



**1. FORMATION AND AUTHORITY**

(a) In these conditions

“the Seller” means John Tainton a division of Hall & Pickles 1812 Limited.

the “Buyer” means the individual, firm, company or other party with whom the Seller contracts.

“International Supply Contract” means such a contract is as described in section 26(3) of the Unfair Contract Terms Act 1977.

'Consignment Agreement' means a contract between the Seller and the Buyer for the consignment of goods by the Seller to the Buyer's premises.

“Goods” means any goods forming the subject matter of any Contract including (where the context so admits) services and any goods belonging to the Buyer on which the Seller performs services.

“Contract” means a contract entered into for the supply of Goods by the Seller to the Buyer.

"Order" the Buyer's order for Goods as contained in the Buyer's oral or written request to the Seller or the Buyer's oral or written acceptance of a quotation from the Seller or in the case where the Goods the subject of an Order are held by the Buyer pursuant to a Consignment Stock Agreement draw down of any Goods pursuant to the Consignment Stock Agreement.

(b) Any Contract made between the Seller and the Buyer shall be subject to these conditions and save as after mentioned no one has the Seller's authority to agree any terms or make any representations inconsistent with them or to enter into any Contract except on the basis of them except a director of the Seller in writing

(c) Unless otherwise agreed in writing by the Seller these conditions shall apply to the exclusion of any terms and conditions stipulated or referred to by the Buyer in its Order or pre-contract negotiations or any inconsistent terms implied by law or trade custom, practice or course of dealing

(d) An Order constitutes an offer by the Buyer to purchase the Goods in accordance with these conditions. The Buyer is responsible for ensuring that the terms of the Order and any specifications submitted by the Buyer in respect of the Goods are complete and accurate.

(e) Subject to Clause 1(f) below the Order shall only be deemed to be accepted when the Seller accepts the Order either orally or in writing at which point a Contract in respect of the supply of the Goods the subject of the accepted Order shall come into existence.

- (f) An order for Goods held by the Buyer pursuant to the terms of a Consignment Stock Agreement shall be deemed to be accepted by the Seller and a contract shall come into existence when the Goods are drawn down by the Buyer in accordance with the Consignment Stock Agreement.
- (g) Any general description contained in the Seller's catalogues or other advertising material shall not form a representation or be part of any Contract
- (h) Where the Seller has not given a written acknowledgement of the Buyer's Order these conditions will nonetheless apply to any Contract provided that the Buyer has had prior notice of them
- (i) The Seller reserves the right to correct any clerical or typographical errors made in respect of any Contract by its employees at any time

## 2. DELIVERY

- (a) Unless otherwise specified by the Seller all Goods for delivery within the mainland of Great Britain shall be despatched by the conveyance of the Seller's choice to the address or addresses specified by the Buyer in any Order or (in the event that the Buyer fails so to specify an address) to any address at which the Buyer resides or carries on business within the mainland of Great Britain. The Goods shall be deemed delivered when they are placed at the Buyer's disposal at the relevant delivery point and unless otherwise agreed in writing the Seller shall not be responsible for any off loading or placing into position of the Goods and reserves the right to deliver at the nearest point of suitable access. Offloading of the Goods when delivered shall be the Buyer's responsibility and be at the Buyer's risk and expense. Where the Buyer requests a different means of conveyance to that proposed by the Seller any extra cost incurred by the Seller in meeting the Buyer's requirements must be paid by the Buyer. Unless otherwise agreed by the Seller Goods for delivery other than within the mainland of Great Britain must be collected by the Buyer or his agent from the Company's premises within 14 days of notification by the Seller that such Goods are ready for collection. Loading of such goods shall be at the Buyer's risk and expense
- (b) If the contract is an International Supply Contract it shall be deemed to incorporate the latest edition of Incoterms current at the date of the Contract save that in the event of any inconsistency between the Incoterms and any express terms of the Contract the latter shall prevail. The Seller shall be under no obligation to give the Buyer the notice specified in Section 32(3) of the Sale of Goods Act 1979
- (c) Should the Seller be delayed in or prevented from making delivery of the Goods relating to any Contract due to any cause whatsoever beyond the reasonable control of the Seller the Seller shall be at liberty to terminate the Contract or suspend its performance of the Contract without incurring any liability for any loss or damage arising there from but without prejudice in any such case to rights accrued to the Seller in respect of deliveries already made
- (d) While the Seller will endeavour to deliver the Goods by any date or within any period agreed upon in the relevant Contract such dates and periods are estimates only given in good faith and the Seller will not be liable for any failure to deliver by such a date or within such a period. Time for delivery shall not be of the essence on the contract. Moreover the Seller shall be entitled to defer delivery until any monies due from the Buyer have been received.
- (e) Goods held by the Buyer pursuant to a Consignment Stock Agreement at the Buyer's premises or as bailee by the Buyer shall be deemed delivered when drawn down by the Buyer.

