

## Terms of Sale

### 1. Definitions and Interpretation

#### 1.1. In these Terms:

You: means the person who accepts our quotation for the sale of the Goods or whose order for the Goods is accepted by us;

contract: means the contract for the purchase and sale of the Goods;

goods: means the goods (including any instalment of the goods or any parts for them) which We are to supply in accordance with these Terms;

we, us, our: means [Hire Trade Alliance member name and address];

terms: means the standard terms set out in this document and (unless the context otherwise requires) includes any special terms agreed in writing between the You and Us;

Writing: includes facsimile transmission email and comparable means of communication.

1.2. Any reference in these Terms 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 Terms are for convenience only and shall not affect their interpretation.

#### 2. Basis of the sale

2.1. We shall sell and you shall purchase the Goods in accordance with any written quotation of ours which is accepted by you, or any written order from you which is accepted by us, subject in either case to these Terms, which shall govern the Contract to the exclusion of any other terms 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 you.

2.2. No variation to these Terms shall be binding unless agreed in Writing.

2.3. Our employees or agents are not authorised to make any representations concerning the Goods unless confirmed by us in Writing. In entering into the Contract You acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.

2.4. Any advice or recommendation given by us or our employees or agents to the you or your employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by us is followed or acted on entirely at your own risk, and accordingly we shall not be liable for any such advice or recommendation which is not so confirmed.

2.5. 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 us shall be subject to correction without any liability on our part.

### 3. Orders and Specifications

3.1. No order submitted by you shall be deemed to be accepted by us unless and until confirmed in writing.

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

3.3. The quantity, quality and description of the Goods and any specification for them shall be as set out in our quotation (if accepted by you) or your order (if accepted by us).

3.4. No order which has been accepted by us may be cancelled by you except with the agreement in Writing of us and on terms that you shall indemnify the us 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 us as a result of cancellation.

#### 4. Price of the goods

4.1. The price of the Goods shall be our quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in our published price list current at the date of acceptance of the order.

4.2. All prices quoted are valid for 30 days only or until earlier acceptance by you, after which time they may be altered by us without giving notice to you.

4.3. We reserve the right, by giving Written notice to you at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to us which is due to any factor beyond our control, any change in delivery dates, quantities or specifications for the Goods which is requested by you, or any delay caused by any instructions of you or failure of you to give the us adequate information or instructions.

4.4. Except as otherwise stated in our Written quotation or in any price list of the ours, and unless otherwise agreed in Writing between you and us, all prices are given by us on an ex works basis, and where we agree to deliver the Goods otherwise than at our premises, you shall be liable to pay the our charges for transport, packaging and insurance.

4.5. The price is exclusive of any applicable value added tax, which you shall be additionally liable to pay to us.

4.6. The cost of pallets and returnable containers will be charged to you in addition to the price of the Goods, but full credit will be given to you provided they are returned undamaged to us before the due payment date.

#### 5. Terms of payment

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

5.2. You shall pay the price of the Goods (less any discount to which you are entitled, but without any other deduction) within the credit period set out on our invoice, and we shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the you.

5.3. The time of payment of the price shall be of the essence of the Contract.

5.4. Receipts for payment will be issued only on request.

5.5. If the you fail to make any payment on the due date then, without limiting any other right or remedy available to the us, we may:

5.5.1. cancel the contract or suspend any further deliveries to you;

5.5.2. appropriate any payment made by you to such of the Goods (or the goods supplied under any other contract between you and us) as we may think fit (notwithstanding any purported appropriation by you); and

5.5.3. charge you

interest (both before and after any judgment) on the amount unpaid, at the

rate of 5 per cent per annum above Barclays Bank Pic's base rate from time to time,

until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6. Delivery

6.1. Delivery of the Goods shall be made by you collecting the Goods at our premises at any time after we have notified you that the Goods are ready for collection or, if some other place for delivery is agreed by us, by us delivering the Goods to that place.

6.2. Any dates quoted for delivery of the Goods are approximate only and we shall not be liable for any delay in delivery of the Goods however caused.

6.3. Time for delivery shall not be of the essence of the Contract unless previously agreed by us in Writing.

6.4. The Goods may be delivered by us in advance of the quoted delivery date on giving reasonable notice to you.

6.5. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate

contract and failure by us to deliver anyone or more of the instalments in accordance with these Terms or any claim by you in respect of anyone or more instalments shall not entitle you to treat the Contract as a whole as repudiated.

6.6. If we fail to deliver the Goods (or any instalment) for any reason other than any cause beyond our reasonable control or your fault, and we are accordingly liable to you, our liability shall be limited to the excess (if any) of the cost to you (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

6.7. If you fail to take delivery of the Goods or fail to give us adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond your reasonable control or by reason of our fault) then, without limiting any other right or remedy available to us, we may:

6.7.1. store the Goods until actual delivery and charge you for the reasonable costs (including insurance) of storage; or

6.7.2. sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to you for the excess over the price under the Contract or charge you for any shortfall below the price under the Contract.

