

## **Terms and conditions of sale**

In these conditions the following words have the following meanings:

The **“Buyer”** means the person(s), firm or company who purchases the Goods from the Company;

The **“Company”** means Winster Limited;

**“Contract”** means any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions;

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

### **1 Validity**

- 1.1 Unless otherwise specifically agreed in writing by the Company all sales of Goods made by the Company are subject to these terms and conditions. No other agreement, representation, promise, undertaking, or understanding of any kind shall, unless expressly made or accepted by the Company in writing, form part of, vary, or operate as a waiver of these terms and conditions or any part of them.
- 1.2 These terms and conditions shall prevail over and take the place of any other terms and conditions contained in any purchase order or any other document or, or communication from the Buyer.

### **2 Formation of Contract**

- 2.1 Each order for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to Purchase Goods subject to these conditions.
- 2.2 A Contract shall be made when the Company sends out its confirmation in writing of the Buyer’s order. Quotations are for information only.

### **3 Price**

- 3.1 All prices quoted by the Company take into account these conditions and reflect the limitations upon the Company’s liability which they contain.
- 3.2 In the event of the Buyer wishing to contract with the Company otherwise than on the Basis of these conditions special arrangements can be made and revised price quoted by the Company.
- 3.3 Unless otherwise agreed by the Company in writing the price for the Goods shall be the price agreed on acceptance of a Contract by the Company.
- 3.4 The price for the Goods shall be exclusive of any value added tax and, unless otherwise stated, all costs or charges in relation to loading, unloading and carriage all of which amounts the Buyer will pay in addition when it is due to pay for the Goods.

### **4 Despatch and Delivery**

- 4.1 The Company will endeavour to adhere to any stated despatch or delivery date, but any such date is a business estimate only and the Buyer agrees that the Company shall have no liability for any loss or damage whatever and however caused resulting from any delay.

- 4.2 The risk in the Goods shall pass to the Buyer upon delivery to the carriers for transport to the Buyer, or where carriage is effected by the Company upon despatch of the Goods, and the Company shall not have any liability whatever for any loss or damage or deterioration to the Goods caused arising either during transit or at any other time after the risk has passed to the Buyer and the Buyer should therefore be insured accordingly.
- 4.3 The Company may, at its absolute discretion, postpone delivery of the Goods at the request of the Buyer in which case the Buyer shall make payment as if the Goods were delivered and invoiced on the date of such request. The Company may store the Goods at its own premises or elsewhere at the Buyer's sole risk and all storage, insurance and transport charges and all other costs arising from postponement of delivery shall be payable by the Buyer.

## **5 Retention of Title**

- 5.1 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- 5.1.1 the Goods; and
  - 5.1.2 all other sums which are or which become due to the Company from the Buyer on any account.
- 5.2 Until ownership of the Goods has passed to the Buyer, the Buyer must:
- 5.2.1 hold the Goods on a fiduciary basis as the Company's bailee;
  - 5.2.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
  - 5.2.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 5.2.4 ensure at all times the Goods are insured to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company; and
  - 5.2.5 hold the proceeds of the insurance referred to in condition 5.2.4 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 5.3 The Buyer may resell the Goods before ownership has passed on to it solely on the following conditions:
- 5.3.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
  - 5.3.2 any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 5.4 The Buyer's right to possession of the Goods shall terminate immediately if:
- 5.4.1 any of the termination events detailed in clause 12 occurs; or
  - 5.4.2 the Buyer encumbers or in any way charges any of the Goods.

5.5 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

5.6 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

## **6 Payment**

6.1 Unless otherwise expressly stated, payment for the Goods shall be made not later than 30 days from the date of the invoice.

6.2 Time for payment shall be of the essence.

6.3 No payment shall be deemed to have been received until the Company has received cleared funds.

6.4 All payments payable to the Company under a Contract shall become due immediately upon termination of such contract despite any other provision.