### **3. SPECIFICATION, INSTRUCTION OR DESIGN**

If Goods are made to specification, instruction or design supplied by the Buyer or any third party on behalf of the Buyer then:

- (i) the Buyer must supply such specification, instruction or design in sufficient time to enable the Seller to complete delivery within the period agreed; and
- (ii) the suitability and accuracy of the specification, instruction or design will be the Buyer's responsibility; and the Buyer will indemnify the Seller against all loss, damages, penalties, costs and other expenses in any country howsoever arising by reason of the specification, instruction or design; and
- (iii) the Buyer will indemnify the Seller against any infringement of any third party's intellectual property rights including but not limited to patent, design rights, registered design, trademark, trade name or copyright and any loss, damage or expense which it may incur by reason of such infringement or alleged infringement in any such country

### **4. TOLERANCES**

Where Goods are ordered by weight Goods despatched may vary in weight by up to plus or minus ten per cent from those ordered and any such variations will be deemed to be due execution of the Order. In such a case the Buyer will be invoiced for the actual weight of Goods delivered and any agreed total Contract price will be adjusted proportionally

### **5. PRICES**

- (a) Unless otherwise stated all prices quoted are net and exclusive of value added tax and the Buyer shall pay any and all taxes duties and other government charges payable in respect of the Goods
- (b) The Seller reserves the right to adjust prices at any time or take into account any increase in the cost to the Seller of purchasing any Goods or materials or manufacturing or working on or supplying any Goods (including but not limited to any such increase arising from any error or inadequacy in any specification, instructions or design provided by the Buyer, any modification carried out by the Seller at the Buyer's request or any change in exchange rates) and such increased prices ruling at the date of despatch by the Seller shall be substituted for the previous Contract price

### **6. RISK**

Save in the case of International Supply Contracts and subject to any agreement in writing by the Seller, the risk in the Goods which the Seller agrees to supply shall pass to the Buyer on (i) delivery or (ii) the date on which the Buyer defaults (which expression shall have the meaning set out in sub-clause 7(a) or

(iii) the date on which the Goods being ready for delivery, delivery is postponed at the Buyer's request, whichever shall first occur.

## **7. PAYMENT**

- (a) For the purpose of this clause the Relevant Date shall be the date on which (i) the Seller despatches the Goods or (ii) the Buyer takes delivery of the Goods or (iii) the Buyer defaults, whichever shall first occur. The Buyer defaults if it (i) fails to take delivery of the Goods when tendered by the Seller or (ii) where the Goods are to be collected by or on behalf of the Buyer from the Seller's premises the Buyer fails to collect the Goods from the Seller's premises when required to do so.
- (b) Unless otherwise specified in writing by the Seller payment of the full purchase price of the Goods shall be made by the Buyer in cash or cleared funds not later than 30 days after the end of the month in which the Relevant Date falls notwithstanding that property in the Goods has not passed to the Buyer. Time for payment shall be of the essence of the Contract
- (c) Without prejudice to any other rights it may have the Seller shall be entitled to charge interest on all sums at 4% per annum above HSBC Plc base rate from time to time and for the purposes of clauses 7, 10 and 11 the full purchase price of the Goods shall include all interest payable hereunder.

## **8. LIMITATION OF LIABILITY**

- (a) The Seller will have no liability for damage in transit, shortage of delivery or loss of Goods unless the Buyer shall have given to the Seller written notice of such damage, shortage or loss with reasonable particulars thereof within 3 days of delivery of the Goods or (in the case of total loss) of receipt of the invoice or other notification of despatch. The Seller's liability, if any, shall be limited to replacing such Goods and it shall be a condition precedent to any such liability that if requested by the Seller the Buyer shall provide authority, facilities and access for the Seller's servants or agents to inspect any damaged Goods within 14 days of such request.
- (b) The Seller will have no liability for any indirect or consequential loss or for any loss or damage suffered by the Buyer relating to waste of time or expenditure, loss of profits, production, business revenue, or any claim by any third party against the Buyer arising out of any damage in transit, shortage of delivery or loss of Goods
- (c) Goods not examined in the presence of the carrier of the Goods or before his departure from the place of delivery must be signed for as "Goods Not Examined"
- (d) The Buyer assumes entire responsibility for the Goods being suitable for the Buyer's or any particular purpose unless otherwise agreed in writing by the Seller

