

## TERMS AND CONDITIONS

**1 INTERPRETATION** (a) In these Conditions the "Company" means Blakeley Profiles LLP or any subsidiary company or agent authorised by them and the "Purchaser" means the person or persons, firm or company purchasing from or doing business with the Company. "Order" means the Purchaser's order for the Goods, as set out in the Purchaser's written acceptance of the Company's quotation. "Contract" means the contract between the Company and the Purchaser for the sale and purchase of the Goods in accordance with these Conditions. The "Goods" means all products supplied by the Company to the Purchaser whether means of sale hire rental or otherwise and whether the property of the Company is distributed by the Company as agents for another.

**2 BASIS OF CONTRACT** (a) These Conditions apply to the Order to the exclusion of any other terms that the Purchaser seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

(b) The Order constitutes an offer by the Purchaser to purchase the Goods in accordance with these Conditions. The Purchaser is responsible for ensuring that the terms of the Order and any applicable specifications are complete and accurate.

(c) The Order shall only be deemed to be accepted when the Company issues a written acceptance of the Order, at which point the Contract shall come into existence.

(d) The Contract constitutes the entire agreement between the parties. The Purchaser acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Contract.

(e) Any samples, drawings, descriptive matter, or advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures 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.

(f) A quotation for the Goods given by the Company shall not constitute an offer. A quotation shall only be valid for a period of 10 Business Days from its date of issue.

**3 GENERAL** (a) These Conditions of Sale should be read in conjunction with any special conditions included in the Company's quotations.

(b) The Company reserves the right to accept or refuse any order given on the basis of its quotation and in the event of the refusal of any order no damages nor expenses of any kind shall be payable by the Company.

(c) In purchasing Goods from the Company on these Conditions the Purchaser is deemed to acknowledge that they do not rely upon the skill or judgement of the Company or its employees as agents as to matters connected with the Goods.

(d) The Purchaser shall be responsible for providing any guard or protection necessary to comply with any statutory requirements in connection with the operation of machinery used in connection with the Goods.

(e) Any complaints about the Goods supplied shall only be entertained by the Company if made within 10 business days of delivery.

(f) Credit will only be given for Goods returned if a delivery note number is quoted and the Company has issued a collection note for the Goods.

(g) When Goods are returned to the Company's stock for credit the Company reserves the right to deduct 25% from the original cost of the Goods.

(h) Cancellation of special or purpose made orders cannot be accepted after the Goods have been manufactured by the Company's supplier.

(i) In processing your application for credit facilities we may make enquiries of credit reference agencies or other third parties who may record those enquiries. We may also disclose information about the conduct of your account with us to credit reference agencies or other third parties. The information obtained from or provided to credit reference agencies or other third parties may be used when assessing further applications for credit terms, for debt collection, for tracing and for fraud prevention.

(k) To the extent that the Goods are to be manufactured in accordance with a specification supplied by the Purchaser, the Purchaser shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Company in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's use of the specification.

(l) If the Purchaser provides the Company with plans, diagrams or other similar information for a project requiring Goods, or invites the Company to view a premises or project where Goods may be used, the Company has no liability to the Purchaser for ensuring that any Goods ordered by the Purchaser will be sufficient in type or quantity for the project in question. The Purchaser must, if necessary, take expert advice from another party in this regard.

**4 QUALITY** (a) The Company warrants that on delivery the Goods shall:

(i) conform in all material respects with their description and any applicable specification;

(ii) be free from material defects in design, material and workmanship; and

(iii) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

(b) Subject to Condition 4(c), if:

(i) the Purchaser gives notice in writing to the Company within 10 business days that some or all of the Goods do not comply with the warranty set out in Condition 4(a);

(ii) the Company is given a reasonable opportunity of examining such Goods; and

(iii) the Purchaser (if asked to do so by the Company) returns such Goods to the Company's place of business at the Purchaser's cost,

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

(c) The Company shall not be liable for the Goods' failure to comply with the warranty set out in Condition 4(a) in any of the following events:

(i) the Purchaser makes any further use of such Goods after giving notice in accordance with Condition 4(b);

(ii) the defect arises because the Purchaser failed to follow the Company's oral or written instructions as to the storage, commissioning, installation, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;

(iii) the defect arises as a result of the Company following any drawing, design or specification supplied by the Purchaser;

(iv) the Purchaser alters or repairs such Goods without the written consent of the Company;

(v) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

(vi) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

(d) Except as provided in this Condition 4, the Company shall have no liability to the Purchaser in respect of the Goods' failure to comply with the warranty set out in Condition 4(a).

