



## **TERMS & CONDITIONS OF TRADING**

### **1. Interpretation**

#### 1.1 In these Conditions:

- (a) "SELLER" means Thames Distribution Ltd (registered in England and Wales under Company no: 06799860.
- (b) "BUYER" means the person, firm or company accepting the Seller's quotation for the sale of Goods or whose order for Goods is accepted by the Seller.
- (c) "GOODS" means any products (or parts of them) agreed in the Contract which are supplied by the Seller to the Buyer in accordance with these Conditions.
- (d) "CONDITIONS" means the standard terms and conditions of sale set out in this document, including any special terms and conditions agreed in writing between the Buyer and the Seller.
- (e) "CONTRACT" means any agreement between the Seller and the Buyer for the purchase and sale of Goods incorporating these Conditions.

1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

### **2. Basis of the Sale**

2.1 The Seller shall provide and the Buyer shall purchase the Goods in accordance with and upon acceptance of the Seller's written quotation or the Buyer's written order.

2.2 All orders by the Buyer shall constitute an offer in accordance with the Conditions which govern this Contract to the exclusion of any other terms and conditions (including any terms and conditions which the Buyer purports to apply under any purchase order, confirmation order, specification or other document.)

- 2.3 No variation to these Conditions shall be binding unless agreed in Writing between the Seller and the Buyer.
- 2.4 These Conditions shall apply to the present Contract and to all future Contracts between the Seller and the Buyer.
- 2.5 The Seller's employees or agents are not authorised to make any representations to the Buyer or its employees or agents regarding the Goods unless confirmed by the Seller in writing. In entering into the Contract, the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed by the Seller.
- 2.6 Any advice or recommendation given by the Seller (or its employees or agents) to the Buyer (or its employees or agents) as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk. The Seller shall not be liable for any such advice or recommendation which is not so confirmed by the Seller in writing.
- 2.7 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 Seller shall be subject to correction without any liability on the part of the Seller and shall not in any way affect the enforceability of the Contract.

### **3. Orders and Specifications**

- 3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.2 The quality, quantity and description of any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller.)
- 3.3 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including but not limited to, loss of profit), costs (including the cost of all labour and material used), damages, charges and expenses incurred by the Seller as a result of cancellation by the Buyer.

### **4. Price of the Goods**

- 4.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted, (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of the acceptance of the order. All prices quoted are valid for 30 days or until

earlier acceptance by the Buyer. After the 30-day period, they may be altered by the Seller without giving notice to the Buyer.

- 4.2 The price is exclusive of any applicable value added tax or shipping, which the buyer shall be additionally liable to pay to the Seller.

## **5. Terms of Payment**

- 5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on despatch or, if the Goods are to be collected by the Buyer, at any time after the Seller has notified the Buyer that the Goods are ready for collection.

- 5.2 The Buyer shall pay the price of the Goods (less any discount to which the Buyer is entitled, but without any other deduction) within agreed timescale as per Buyers account of the date of the Seller's invoice, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued by the Seller only upon request.

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

- (a) cancel the Contract or suspend any further deliveries to the Buyer;
- (b) appropriate any payment made by the Buyer to such of the Goods any appropriation by the Buyer.

## **6. Delivery**

- 6.1 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in Writing.

- 6.2 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate Contract and failure by the Seller to deliver any one or more of the instalments in accordance with the Conditions shall not entitle the Buyer to treat the Contract as a whole as repudiated.

## **7. Risk and Property**

- 7.1 The Goods are at the risk of the Buyer from the time of delivery.

- 7.2 Ownership of the Goods shall not pass to the Buyer until the Seller 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 Buyer on any account.
- 7.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
- (a) hold the Goods on a fiduciary basis as the Seller's bailee;
  - (b) store the Goods (at no cost to the Seller) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller'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 Buyer shall produce the policy of insurance to the Company.
- 7.4 Before title is passed to the Buyer under the terms of Clause 7.2 and without prejudice to any of its other rights, the Seller shall have the right to recover and resell the Goods or any of them and may enter upon the Buyer's premises by its servants or agents for that purpose.

## **8. Warranties and Liability**

- 8.1 Subject to the conditions set out in this Clause, the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects.
- 8.2 The above warranty is given by the Seller subject to the following conditions:
- (a) The Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Buyer's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;
  - (b) the Seller shall be under no liability under the above warranty (or any warranty as to condition or guarantee) if the total price for the Goods has not been paid by or on behalf of the Buyer by the due date for payment.
- 8.3 Where any valid claim in respect of any of the Goods, which is based on any defect in quality or condition of the goods or the failure to meet specification, is notified to the Seller in accordance with these conditions, the Seller shall be entitled to replace the Goods (or the part

in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.

- 8.4 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) arising from or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.
- 8.5 The Seller shall not be liable to the Buyer 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 Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control.
- 8.6 The Seller's total liability shall not exceed the value of the Goods as set out in the Seller's invoice. Where the Seller accepts liability in respect of the Goods the Seller shall have the option of refunding the price of the Goods to the Buyer or of replacing the Goods in question within a reasonable time and any replacement Goods shall be accepted by the Buyer in substitution for any rights in respect of the replaced Goods.

## **9. Insolvency of Buyer**

9.1 This Clause applies if:

- (a) the Buyer has a bankruptcy order made against it or makes an arrangement or composition with its 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 Buyer or notice of intention to appoint an administrator is given by the Buyer 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 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

- (b) the Buyer 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 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; or
- (c) the Buyer encumbers or in any way charges any of the Goods; or
- (d) the Buyer ceases, or threatens to cease, to carry on business; or
- (e) the Seller reasonably apprehends that any of the events mentioned above is about to occur to the Buyer and notifies the Buyer accordingly.

9.2 Where this Clause applies, then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, 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.

## **10. Export Terms**

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

## **11. Assignment**

11.1 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

## **12. Force Majeure**

12. The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of **90 days**, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

### **13. General**

13.1 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or not.

13.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

13.3 Failure or delay by the Seller 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.

13.4 Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

13.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person, firm or company that is not a party to it.

13.6 This 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 English law, and the parties submit to the exclusive jurisdiction of the English Courts and Tribunals.

13.7 The Seller reserves the right to charge the Buyer additional costs incurred to any non-payment of account, which may include but is not limited to the costs of legal action and enforcement of any judgments through the Courts and Tribunals, or debt collection costs and interest charges, in particular, under the Late Payment of Commercial Debts Act 1998.

13.8 The Seller will charge contractual interest at base rate set by Barclays Bank PLC, variable plus 8% per annum until payment is received.

#### **IMPORTANT NOTE:**

Please be advised that from receipt of purchase order it will be deemed that the buyer fully understands and accepts all of the sellers terms and conditions of trade above.