- (e) Save as otherwise provided in these conditions the Seller's liability in respect of any defect in or failure of Goods supplied or work done is limited to replacing or (in its discretion) paying for the replacement of Goods provided that the Buyer has given to the Seller written notice of such defects or failure (in the case of defects or failure apparent upon inspection) within 28 days of delivery and (in the case of defects or failure not so apparent) within 3 months of delivery to the Buyer and it shall be a condition precedent to the Seller's liability hereunder that if requested by the Seller the Buyer shall have given to the Seller reasonable notice of the defect, failure or error and shall have provided authority, facilities and access for the Seller's servants or agents to inspect the Goods
- (f) In the event of any error in any weight, dimension, capacity, performance or other description which is part of a Contract the Seller's liability in respect of any loss or damage sustained by the Buyer as a result of such error shall not exceed the price of the Goods in respect of which the description is incorrect
- (g) The Seller shall have no liability for any indirect or consequential loss or damage or loss of profits, production, business revenue or any claim by any third party against the Buyer sustained by the Buyer arising from or in connection with any such defect, failure or error aforesaid
- (h) Where the Seller agrees to replace Goods in accordance with the foregoing provisions of this paragraph or otherwise any time specified for delivery under a Contract shall be extended for such period as the Seller may reasonably require
- (i) All Goods sold by the Seller are supplied with the benefit of the terms implied by section 12 of the Sale of Goods Act 1979. Subject thereto, and whether or not the contract is a contract of sale all other conditions, warranties and other terms express or implied, statutory or otherwise, are expressly excluded, save insofar as contained herein or as otherwise expressly agreed by the Seller in writing PROVIDED that if and insofar as any legislation or any order made thereunder shall make or have made it unlawful to exclude or purport to exclude from the contract any term or shall have made unenforceable any attempt to exclude any such term the foregoing provisions of this paragraph will not apply to any such term
- (j) Nothing in these conditions shall exclude or restrict any liability that the Seller may have by virtue of the Consumer Protection Act 1987
- (k) The Seller shall not be liable to the Buyer in negligence
- (l) In the event of any negligence or wilful default on the part of its servants or agents in or in connection with the supply of any Goods or the design or manufacture thereof or in the carrying out of any work the Seller shall have no liability to the Buyer save as otherwise provided in these conditions

- (m) Nothing in these Conditions shall limit or exclude the Seller's liability for:
  - (i) death or personal injury caused by its negligence or the negligence of its employees, agents or subcontractors;
  - (ii) fraud or fraudulent misrepresentation; and
  - (iii) breach of terms implied by Section 12 of the Sale of Goods Act 1979.

**9. FAILURE TO PAY, CANCELLATION OR DEFERMENT**

- (a) For the purposes of this clause "an intervening event" shall mean any such event as is described in sub-clause 9(c) hereof
- (b) If there shall be an intervening event the Seller may, within a reasonable time thereafter, defer or cancel any further deliveries or services, stop any Goods in transit and treat any Contract of which these conditions form part as determined but without prejudice to its rights to the full purchase price for Goods delivered and services performed and damages for any loss suffered in consequence of such determination
- (c) An intervening event shall be any of the following:
  - (i) failure by the Buyer to make any payment when it becomes due
  - (ii) breach by the Buyer of any terms or conditions of a Contract
  - (iii) the Buyer's proposal for or entry into any composition or arrangement with creditors
  - (iv) the presentation against the Buyer of any Petition for a Bankruptcy Order, Administration Order, Winding-Up Order or similar process
  - (v) the appointment of an Administrator, Administrative Receiver or Receiver in respect of the business or any part of the assets of the Buyer
  - (vi) the Seller forming the reasonable opinion that the Buyer has become or is likely in the immediate future to become unable to pay his, her or its debts (adopting, in the case of a company, the definition of that term set out in Section 123 of the Insolvency Act 1986)
- (d) Cancellation of any Contract by the Buyer will only be accepted at the Seller's discretion and in any case on condition that any costs or expenses incurred by the Seller up to the date of cancellation and all loss or damage resulting to the Seller by reason of such cancellation will be paid by the Buyer to the Seller forthwith. Acceptance of such cancellation will only be binding on the Seller if in writing and signed by a director
- (e) Any costs incurred by the Seller due to suspension or deferment of any order by the Buyer or in the event that the Buyer defaults in collecting or giving instructions for the delivery of any goods will be payable by the Buyer forthwith on demand

