurisdiction

Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims). Nothing in this condition shall limit ViaCon's right to take proceedings against the Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdictions.