

## **Trust Sales Consultancy Ltd. Terms and Conditions**

### **1.0 INTERPRETATION**

#### 1.1 In these conditions

“The Company” means Trust Sales Consultancy Ltd

“The Customer” means the person who accepts a quotation of the Company for the sale of the Goods or whose order for the Goods is accepted by the Company

“The Goods” means the goods (including any installment of the goods or any parts for them) which the Company is to supply to the Customer in accordance with these conditions

“The Conditions” means the standard terms and conditions for sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and the Company

“The Contract” means the contract for the purchase and sale of the Goods.

1.2 Any reference in these conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these conditions are for convenience only and shall not effect their interpretation.

### **2.0 BASIS OF SALE**

2.1 The Company shall sell and the Customer shall purchase the Goods in accordance with any written quotation of the Company which is accepted by the Customer, or any written order of the Customer which is accepted by the Company, subject in either case to these Conditions, which shall govern the contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Customer

2.2 No variation to these conditions shall be binding unless agreed in writing between a director or manager and the authorised representative of the Company

2.3 The employees or agents of the Company are not authorised to make any representations concerning the Goods unless confirmed by the Company in writing. In entering into the contract the Customer acknowledges that it does not rely on, any waives any claim for breach of, any such representations which are not so confirmed.

2.4 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

### **3.0 ORDERS AND SPECIFICATION**

3.1 No order submitted by the Customer shall be deemed to be accepted by the Company unless and until confirmed in writing by the Company.

3.2 The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer, and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the contract in accordance with its terms.

3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the quotation of the Company (if accepted by the Customer) or the Customer's order (if accepted by the Company).

3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the Customer, the Customer shall indemnify the Company against all loss, damage, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, design right, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Company's specification.

3.5 No order which has been accepted by the Company may be cancelled by the Customer except with the agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of a cancellation.

#### 4.0 PRICE OF GOODS

4.1 The price of the Goods shall be the Company's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Company's published price list current at the date of acceptance of the order. All prices quoted are subject to variation by the Company at any time prior to the acceptance by it of an order from the Customer.

4.2 Except as otherwise stated under the terms of any quotation or in any price list of the Company, and unless otherwise agreed in writing between the Customer and the Company, all prices are given by the Company on an ex works basis, and where the Company agrees to deliver the Goods otherwise than at the premises of the Company, the Customer shall be liable to pay the Company's charges for transport, packaging and insurance.

4.3 The price is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to the Company.

#### 5.0 TERMS OF PAYMENT

5.1 Subject to any special terms agreed in writing between the Customer and the Company, the Company shall be entitled to invoice the Customer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Customer or the Customer wrongfully fails to take delivery of the Goods, in which event the Company shall be entitled to invoice the Customer for the price at any time after the Company has notified the Customer that the Goods are ready for collection or (as the case may be) the Company has tendered delivery of the Goods.

5.2 The Customer shall pay the price of the Goods (less any discount which has previously been agreed in writing between the Company and the Customer, but without any other deduction) within 30 days of the date of the Company's invoice, notwithstanding that delivery may not have

taken place and the property in the Goods has not been passed to the Customer. The time of payment of the price shall be of the essence of the contract.

5.3 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:

5.3.1 Cancel the contract or suspend any further deliveries to the Customer;

5.3.2 Appropriate any payment made by the Customer to such of the Goods (or the Goods supplied under any other contract between the Customer and the Company) as the Company may think fit (notwithstanding and purported appropriation by the Customer);and

5.3.3 Charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 4 per cent per annum above Bank of England base rate from time to time, until payment in full is made.

## 6 RISK/TITLE

6.1 The Goods are at the risk of the Customer from time of delivery.

6.2 Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

- (a) the Goods; and
- (b) all other sums which are or which become due to the Company from the Customer on any account.

6.3 Until ownership of the Goods has passed to the Customer, the Customer shall:

- (a) hold the Goods on a fiduciary basis as the Company's bailee;
- (b) store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- (d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company.

6.4 The Customer may resell the Goods before ownership has passed to it solely on the following conditions:

- (a) any sale shall be effected in the ordinary course of the Customer's business at full market value; and
- (b) any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.

6.5 The Customer's right to possession of the Goods shall terminate immediately if:

- (a) the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision 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 documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
- (b) the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
- (c) the Customer encumbers or in any way charges any of the Goods.

6.6 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.

6.7 The Customer 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 Customer's right to possession has terminated, to recover them.

6.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by the Company to the Customer in the order in which they were invoiced to the Customer.

6.9 On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this clause 6 shall remain in effect.

## 7.0 DELIVERY

7.1 Delivery of the Goods shall be made by the Customer collecting the Goods at the Company's premises at any time after the Company has notified the Customer that the Goods are ready for collection or, if some other place for delivery has been agreed in writing by the Company, by the Company delivering the Goods to that place.

7.2 Any dates quoted for delivery of Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Company in writing. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Customer.

