

# Terms & Conditions

## **1. General**

a) In these Conditions:

i) “the Seller” means CB Imports Ltd.

ii) “the Buyer” means the person submitting an order for the purchase of goods from the Seller (or where such person acts as agent for another, that person and the principal jointly and severally).

iii) “the Contract” means the contract for the sale and purchase of the goods (in which these conditions apply).

b) These General Conditions shall, (unless or except to extent the Seller otherwise agrees in writing) apply to all tenders, offers, quotation, acceptances, deliveries and agreements relating to sale of goods by the Seller and the Buyer shall be deemed to assent thereto.

c) Each order is subject to these General Conditions of Sale (in so far as not inconsistent with any special terms agreed between the Seller and the Buyer) to which the Buyer shall be deemed to assent.

d) No other conditions or modifications of these conditions shall be binding on the Seller unless the Seller agrees thereto in writing and the Seller shall not be deemed to accept such other conditions nor to waive any of these Conditions by failing to object to provisions contained in any purchase order or other communication from the Buyer.

e) No representative, agent or salesman who is not a director of the Seller has any authority to amend or waive any of these conditions or other provisions of the contract.

## **2. Prices**

a) Unless otherwise agreed in writing the price payable by the Buyer, for each order, shall be the Seller’s price ruling at the date of dispatch of the goods, to which VAT shall be added at the appropriate rate.

b) All prices are subject to change without prior notice at any time following the date on an order and before goods are dispatched for delivery.

c) Unless otherwise agreed, packaging, transport and delivery will be charged extra at the Seller’s then current rate for the same.

## **3. Payment**

a) Unless otherwise agreed by the Seller, or where a monthly payment account has been opened in the name of the Buyer, the price of goods shall be payable upon the submission of an order, and, for the avoidance of doubt, the Seller shall not be deemed to have accepted an order until it has received from the Buyer the price (including VAT) payable for the goods.

b) The Seller reserves the right at any time before proceeding or proceeding further with an order to demand full or partial payment under the contract or of any moneys due and payable between the Seller and the Buyer.

c) If the Buyer defaults in any payment the Seller, may, in addition to exercising the right contained in condition 3(B) suspend work under the contract, delay or withhold delivery or cancel the contract or suspend work, delay or withhold delivery under or cancel any other contract with the Buyer and retain any payments on account already received under this or any other contract with the Buyer.

d) The Seller shall have a lien on all undelivered goods which the Buyer agrees to buy from the Seller for all moneys due from the Buyer to the Seller under this or any other contract between them and the Buyer shall have no right of set-off in respect of such moneys.

e) Payment of all sums due on the due date for payment shall be of the essence of the Contract.

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## **4. Delivery**

- a) Time is not of essence of the contract and any time or date specified by the Seller as time at which or date on which goods will be despatched or delivered (or as case may be made available for collection) is given and intended as an estimate only and the Seller shall not be liable for any loss, damage or expense howsoever arising from delay in delivery.
- b) The Buyer shall at request of the Seller supply the Seller with details necessary to allow the Seller to make delivery and shall accept delivery whenever the Seller proffers delivery. If the Buyer does not comply with the foregoing it shall not be entitled to withhold any payment and shall indemnify the Seller against any consequential loss, damage or expense and the Seller may enforce its remedies for payment and may (if it so wishes) cancel intended delivery and sell the goods to which such intended delivery related without prejudice to its right to claim damages in respect of such breach of contract or may store goods at the Buyer's risk in a place of its choosing at the cost of the Buyer and delivery by the Seller of a deposit receipt or other evidence of storage to the Buyer shall be deemed to be delivery of goods.
- c) The Seller reserves the right to make delivery by installments, and the period during which delivery by installments may be made and the quantity of goods delivered in each installment shall be in the Seller's discretion.
- d) Notwithstanding any express agreement as to the date of delivery the Seller shall be entitled to postpone or cancel delivery in whole or in part when it is delayed in or prevented from making or obtaining any goods or materials or parts or components or services therefore or making delivery thereof by any cause beyond the Seller's control. During any of the foregoing events the Seller's obligations shall be suspended until such events cease or until the Seller cancels delivery (as the case may be) and the Seller shall not be required to obtain elsewhere in the market goods with which to replace or permit it to produce goods delivery of which has been postponed or cancelled as a result of any of said events. In event of cancellation, the Seller shall be paid pro rata for goods delivered or work done to the date of cancellation.
- e) The Buyer shall be solely responsible for the proper unloading of goods. If, to assist the Buyer to remove the goods from point of delivery, the Seller or any sub-contractor does any loading or unloading of goods free of charge, no liability whatsoever shall thereby be incurred by the Seller or subcontractor and the Buyer shall indemnify the Seller in respect of thereof.