(d) The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

(e) These Conditions shall apply to any repaired or replacement Goods supplied by the Company.

**5 PAYMENT** (a) Unless terms are agreed otherwise, all sums become due and payable under these Conditions not later than 30 days from the end of invoice month.

(b) There shall be no payment, for purposes of these Conditions, until any cheque has been cleared.

(c) Time for payment shall be of the essence.

(d) The company reserves the right to charge interest at 8% over the Bank of England base rate as per the Late Payments of Commercial (Interest) Act 1998, such interest being deemed to accrue on a day to day basis from the due date of payment under paragraph (a) of this Condition 5.

(e) The Purchaser shall have no right of set off, statutory or otherwise.

(f) If the Purchaser (being a company) fails to pay an account by the due date its directors will be personally liable to the Company and, in the case of two or more directors, such liability will be both joint and several.

(g) The Company reserves the right at any time at its discretion to demand security for payment before continuing with or delivering any order.

**6 RISK AND THE PASSING OF PROPERTY** (a) The risk in the Goods shall pass to the Purchaser on completion of delivery.

(b) Title to the Goods shall not pass to the Purchaser until the Company receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Company has supplied to the Purchaser in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums;

(c) Until title to the Goods has passed to the Purchaser, the Purchaser shall:

(i) store the Goods separately from all other goods held by the Purchaser so that they remain readily identifiable as the Company's property;

(ii) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(iii) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

(iv) notify the Company immediately if it becomes subject to any of the events listed in Condition 12; and

(v) give the Company such information relating to the Goods as the Company may require from time to time.

(d) If before title to the Goods passes to the Purchaser the Purchaser becomes subject to any of the events listed in Condition 12 and/or fails to pay any amount due under this Contract on the due date for payment then, without limiting any other right or remedy the Company may have:

(i) the Purchaser's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and

(ii) the Company may at any time require the Purchaser to deliver up all Goods in its possession which have not been resold or irrevocably incorporated into another product, and if the Purchaser fails to do so promptly, enter any premises of the Purchaser or of any third party where the Goods are stored in order to recover them.

**7 DELIVERY** (a) Delivery of the Goods shall be completed on the Goods' arrival at the delivery location agreed by the Company and the Purchaser.

(b) Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event (as defined in Condition 11) or the Purchaser's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

(c) If the Company fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Purchaser in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Purchaser's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

(d) The Company reserves the right to make delivery by instalments and to tender a separate invoice in respect of each instalment.

- (e) When delivery is to be by instalments or the Company exercises its right to deliver by instalments under paragraph (d) of this Condition 7, or if there is a delay in the delivery of any one or more instalments for whatever reason, this will not entitle the Purchaser to treat the Contract as repudiated or to damages.
- (f) Deviations in quantity of the Goods delivered (representing not more than 10% by value) from that stated in these Conditions shall not give the Purchaser any right to reject the Goods or to claim damages and the Purchaser shall be obliged to accept and pay at the Contract rate for the quantity of the Goods delivered.
- (g) The Company reserves the right to make a delivery charge according to the circumstances of each order. Deliveries of £75 nett Goods value and over are carriage paid within the Company's normal delivery area. Under £75 a surcharge of £7.5 will be applied.
- (h) Shortages must be notified to the Company within five business days of delivery.

**8 Not used.**

**9 PRICES** (a) Goods will be invoiced at the Supplier's prices ruling at date of despatch unless agreed otherwise in writing between the parties.

(b) The price of the Goods shall be the price set out in the Order or, if no price is quoted, the price set out in the Company's published price list in force as at the date of delivery.

