

# CONDITIONS OF SALE

- 1 Interpretation
- 1.1 In these Conditions:
  - 'BUYER' means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller
  - 'GOODS' means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply under with these Conditions
  - 'SELLER' means UNISTO LIMITED (registered in ENGLAND under number 333367)
  - 'CONDITIONS' means these standard terms and conditions.
  - 'CONTRACT' means the contract for the purchase and sale of the Goods
  - 'WRITING' includes telex, cable, facsimile transmission and comparable means of communication.
- 1.2 Any reference in these Conditions to any statute shall be construed as a reference to that statute as amended, re-enacted or extended.
- 1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.
- 2 Basis of sale
- 2.1 The Seller sells and the Buyer purchases the Goods in accordance with any written quotation of the Seller, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions. The Seller reserves the right to revoke any quotation at any time before written acceptance by the Buyer.
- 2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.
- 2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which have not been confirmed in writing.
- 2.4 Any advice given by the Seller to the Buyer 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.
- 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 the Seller shall be subject to correction without any liability on the part of the Seller.
- 3 Orders and specifications
- 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until accepted in Writing by the Seller.
- 3.2 The Buyer shall be responsible for ensuring the accuracy of the terms of any order (including any applicable specification), 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.
- 3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation or the Buyer's order (if accepted by the Seller).
- 3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with the specifications or directions submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.
- 3.5 The Seller reserves the right to make any changes in the specification of the Goods which do not materially adversely affect their performance or which are required to conform with any applicable statutory or EC requirements.
- 3.6 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 loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.
- 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 then current published price list at the date of acceptance of the order. Where the Goods are supplied for export from the United Kingdom, the Seller's published or quoted export price list shall apply unless revoked, cancelled or varied by the Seller prior to acceptance by the Buyer. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.
- 4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond its, (e.g. any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, freight haulage, insurance, materials or other costs of manufacture, any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions).
- 4.3 Except as otherwise stated in any quotation or price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance and the Seller reserves the right to make an extra charge should expedited delivery be required.
- 4.4 The price is exclusive of any VAT.
- 4.5 The cost of pallets and returnable containers if any will be charged to the Buyer in addition to the price of the Goods.
- 5 Terms of payment
- 5.1 Subject to any special terms agreed in Writing the Seller shall invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 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 30 days of the date of the Seller's invoice or delivery if earlier, and the Seller 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 Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued 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:
  - 5.3.1 cancel the contract or suspend any further deliveries to the Buyer;
  - 5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
  - 5.3.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 2.5 per cent per annum above Barclays Bank 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).
- 5.4 All payments must be made in pounds sterling free and clear of all deductions, withholding for tax or set-off.
- 5.5 Where payment is for an export order payment must be made by direct transfer to the Seller's account.
- 6 Delivery
- 6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place and the Buyer should inspect the Goods upon delivery.
- 6.2 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. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.3 Where delivery of the Goods is to be made by the Seller in bulk, the Seller reserves the right to deliver up to 10 per cent more or 10 per cent less than the quantity ordered subject to an appropriate adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered.
- 6.4 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 these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.5 If the Seller fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly held liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 6.6 If work is suspended or delayed at the request of the Buyer for a period of 30 days or more then the Seller will be entitled to payment for work already carried out and materials specially ordered.
- 6.7 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
  - 6.7.1 store the Goods until actual delivery and charge the Buyer 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 the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
  - 6.7.3 if the Seller is unable to sell the Goods the Buyer shall be liable for the full price quoted by the Seller for the Goods together with all costs and expenses arising from the Buyer failing to take delivery.
- 7 Risk and property
- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
  - 7.1.1 if Goods are to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
  - 7.1.2 if of Goods are to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due. In the event of non-payment of any invoice by the Buyer the Seller or its agent shall be entitled to enter upon the premises of the Buyer to recover the Goods to the value of the unpaid invoice(s) and the Buyer consents to such re-entry.
- 7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property, but shall be entitled to resell or use the Goods in the ordinary course of its business in which case the proceeds of sale shall be held on trust for the account of the Seller and be paid to the Seller within seven days of sale or usage.
- 7.4 The Buyer 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 the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 8 Warranties and liability
- 8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 1 month.
- 8.2 The above warranty is given by the Seller subject to the following conditions:
  - 8.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
  - 8.2.2 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 Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;
  - 8.2.3 the Seller 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 the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer of the Seller.
- 8.3 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1994), 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 the statutory rights of the Buyer are not affected by these Conditions.
- 8.5 Any claim by the Buyer 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 the Buyer) be notified to the Seller within 7 days from the date of delivery or the date that the Goods were tendered for delivery. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.6 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their 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.
- 8.7 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 (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 any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions.
- 8.8 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. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's 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 the Seller 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 Indemnity
- If any claim is made against the Seller that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then where the claim arises from the use of any drawing, design or specification supplied by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with the claim, or paid or agreed to be paid by the Seller in settlement of the claim.
- 10 Insolvency of buyer
- 10.1 This clause applies if:
  - 10.1.1 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
  - 10.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
  - 10.1.3 the Buyer ceases, or threatens to cease, to carry on business;or
- 10.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 10.2 If 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 or ordered or manufactured but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary. The Seller shall be further entitled to enter onto the premises of the Buyer to repossess the Goods delivered but not yet paid for.
- 11 General
- 11.1 Any notice required or permitted to be given by either party to the other under these Conditions 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 the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 11.4 Any dispute arising under or in connection with these Conditions or the sale of the Goods shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of The Law Society.
- 11.5 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.