## **5. Risk**

- a) Risk in the goods shall pass to the Buyer when the goods are delivered to the Buyer. Delivery to a carrier or to any person firm or company on the Buyer's behalf shall constitute delivery to the Buyer.

## **6. Title to Goods**

- a) Notwithstanding delivery and the passing of risk in the goods, or any other provisions of these conditions, the property in the goods shall not pass to the Buyer until the Seller has received in cash or cleared sums payment in full of the price of the goods and all other goods agreed to be sold by the Seller to the Buyer, together with any interest or other sums payable under the relevant contract in respect of the goods and such other goods.
- b) The Buyer may, while not in default in terms of Clause 11 below, sell goods notwithstanding the Seller's title.
- c) Any sale by the Buyer of goods owned by the Seller shall, as between the Buyer and

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person to whom the Buyer sells, be made by the Buyer as principal, but the proceeds of sale shall belong to the Seller to extent that the Buyer has not paid the Seller for such goods until such payment has been made, and until such time the proceeds shall be held by the Buyer in a fiduciary capacity on behalf of the Seller and shall be kept in a separate account without prejudice to the Seller's rights to trace same if the Buyer fails to keep the proceeds separate as aforesaid.

d) The Buyer will, if the Seller so requires, assign to the Seller free of charge the Buyer's rights to unpaid resale proceeds of the Seller's goods.

e) Pending delivery of goods owned by the Seller pursuant to a resale authorised by this Condition, the Buyer shall store the same on its property in such a way as to keep them clearly identified as being the property of the Seller and will take such care of them (including effecting all proper insurance) as a careful businessman would take of his own property.

f) The Seller may while owner of the goods (and without prejudice to any other rights it may have under or by virtue of the contract) demand the immediate return of the goods at any time and the Buyer shall forthwith comply with such demand and bear the expense of such return. The Seller will not exercise such right without giving 3 days prior written notice unless the Buyer fails to pay for the goods in whole or in part on the due date or if before the due date any of the events referred to in Clause 13 below occurs.

g) If the Buyer fails forthwith to return goods so demanded the Seller may enter on the Buyer's premises for the purpose of removing the goods (the cost of doing which shall be borne by the Buyer) or may sell or otherwise deal with the goods.

h) The Buyer hereby grants licence to the Seller and its successors in title to goods, their respective employees and agents to enter on to the Buyer's premises for the purpose of removing the goods and where goods are on premises other than the Buyer's own the Buyer shall use its best endeavours to procure such licence from the appropriate person. The Buyer will give any assistance required by the Seller to register the Seller's right to entry and will pay reasonable costs and expenses incurred by the Seller in effecting any such registration.

i) The foregoing rights of the Seller are in addition to and in lieu of any other rights it may have at common law or by statute including the right to payment for goods and the right to recover goods.

j) Each right or obligation contained in this Clause 6 or any other provision of the Contract (or of these conditions) shall be construed as a separate right or obligation or provision and if any of the rights or obligations set out in this clause or any other provision of the Contract (or of these conditions) is held by any competent authority to be invalid or unenforceable in whole or in part for any reason including lack of registration then the validity of the other rights and obligations set out in this clause or the other provisions of the Contract (or of these conditions) shall be unaffected and the remaining rights and obligations and other provisions shall construe in full force and effect and shall bind the Buyer.

## **7. Warranty of Seller**

a) Each of the Seller and the Buyer shall be regarded as having received no representation made by or on behalf of the other of them before the contract was entered into which in any way induced it to enter into the contract, but this shall not apply to any representation recorded in a quotation or order or acknowledgement of it.