## 10. RETENTION OF TITLE

- (a) Save in respect of International Supply Contracts title to the Goods shall not pass to the Buyer until the earlier of:
- (i) the Seller receiving payment in full (in cash or cleared funds) for the price of the Goods;
  - (ii) the Seller receiving payment in full (in cash or cleared funds) for any other goods or services supplied by the Seller;
  - (iii) the Buyer resells the Goods in which case title to the Goods shall pass to the Buyer at the time specified in clause 10(c).
- (b) Until title passes:
- (i) The Buyer shall hold the Goods as bailee for the Seller separately from all other goods held by the Buyer and ensure that the Goods are at all times clearly identified as the property of the Seller and not remove, deface or obscure any identifying mark or packaging on or relating to the Goods.
- (c) The Buyer may resell and use the Goods in the ordinary course of its business (but not otherwise) before title in the Goods passes to the Buyer. However if the Buyer resells the Goods before that time:
- (i) it does so as principal and not as the Seller's agent; and
  - (ii) title to the Goods shall pass to the Buyer immediately before the time at which the resale by the Buyer occurs.
- (d) If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 9(c) then, without limiting any other right or remedy the Seller may have, the Buyer's right to resell the Goods or use them in the ordinary course of its business shall immediately cease.
- (e) The Seller shall be entitled at any time on demand to:-
- (i) Repossess, remove from any equipment or structure (without being liable for any damage thereby occasioned) and sell all or any of the Goods and thereby terminate (without any liability to the Buyer) the Buyer's right to use or sell them, and;
  - (ii) Enter any premises where the Goods are located for the purpose of inspecting or repossessing them.
- (f) The Seller transfers to the Buyer only such title and rights of use as the Seller has in any Goods and in the case of material provided by any third party shall transfer only such title and rights as that party had and has transferred to the Seller.
- (g) In the case of International Supply Contracts property in the goods shall pass to the Buyer on delivery



**11. HEALTH AND SAFETY AT WORK ACT 1974**

- (a) THE SELLER DOES NOT HOLD ITSELF OUT AS AN EXPERT IN THE PROCESSING OR USE OF THE GOODS WHICH IT SUPPLIES AND ALTHOUGH IT ENSURES SO FAR AS IS REASONABLY PRACTICABLE THAT ITS PRODUCTS ARE SAFE AND WITHOUT RISKS TO HEALTH WHEN PROPERLY USED THE BUYER MUST SATISFY ITSELF THAT ANY USE OR PROCESS TO WHICH THE GOODS ARE TO BE SUBJECTED CAN BE CARRIED OUT SAFELY WITHOUT RISK TO HEALTH. THE SELLER WILL, IF REQUESTED IN WRITING BY THE BUYER, GIVE THE BUYER INFORMATION REGARDING THE GOODS SUPPLIED AS THE SELLER POSSESSES. PROTECTIVE CLOTHING SHOULD BE USED WHEN HANDLING OILED MATERIAL TO PREVENT LACERATIONS AND TO AVOID CONTINUED CONTACT WITH OIL. CERTAIN TREATMENTS SUCH AS WELDING, WHEN APPLIED TO OILED OR ZINC TREATED MATERIALS MAY PRODUCE NOXIOUS FUMES. STEEL BANDING SURROUNDING BUNDLES SHOULD IN NO CIRCUMSTANCES BE USED TO LIFT THE BUNDLES.
- (b) The Buyer warrants that it will pass on to all third parties to whom it may supply the goods all information as to the use and safe handling of the goods as may have been passed on to the Buyer by the Seller

**12. LEGAL CONSTRUCTION**

- (a) The proper law of all Contracts with the Seller shall be English Law which govern in all respects the construction and effect of such Contracts and of these conditions and all disputes arising out of and in connection with the subject matter of such Contracts. Each party agrees for the sole benefit of the Seller that, subject as provided below, that the Courts of England and Wales shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with any Contract. Nothing in this clause shall limit the right of the Seller to take proceedings against the Buyer in any other court of competent jurisdiction.
- (b) The headings to the clauses of these conditions are for ease of reference only and shall not affect the interpretation or construction thereof
- (c) If any provision of these conditions is or becomes illegal or void or unenforceable for any reason, the validity of the remaining provisions shall not be affected
- (d) Failure by the Seller to enforce strict compliance with these conditions by the Buyer will not constitute a waiver of any of the provisions of these conditions
- (e) 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