

## Terms & Conditions

### 1. INCORPORATION OF CONDITIONS

- (a) All contracts entered into between the Company and a customer shall be deemed to incorporate these Conditions and no amendment or addition shall be binding on the Company unless agreed in writing by an authorised representative of the Company.
- (b) The applicability of any terms and conditions proffered by the customer is hereby excluded, unless expressly agreed in writing by an authorised representative of the Company. The customer accepts that in entering into a contract for the supply of goods and/or services by the Company it has not relied upon any prior promises, representations or undertakings of the Company which are not contained in these Conditions.

### 2. QUOTATIONS AND PRICES

- (a) No quotation by the Company shall constitute an offer by the Company and all quotations are subject to withdrawal or alteration without notice. Quotations may be given in writing or orally.
- (b) All prices for goods and/or services shall be as quoted by the Company or its employees or agents who are authorised from time to time to issue quotations.

### 3. APPLICATION FOR CREDIT AND PAYMENT

- (a) The Company will only consider an application for an Account subject to the satisfactory completion of the attached Account application form for credit ("Application Form").
- (b) By completing and returning the Application Form, the applicant
  - o (i) consents to the Company carrying out searches with a credit reference agency on the business, principal directors, partners & sole proprietors. The credit reference agency will keep a record of that search and will share that information with other businesses; and
  - o (ii) the applicant accepts that all business transacted with the Company shall be on and subject to these Conditions.
- (c) The Company may in its absolute discretion decline any application for credit and shall not be or required to give any reason therefore.
- (d) Pursuant to the Consumer Credit (Total Charge for Credit) Regulations 1980, the annual percentage rate applicable to the credit agreement for the customer's Local Account is 0%.
- (e) The Company reserves the right to cancel the credit agreement applicable to the customer's Account without any liability to the customer in the event of a change of ownership of the customer.
- (f) Where the customer is an Account holder the net invoice amount shall be due for payment by the customer at the end of the calendar month following the calendar month in which the invoice is raised.
- (g) Where the customer is not an Account holder, invoices shall be payable prior to delivery of the goods/ services.
- (h) The customer must clearly identify to which invoice any settlement relates. If the customer fails to do so the Company may, at its discretion, treat the settlement as settlement of the customer's oldest outstanding invoice.
- (i) Where payment is overdue or the amount of credit on a customer's Account exceeds the agreed credit limit the Company may:
  - o (i) (both before as well as after judgment) charge interest on the overdue account or on the amount by which the amount of credit exceeds the agreed credit limit from time to time on a daily basis at Midland Bank plc's annual base rate from time to time plus 2%;
  - o (ii) appoint a third party to recover the overdue monies together with interest owed under the contract and all costs incurred by the Company under this Condition, shall be charged to the customer and shall form part of the sum due from the customer to the Company;
  - o (iii) suspend the provision of any further goods /services to the customer without any liability to the customer;
  - o (iv) terminate the contract immediately by notice in writing; and
  - o (v) at the Company's discretion cancel the credit agreement applicable to the customer's Account without any liability to the customer.
- (j) The customer shall make payment to the Company in respect of each invoice in full without any set off or withholding (whether in relation to such invoice or otherwise).

#### 4. SUPPLY OF GOODS AND SERVICES

- (a) The Company will use reasonable endeavours to supply relevant goods and services by any estimated date but time is not of the essence and the Company shall incur no liability whatsoever for failure to perform by such date.
- (b) Following the supply of goods the customer shall be bound to accept delivery of and to pay for such goods and for the provision of any related services (eg fitting) in full.
- (c) The Company shall be entitled to supply the goods in instalments and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions shall not entitle the customer to treat the contract as a whole as repudiated.
- (d) Delivery shall be deemed to take place when the goods are supplied to the customer.

#### 5. RISK

- Unless otherwise agreed in writing ownership and risk in the goods shall pass to the customer upon delivery save that where the Company agrees to store goods sold to a customer at its premises risk in the goods shall pass to the customer upon the date of invoice.

#### 6. WARRANTIES AND LIMITATION OF LIABILITY

- (a) The Company warrants that the goods will be of satisfactory quality and fit for the purpose for which they were supplied.
- (b) The Company shall not be liable for any shortages unless notification thereof is received by the Company in writing within 72 hours of delivery.
- (c) The Company shall not be liable for any defect in the goods save defects, materials or workmanship discovered within one month of the date of delivery and which are notified to the Company within 72 hours of the date the customer discovered the defect or ought reasonably to have discovered the defect and PROVIDED ALWAYS that following notification to the Company the customer thereafter fully complies with all reasonable requirements of the Company relating to the use or storage of the goods and the Company's access to them.
- (d) The Company shall only be liable under sub-clauses (b) and (c) above at its option to make good any shortage, or replace any damaged or defective unused goods, or accept the return of such goods and to credit the customer with the price.
- (e) Save in the case of death or personal injury arising from the Company's negligence, fraud or fraudulent misrepresentation no other condition, warranty or representation express or implied whether by statute or otherwise shall apply.
- (f) The Company shall not be liable for loss or profit interest paid or payable to the customer, loss of orders or expense consequent upon destruction or interruption of business or any other consequential loss.
- (g) Without prejudice to any other Condition if the Company shall be liable to the customer for any loss or damage such liability shall be limited to the invoice price of the goods concerned.
- (h) All quotations, specifications, information in catalogues, representations whether written or oral and forecasts of performance howsoever given are approximate only and do not form part of the contract and the Company shall have no liability in respect thereof and the customer acknowledges that it has not relied upon any such representation.

#### 7. CUSTOMER'S ASSURANCE

- (a) The customer agrees upon demand to indemnify the Company against all losses, damages, third party claims, injury, costs and expenses of whatever nature suffered by the Company to the extent that the same are caused by or related to the improper incorporation, assembly, use, storage or handling of the goods by the customer.
- (b) The customer shall ensure that it has adequate and proper third party and occupiers' liability insurance in respect of employees of the Company providing services from time to time to the customer at the customer's premises.

#### **8. FORCE MAJEURE**

- The Company shall have the right to cancel, or to reduce the volume of any goods to be supplied under the contract, or to delay the performance of the contract if it is prevented from or hindered through any circumstances beyond its control (affecting either itself or any other party) including (but not limited to) industrial action, war, fire, prohibition or enactment of any kind, lock-out or trade dispute, without incurring any liability for any loss or damage whatsoever resulting therefrom.

#### **9. DATA PROTECTION**

- The Company may use and the customer agrees that it may use and disclose personal information about the customer to third parties for the purpose of supplying goods and services the goods to the customer and processing invoices and statements. In respect of any personal data of the customer held by the Company, the Company agrees to comply with the provisions of the Data Protection Act 1998.

#### **10. GENERAL**

- (a) Failure by either party to enforce or to exercise at any time or for any period any term of or any right pursuant to these Conditions shall not be construed as a waiver of such term or right.
- (b) The invalidity, illegality or unenforceability of any provision of these Conditions shall not affect the other Conditions.
- (c) A person who is not a party to the contract between the Company and the customer is not entitled to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
- (d) These Conditions and any contract in which these Conditions are incorporated shall be governed by and constructed in accordance with English Law and the parties agree to submit to the exclusive jurisdiction of the English Courts.