#### 7. Risk and property

7.1. Risk of damage to or loss of the Goods shall pass to you:

7.1.1. in the case of Goods to be delivered at our premises, at the time when we notify you that the Goods are available for collection; or

7.1.2. in the case of Goods to be delivered otherwise than at our premises, at the time of delivery or, if you wrongfully fail to take delivery of the Goods, the time when we had tendered delivery of the Goods.

7.2. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, the property in the Goods shall not pass to you until we have received in cash or cleared

funds payment in full of the price of the Goods and all other goods agreed to be sold by us to you for which payment is then due.

7.3. Until such time as the property in the Goods passes to you, you shall hold the Goods as our fiduciary agent and bailee, and shall keep the Goods separate from those of your own and third parties and properly stored, protected and insured and identified as our property, but you may resell or use the Goods in the ordinary course of its business.

## Terms of Sale

7.4. Until such time as the property in the Goods passes to you (and provided the Goods are still in existence and have not been resold), we may at any time require you to deliver up the Goods to us and, if you fail to do so forthwith, enter on any premises of yours or any third party where the Goods are stored and repossess the Goods.

7.5. You shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of us, but if you do so all moneys owing by you to us shall (without limiting any other right or remedy of us) forthwith become due and payable.

### 8. Warranties and liability

8.1. Subject to the following provisions, we warrant that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for such periods as stated by the manufacturers of the Goods.

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

8.2.1. we shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by you;

8.2.2. we 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 our instructions (whether oral or in Writing), misuse or alteration or repair of the Goods without our approval;

8.2.3. we 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 us, in respect of which you shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to us.

8.3. Subject as expressly provided in these Terms, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.4. Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) your statutory rights are not affected by these Terms.

8.5. A claim by you which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by you) be rejected to us within seven days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and you do not notify us accordingly, you shall not be entitled to reject the Goods and we shall have no liability for such defect or failure, and you shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

8.6. Where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods or their failure to meet specification is notified to us in accordance with these Terms, we may replace the Goods (or the part in question) free of charge or, at our sole discretion, refund to you the price of the Goods (or a proportionate part of the price), in which case we shall have no further liability to you.

8.7. Except in respect of death or personal injury caused by our negligence, or liability for defective products under the Consumer Protection Act 1987, we shall not be liable to you by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of us, our employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use or resale by you, and the entire liability of us under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Terms.

8.8. We shall not be liable to you or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of our obligations in relation to the Goods, if the delay or failure was due to any cause beyond our reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond our reasonable control:

8.8.1. Act of God, explosion, flood, tempest, fire or accident;

8.8.2. war or threat of war, sabotage, insurrection, civil disturbance or requisition;

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

8.8.4. import or export regulations or embargoes;

8.8.5. strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of ours or of a third party);

8.8.6. difficulties in obtaining raw materials, labour, fuel, parts or machinery;

8.8.7. power failure or breakdown in machinery.

### 9. Insolvency of you

9.1. This clause 10 applies if:

9.1.1. you make a voluntary arrangement with your creditors or (being an individual or firm) become bankrupt or (being a company) becomes subject to an administration order or go into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

9.1.2. an encumbrance takes possession, or a receiver is appointed, of any of your property or assets; or

9.1.3. you cease, or threaten to cease, to carry on business; or

9.1.4. we reasonably apprehend that any of the events mentioned above is about to occur in relation to you and notify you accordingly.

9.2. If this clause applies then, without limiting any other right or remedy available to us, we may cancel the Contract or suspend any further deliveries under the Contract without any liability to you, 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. Distance Selling Regulations

10.1. The Consumer Protection (Distance Selling) Regulations 2000 may apply to the Contract if you are a consumer and the Contract was concluded by 'distance' (ie; not in person). The Regulations do not apply if you are a business or if the Contract was not concluded by 'distance' as defined within the Regulations.

10.2. If the Regulations apply to the Contract you are entitled to withdraw from the Contract at any time before the Goods are delivered or within 7 working days from delivery of the Goods and to a full credit or refund less any applicable delivery charges. The Goods must be unused

and 'as new' with its original box and packaging including all manuals and accessories. If you have opened the box to examine the Goods you must have done so without damaging or marking the product or packaging. The Goods must not have been used or assembled. You have a duty of care whilst the Goods are in your possession and as such we advise you to

return the Equipment with its original packaging to ensure it is not damaged during transit to us.

Goods received back incomplete or in a damaged or used condition will either be returned to

you and the cost of delivery charged to your account or we reserve the right to levy a surcharge on such returned goods at a minimum 15 of the invoice price. You must notify us within 7 days

from date of delivery and we will issue you with a Returns Authorisation Number. The Returns

Authorisation Number will be valid for 14 days and it will be your responsibility to return the Goods to us at your own cost and risk.

### 11. General

11.1. A notice required or permitted to be given by either party to the other under these Terms

shall be in Writing addressed to that other party at its registered office or principal 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.

11.2. No waiver by us of any breach of the Contract by you shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.3. If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.

11.4. The provisions of the Contracts (Rights of Third Parties Act) 1999 shall not apply to this Contract and a person who is not a party to this Contract shall have no right under that Act to enforce any term of the Contract.

11.5. The Contract shall be governed by the laws of England, and you agree to submit to the non-exclusive jurisdiction of the English courts.

Copyright