(c) The Company may, by giving notice to the Purchaser at any time up to 5 business days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (i) any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (ii) any request by the Purchaser to change the delivery date(s), quantities or types of Goods ordered, or the specification(s); or
  - (iii) any delay caused by any instructions of the Purchaser or failure of the Purchaser to give the Company adequate or accurate information or instructions.
- (d) The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Purchaser.
- (e) The price of the Goods is exclusive of amounts in respect of value added tax (VAT). The Purchaser shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

**10 RETURNS/CREDITS** (a) It is NOT company policy to accept the return of goods correctly supplied to a customer. However, in certain circumstances special consideration is given in the interest of good customer relations. The process for returning goods is as follows:

- (a) All requests must be made in writing, within 5 business days of the delivery of the goods.
- (b) Details of any replacement order would assist the decision making process.
- (c) Before any items are collected/returned we require written acceptance of our restocking terms and conditions as follows:
  - (i) special order items are not available for return or cancellation once ordered, even if they have not been despatched from the manufacturer;
  - (ii) a restocking charge of 25% or £25.00 applies, whichever is the greater; and
  - (iii) all goods must be in perfect condition, fit for resale and in their original packaging.
  - (iv) Goods that are not fit for resale will be disposed of and not credited. A discretionary disposal charge may apply.
- (v) The Purchaser has a responsibility to take reasonable care of goods prior to collection.

**11 FORCE MAJEURE** The Supplier 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 beyond the Supplier'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 of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

**12 TERMINATION AND SUSPENSION** (a) If the Purchaser becomes subject to any of the events listed in Condition 12(b), the Company may terminate the Contract with immediate effect by giving written notice to the Purchaser.

(b) For the purposes of Condition [ ], the relevant events are:

- (i) the Purchaser suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (ii) the Purchaser commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Purchaser is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Purchaser with one or more other companies or the solvent reconstruction of the Purchaser;
- (iii) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Purchaser, other than for the sole purpose of a scheme for a solvent amalgamation of the Purchaser with one or more other companies or the solvent reconstruction of the Purchaser;
- (iv) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Purchaser;
- (v) (being a company) the holder of a qualifying floating charge over the Purchaser's assets has become entitled to appoint or has appointed an administrative receiver;
- (vi) a person becomes entitled to appoint a receiver over the Purchaser's assets or a receiver is appointed over the Purchaser's assets;
- (vii) (being an individual) the Purchaser is the subject of a bankruptcy petition or order;
- (viii) a creditor or encumbrancer of the Purchaser attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (ix) any event occurs, or proceeding is taken, with respect to the Purchaser in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Conditions 12(b)(i) to 12(b)(xiii) (inclusive);
- (x) the Purchaser suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- (xi) the Purchaser's financial position deteriorates to such an extent that in the Company's opinion the Purchaser's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;
- (xii) the Purchaser fails to pay any amount due under this Contract on the due date for payment;
- (xiii) the Purchaser commits any material breach of the Contract and (if the breach is capable of remedy) does not remedy the breach with 10 business days of a request to do so from the Purchaser; and
- (xiv) (being an individual) the Purchaser dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

(c) Without limiting its other rights or remedies, the Company may suspend provision of the Goods under the Contract or any other contract between the Purchaser and the Company if the Purchaser becomes subject to any of the events listed in Conditions 12(b)(i) to 12(b)(xiii) (inclusive), or the Company reasonably believes that the Purchaser is about to become subject to any of them, or if the Purchaser fails to pay any amount due under this Contract on the due date for payment.

(d) On termination of the Contract for any reason, the Purchaser shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest.

(e) Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

(f) Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

**13 LIMITATION OF LIABILITY** (a) Nothing in these Conditions shall limit or exclude the Company's liability for:

- (i) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (ii) fraud or fraudulent misrepresentation;
- (iii) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (iv) defective products under the Consumer Protection Act 1987; or
- (v) any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.

(b) Subject to Condition 13(a):

- (i) the Company shall under no circumstances whatever be liable to the Purchaser, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (ii) the Company's total liability to the Purchaser 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 (excluding VAT).

**14 MISCELLANEOUS** (a) The Company 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. The Purchaser 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 the Company.

(b) If any provision or part-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 or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

(c) A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. 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 that or any other right or remedy, nor shall it 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.

(d) A person who is not a party to the Contract shall not have any rights to enforce its terms.

(e) 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 and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).