6.5 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

6.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract the Buyer will be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 5% above the base lending rate from time to time of National Westminster Bank plc, accruing on a daily basis until payment is made, whether before or after any judgement. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

6.7 The Company shall have the right to suspend any further deliveries under the Contract or any other Contract until payment is made or to cancel the Contract or any other Contract until payment is made or to cancel the Contract in relation to such further deliveries provided that no time or indulgence granted by the Company shall prejudice any right or remedy of the Company.

## **7 Company's Warranty**

7.1 Subject to the remainder of this clause and clause 8, the Company hereby warrants that the Goods are free from any material defect in workmanship and materials and correspond with any agreed written specification. The Company does not warrant that the Goods are fit for any particular purpose of, or intended use by, the Buyer and it is for the Buyer to satisfy itself that the Goods are so fit. The Company's liabilities under this warranty shall be limited to:

7.1.1 making available free of charge the labour and materials required to make good any such defects; or

7.1.2 at the Company's option replacing any defective Goods (or the defective part) or refunding the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Buyer's expense, return the Goods or the part of such Goods which are defective to the Company.

7.2 The Company's liability under the warranty in clause 7.1 is also conditional upon:

- 7.2.1 written notice of the defect or allegation that the Goods delivered are not in accordance with any particular specification, which defect should be apparent on reasonable inspection of the packaging and labelling of the Goods, being given to the Company within 7 days of arrival of the Goods at the Buyer's premises;
  - 7.2.2 where the defect is not apparent until the Goods are used by the Buyer, within 7 days of the defect or alleged defect being apparent;
  - 7.2.3 the Buyer not making any further use of such Goods after giving such notice;
  - 7.2.4 the Buyer affording the Company reasonable opportunity (within 21 days of such notice) itself or by its representatives to examine the Goods;
  - 7.2.5 the Goods having been properly stored and used by the Buyer prior to the defect occurring;
  - 7.2.6 that the Goods not having been fitted incorrectly or subject to any incorrect, abnormal or improper load, use, accident or unauthorised modification repair or application, whether by the Buyer or any third party;
  - 7.2.7 the Goods having been subjected to proper and adequate inspection after installation and use and properly maintained in accordance with the Company's guidelines; and
  - 7.2.8 the Company having received the total price for the Goods by the due date for payment.
- 7.3 The Company's liability in respect of the Goods shall in any event be limited to a period of 12 months from the date of delivery of the Goods.
- 7.4 Any Goods replaced will belong to the Company and any repaired or replacement Goods will be guaranteed on these terms for the unexpired portion of the 12 month period.
- 7.5 This warranty does not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company and the Buyer's only remedy shall be against the manufacturer for defects or fault attributable to such parts, materials or equipment. The warranty does not extend to cosmetic defects occurring after supply or to samples or Goods sold as sub-standard by the Company.
- 7.6 In the case of Goods exported by the Buyer, it is the Buyer's responsibility to ensure that the Goods comply with any legislation or regulations relating to their use in the country in question and the Company shall not therefore incur any liability whatever in respect thereof.
- 7.7 The Company shall not be liable in respect of any defect arising from fair wear and tear, wilful damage or arising from any drawing, design or specification supplied by the Buyer.
- 7.8 If some only of the Goods are defective the Buyer shall accept the remainder of the Goods and the Buyer shall be liable to make payment of the Contract price in proportion to the quantity of Goods accepted.
- 7.9 The Buyer shall be responsible for determining whether the Goods are fit for the purpose for which the Buyer purchases the Goods. Further, the Buyer shall satisfy itself a) as to the suitability of the Goods to carry or contain specific substances (whether

organic or inorganic) without causing deterioration or damage to the Goods and b) as to the period of time that such substances can be stored within the Goods, and the Company shall accept no liability for any loss or contamination of such substances whatever however arising.