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b) The Seller warrants that it has the right to sell the goods and that the goods are free from any charge or encumbrance unknown to the Buyer.

c) Subject to the application of Clause 8 below the Seller will, in its absolute discretion, replace repair or rectify the goods or take back the goods and refund or credit the Buyer with the cost thereof provided:

i) any defect appears within 3 days of delivery and the Buyer notifies the Seller in writing within 7 days of discovering the defect and giving full details thereof; and

ii) the Seller is satisfied that the goods are defective as result of a defect in materials or workmanship or are otherwise not in accordance with the contract; and

iii) the Seller is satisfied that no-one other than the Seller has so dealt or tampered with the goods as to contribute to their defectiveness and that the goods have been properly used, handled, maintained and stored and have not been used whilst allegedly defective or otherwise not in accordance with the contract or order.

d) Where the Seller performs its obligations under this Clause the Buyer shall not be entitled to any claim in respect of the goods, or for work done thereon, transport costs, loss of profit, damage to property not the subject matter of the contract, or otherwise (save where death or personal injury has been caused by the Seller's negligence) nor shall the Buyer be entitled to treat delivery thereof as a ground for repudiating the contract failing to pay for the goods or cancelling further deliveries.

## **8. Limitation of the Seller's Liability**

a) Except as provided in these conditions or otherwise agreed by the Seller in writing and except where death or personal injury has been caused by the Seller's negligence no warranty, condition, representation, undertaking or obligation express or implied imposed by statute, common law, custom, course of dealing or otherwise on the part of the Seller shall apply in respect of the goods.

b) The Buyer shall in no circumstances, save for death or personal injury caused by the Seller's negligence, be entitled to recover from the Seller damages for breach of a contract of which these Conditions form part for negligence or otherwise arising exceeding price of goods paid by the Buyer under such contract.

## **9. Indemnity by the Buyer**

a) The Buyer undertakes to indemnify to Seller against all claims relating to or arising from goods sold to the Buyer by the Seller in respect of any loss, damage or expenses sustained by any third party howsoever caused save for death or personal injury caused by the Seller's negligence.

## **10. Trade marks, patents and other industrial rights**

a) The Buyer shall have no right to apply to goods any trade mark owned or used by the Seller.

b) If any claim is made against the Buyer alleging that goods infringe any patent rights, registered designs, copyright or other industrial property rights of another then:

i) the Buyer shall forthwith notify the Seller with full particulars, and

ii) the Seller or its suppliers or licensors {as the case may be} shall be at liberty at their expense to conduct all negotiations and/or litigation in respect thereof and (if necessary) in name of the Buyer and if as a result of such negotiations or litigation the Buyer shall be unable to use the goods substantially for the purpose for which they were bought the Seller shall (except where sub-clause (c) below applies) take them back and refund the price thereof to the Buyer and such refund shall be in full satisfaction of all claims by the Buyer

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against the Seller.

c) The Buyer shall indemnify the Seller against all actions costs (including the cost of defending legal proceedings) expenses claims proceedings and demands in respect of any infringement or alleged infringement by the Seller of patent rights registered design copyright or other industrial rights attributable to the Seller complying with any special instructions from or requirements of the Buyer relating to the goods.

## **11. Default by the Buyer**

If the Buyer defaults in or commits any breach of any of its obligations to the Seller or ceases to carry on its business or a substantial part thereof, or if any distress or execution is levied on any of the Buyer's property, or if the Buyer makes or offers to make any arrangement or composition with its creditors or commits any act or bankruptcy, or if any resolution or petition to wind up the Buyer's business is passed or presented, or a Receiver appointed of the Buyer's undertaking, property or assets or any material part thereof, then such event shall be deemed to constitute a breach of contract by the Buyer and the Seller shall be entitled forthwith to terminate this and any other contract with the Buyer and on written notice of such termination being posted by it to the Buyer's last known address this contract (and if the notice so states every other contract subsisting between the Seller and the Buyer or such contracts as are specified in such notice) shall be terminated and all the Seller's unpaid invoices to the Buyer shall be immediately due for payment but without prejudice to any claim or right which the Seller might otherwise make or exercise or have against the Buyer.

## **12. Notices**

Any notice given hereunder must be in writing and may be effected by personal delivery, telex or by registered mail postage and if effected by telex shall be deemed to be received on the day of sending and if effected by post shall be deemed to be received 48 hours after the date of posting.

## **13. No assignment**

The Contract of which these conditions form part shall be personal to the Buyer and shall not nor shall any rights under it be assigned by the Buyer without the written consent of the Seller. The Contract (and these conditions) shall be governed and construed in accordance with the laws of England and the Buyer for the benefit of the Seller hereby submits to the non-exclusive jurisdiction of the English Courts.