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## **Terms and Conditions**

### **INTERPRETATION**

1.1 In these Conditions, the following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Conditions:** the terms and conditions set out in this document as amended from time to time.

**Contract:** the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

**Customer:** the person or firm who purchases the Goods from the Supplier.

**Goods:** the goods (or any part of them) set out in the Order.

**Order:** the Customer's order for the Goods, as set out in the Customer's purchase order form.

**Premises:** the address given by the Customer to the Supplier for the purposes of delivery of the Goods.

**Specification:** any specification for the Goods, including any related plans and drawings, that is agreed by the Customer and the Supplier.

**Supplier:** Cliffe Packaging Limited (registered in England and Wales with company number 04829354).

### **OFFER AND ACCEPTANCE**

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

2.5 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 5 Business Days from its date of issue.

### **TOLERANCES**

3.1 All Goods delivered are subject to the normal trade tolerances, copies of which are available on request.

3.2 The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 10% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.

3.3 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

3.4 Subject to where it is agreed otherwise in the Specification, the Supplier shall (in its absolute discretion) elect whether to supply polythene bags end weld or side weld.

3.5 All Flexible Intermediate Bulk Containers (FIBC'S) shall be supplied on the basis of external dimension measurements, unless otherwise agreed in the Specification.

### **DELIVERY**

4.1 The supplier undertakes to use its best endeavours to execute orders and to effect delivery in reasonable time and by the dates quoted, but shall not be liable for failure to execute any order or complete any delivery on any given date within any given time, and will not be responsible for any loss

or damage which may result from late delivery. The Goods may be delivered by the supplier in advance of the quoted delivery date.

**4.2** Should the Supplier be unable to supply Goods due to circumstances outside the control of the Company, the Supplier reserves the right to cancel or suspend the contract without incurring any liability for any loss or damage arising there from.

**4.3** If the Contract provides for delivery by instalments, delay in delivery or non-delivery of any instalment shall not entitle the Customer to treat the contract as at an end, or to reject any other instalments.

**4.4** The Supplier shall not be liable for any delay in delivery of the Goods that is caused by the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

**4.5** Delivery of the Goods shall be completed on the earlier of their being made available to a third party carrier for onward transportation to the Customer's Premises and actual delivery of the Goods to the Premises.

**4.6** Risk in the Goods shall pass to the Customer immediately upon delivery in accordance with clause

### **QUALITY**

**5.1** The Supplier warrants that on delivery, and for a period of three months from the date of delivery (warranty period), the Goods shall:

- (a) conform in all material respects with their description and any applicable Specification;
- (b) be free from material defects in design, material and workmanship; and
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (d) be fit for any purpose held out by the Supplier.

**5.2** Subject to clause 5.3, if:

- (a) the Customer gives notice in writing to the Supplier during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
  - (b) the Supplier is given a reasonable opportunity of examining such Goods; and
  - (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,
- the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

**5.3** The Supplier shall not be liable for Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

**5.4** Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

**5.5** The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

**5.6** In respect of Goods that do not comply with the warranty set out in clause 5.1 upon delivery to the Premises, the Supplier shall only replace these if the Customer gives notice in writing of the relevant defects: (a) in the case of a defect that is apparent on normal visual inspection, within 5 Business Days of delivery; and (b) in the case of a latent defect, within a reasonable time of the latent defect having become apparent. If the Customer has not given notice of any defects in the Goods within the relevant time period, it shall be deemed to have accepted the Goods.

### **LIABILITY**

**6.1** Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) defective products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

6.2 Subject to clause 6.1:

(a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

(b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the purchase price paid for the Goods.

### **RETENTION OF TITLE**

7.1 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:

- (a) the Goods; and
- (b) any other goods or services that the Supplier has supplied to the Customer.

7.2 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) hold the Goods on a fiduciary basis as the Supplier's bailee;
- (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (e) notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.8; and
- (f) give the Supplier such information relating to the Goods as the Supplier may require from time to time,

but the Customer may resell or use the Goods in the ordinary course of its business.

7.3 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.8, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

### **PAYMENT**

8.1 Payment to the Supplier must be in full within 30 days of the end of the month of the date of invoice.

8.2 Payments by cheque will not be deemed to constitute payment unless the cheque is cleared upon the first presentation.

8.3 All monies due to be paid by the Customer to the Supplier will be made in full on the due date without any deduction or set off whatsoever.

8.4 Time for payment is of the essence and non-payment on the due date is a repudiatory breach.

8.5 Interest will be charged at 8 % per month on overdue sums (both before and after judgement).

8.6 The provision of credit account facilities is at the Supplier's sole discretion and credit account facilities will be withdrawn from the Customer when any account is overdue by more than 30 days.

8.7 If the Customer becomes subject to any of the events listed in clause 8.8, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

8.8 For the purposes of clause 8.7, the relevant events are:

- (a) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (d) (being an individual) the Customer is the subject of a bankruptcy petition or order;
- (e) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (f) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- (g) (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.8(a) to clause 8.8(h) (inclusive); and
- (j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business.

8.9 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## **GENERAL**

9.1 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

9.2 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.

9.3 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

9.4 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

9.5 A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

9.6 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.