## **8 Exclusion of Liability**

8.1 Nothing in these conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence.

### **THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION 8.2**

8.2 Subject to clause 7 and clause 8.1:

8.2.1 the Company shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of any agreement, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatever (whether caused by the Company's negligence or that of its employees, agents or subcontractors or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with any agreement or at all) or their use or resale by the Buyer; and

8.2.2 the entire liability of the Company in contract, tort (including negligence or breach of statutory duty), misrepresentation (unless fraudulent) or otherwise arising in connection with the supply of the Goods under the Contract or resulting from their use shall not exceed the lower of:

a) £500.00 per claim, or series of claims arising from one occurrence, where the Company's liability for the loss or damage is covered by the Company's insurance cover. If for any reason (other than the Company's failure to pay the insurance premium where insurance is reasonably available) the loss or damage is not covered by the Company's insurance cover then, the entire liability of the Company in accordance with this sub-clause shall not exceed £500.00; or

b) the value paid or payable by the Buyer under a Contract.

8.2.3 A claim in respect of any defect, failure to comply with any agreed written specification, non-delivery of any order or any part of the order shall not entitle the Buyer to cancel a Contract or refuse delivery of or payment for the Goods or any other order.

8.2.4 The Buyer shall be liable for any loss, damage or injury caused by faulty installation of the Goods or by faulty loading or packing within any form of container whether such packing or loading has been performed by the Buyer or on its behalf.

8.2.5 If any of these terms and conditions or any part of any of them is rendered void by any legislation to which it is subject, it shall be void to that extent and no further. If any of these terms and conditions or any part of any one of them is rendered unenforceable by legislation to which it is subject, it shall be unenforceable to the extent that it is shown by the Buyer that it would not be fair or reasonable to allow reliance on it and no further.

## **9 Indemnity**

- 9.1 The Buyer shall indemnify and hold the Company harmless against all claims relating to the Goods, in respect of any loss, damage or expense, whether direct or consequential, sustained by any third party save only in respect of death or personal injury caused by the negligence of the Company or any of its employees, sub-contractors of agents.

## **10 Artwork**

- 10.1 All blocks, stereos, sketches and other original work produced by the Company in connection with the Buyer's order shall remain the property of the Company.

## **11 Quality Variation**

- 11.1 A shortage or surplus, charged pro-rata, not exceeding 10 per cent will be considered due execution of any order.

## **12 Force Majeure**

- 12.1 In the event of any delay or interruption of works at the Company's works or of any strike, lockout, trade dispute, fire, explosion, flood accident to or breakdown of any plant or machinery, stoppage of any material, labour or transport or any other cause whatsoever beyond the Company's control adversely affecting or delaying the Company's performance of any of its obligations under the Contract, the Company shall be entitled without liability to suspend delivery wholly or in part or to extend the time for delivery or, if performance of the Contract becomes impossible or commercially unreasonable, to terminate the Contract.

## **13 Termination**

- 13.1 If the Buyer:

13.1.1 has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation or has a receiver and/or manager administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

13.1.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade

the Company shall have the right forthwith to terminate any order then subsisting upon written notice of such determination being posted to the Buyer's last known address any subsisting order shall be deemed to have been determined without prejudice to any claim or right the Company might otherwise make or exercise.

## **14 Headings**

- 14.1 The headings to these terms and conditions are intended for convenience only and shall in no way affect their construction.

## **15 Third Party Rights**

- 15.1 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

## **16 Communications**

- 16.1 All communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission:

16.1.1 (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or

16.1.2 (in the case of communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of this Contract or such other address as shall be notified to the Company by the Buyer.

- 16.2 Communications shall be deemed to have been received:

16.2.1 if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);

16.2.2 if delivered by hand, on the day of delivery;

16.2.3 if sent by facsimile transmission on a working day prior to 4:00pm, at the time of transmission and otherwise on the next working day.

## **17 Governing Law**

- 17.1 These terms and conditions shall be governed by and construed in accordance with English Law, and by entering into a Contract with the Seller the Buyer agrees irrevocably to submit any disputes arising out of such Contract to the exclusive jurisdiction of the English Courts.