7.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the contract as a whole as repudiated.

7.4 If the Company fails to deliver the Goods for any reasons other than any cause beyond the Company's reasonable control or the Customer's fault, and the Company is accordingly liable to the Customer, the Company's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar Goods to replace those not delivered over the price of the Goods.

7.5 If the Customer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Company's fault) then, without prejudice to any other rights or remedy available to the Company, the Company may:

7.5.1 Store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage: or

7.5.2 Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the contract or charge the Customer for any shortfall below the price under the contract.

## 8.0 WARRANTIES AND LIABILITY

8.1 Subject to the conditions set out below the Company warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 1 month from the date of their initial use or 1 month from delivery, whichever ever is first to expire.

8.2 The above warranty is given by the Company subject to the following conditions:

8.2.1 The Company shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Customer;

8.2.2 The Company shall be under no liability in respect of any defect arising from wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Company's approval;

8.2.3 The Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;

8.2.4 The above warranty does not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.

8.3 Subject as expressly provided in these conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.4 Any claim by the Customer which is based on any defect in the Goods or their failure to correspond with specifications shall (whether or not delivery is refused by the Customer) be notified to the Company within 7 days from the date of delivery. If delivery is not refused, and the Customer does not notify the Company accordingly, the Customer shall not be entitled to reject the Goods and the Company shall have no liability for such defect and failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the contract.

8.5 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specifications is notified to the Company in accordance to these conditions, the Company shall be entitled to replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Customer the price of the Goods (or a proportionate part of the price), but the Company shall have no further liability to the Customer.

## 9.0 LIMITATION OF LIABILITY

9.1 The Company will be responsible for the bodily injury or death of any person to the extent that such bodily injury or death is directly caused by the negligence of the Company or of any person for whose acts the Company is responsible.

9.2 The Company will be responsible for damage to property to the extent that such damage is directly caused by the negligence of the Company or of any person for whose acts the Company is responsible provided that the liability of the Company in respect of loss or damage to the damage to the Customer's property shall be limited to the lower of the direct costs of replacement or repair of such property or the sum of five hundred thousand pounds per incident or series of incidents arising out of the one event.

9.3 The Company shall in no circumstances be liable to the Customer whether in tort (including but not limited to negligence or breach or statutory duty) contract misrepresentation or restitution or otherwise for any loss of use of the Goods in whole or in part, any loss of profits or business or contract of any type of special indirect or consequential loss (including loss or damage suffered by the Customer as a result of any action by a third party) even if such loss was reasonably foreseeable or the Company has been advised of the possibility of the Customer incurring the same.

9.4 Notwithstanding any other provision herein, if the Company fails to supply one or more of the Goods in accordance with the conditions or is found to be otherwise in breach of the contract in respect of the same the liability of the Company to the Customer shall be limited to the price of the Goods.

## 10 ASSIGNMENT

10.1 The Company may assign the Contract or any part of it to any person, firm or company.

10.2 The Customer shall not be entitled to assign the Contract if any part of it without the consent of the Company.

## 11.0 FORCE MAJEURE

11.1 The Customer shall not be liable to the Customer or be deemed to be in breach of the contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded without limitation as causes beyond the Company's reasonable control:

11.1.1 Acts of God, explosion, flood, tempest, fire or accident;

11.1.2 War or threat of war, sabotage, insurrection, national emergency, acts of terrorism, civil disturbance or requisition;

11.1.3 Acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of the governmental, parliamentary or local authority;

10.1.4 Import or export regulations or embargoes;

11.1.5 Strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);

11.1.6 Difficulties or delays in obtaining raw materials, supplies, labour, fuel, parts or machinery;

11.1.7 Power failure or breakdown in machinery

## 12.0 INSOLVENCY OF CUSTOMER

12.1 If the Customer (being an individual or firm) dies, commits an act of bankruptcy or has a receiving order made against him, or enters into any composition or arrangement with or for the benefit of his creditors (being a corporate body) becomes insolvent, has an administrator or administrative receiver appointed of the whole or any part of its assets, enters into any composition or arrangement with or for the benefit of its creditors or has a winding-up order made against it or passes a resolution for voluntary winding-up (otherwise than for the purpose of reconstruction or amalgamation) then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the contract or suspend any further deliveries under the contract without any liability to the Customer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 13.0 GENERAL

13.1 Any notice required or permitted to be given by either party to the other under these conditions shall be in writing addressed to that other party at its registered office or principle place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

13.2 No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

13.3 If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of any other provisions of the conditions and the remainder of the provisions in question shall not be affected thereby.

13.4 The parties to the Contract do not intend that any term of the contract shall be enforceable by virtue of the Contract s (Rights of Third Parties) Act 1999 by any person that is not a party to it.

13.5 Failure of delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

13.6 The contract shall be governed by the laws of England, and the Company and the Customer agree to submit to the jurisdiction of the English courts.