

## TERMS AND CONDITIONS OF SALE

### 1. DEFINITIONS

These are the only ("Conditions") upon which Beaverpark Ltd ("Seller") (registered office Premier Business Park, Westfields Trading Estate, Hereford, HR4 9NZ, registration number 3667694) will trade with the buyer.

Within these conditions the following item meanings are as follows

**"Account application form"** means the form completed by the buyer requesting credit from the seller;

**"the buyer"** means the person, firm or company to be supplied with goods in accordance to the contract;

**"the contract"** means the contract between the seller and buyer for the sale and purchase of the goods and includes these conditions, the order, the sellers customer returns policy and account application form;

**"the goods"** means the goods to be supplied by the seller to the buyer pursuant to the contract;

**"the order"** means the offer from the buyer to the seller to purchase the goods in accordance with these conditions;

**"the sellers customer returns policy"** means the seller's returns policy or policies for the goods as may be published from time to time;

**"the services"** means the services to be supplied by the seller to the buyer pursuant to the contract;

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**"working day"** means any day from Monday to Friday inclusive. Excluding United Kingdom Bank Holidays.

### 2. GENERAL

2.1 These conditions govern the contract to the entire exclusion of any other express or implied conditions and they may be varied only by the agreement in writing of the seller and buyer.

2.2 The buyer accepts that in entering into the contract it has not relied upon and prior promises, representations or undertakings of the seller or any of the seller's employees or agents nor any documents not expressly included in the definition of contract set out in these conditions.

2.3 Any advice or recommendation given by the seller or its employees or agents as to the storage, supply 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 and accordingly the seller shall not be liable for any such advice or recommendation which is not so confirmed

2.4 Any typographical, clerical or other error or omission in any sales literature, quotation,

price list, acceptance of offer, invoice, order acknowledgement or other document or information issued by the seller (including electronic communications) shall be subject to correction without any liability, either in contract, tort or otherwise on the part of the seller.

2.5 The buyer shall be responsible for ensuring the accuracy of the terms of the order submitted by the buyer, and for giving the seller any necessary information relating to the goods within sufficient time to enable the seller to fulfil the order in accordance with these conditions.

2.6 Acceptance of any order shall be deemed to be made by the seller upon the first of: issue of any invoice to the buyer in respect of the goods or receipt by the buyer of the order acknowledgement (if applicable); or upon delivery of the goods to the buyer

2.7 The buyer may not withdraw or cancel any order or a contract at any time without the written approval of the seller.

2.8 In the event of a conflict between these conditions and any other documents forming part of the contract then these conditions will prevail.

### 3. PRICE

3.1 The price of the goods shall be the same as the quoted price as agreed between the buyer and the seller and which may be confirmed in writing to the buyer or, where the price has not been quoted, the price listed upon purchase.

3.2 The price of the goods will not include carriage, unless otherwise stated

3.3 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 control, including but without limitation any increases in costs due to market fluctuations, 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.

3.4 Unless otherwise agreed in writing between the seller and the buyer, the price of the goods is exclusive of Value Added Tax or any similar taxes levies or duties which will be added to or charged on invoices at the appropriate rate.

### 4. PAYMENT

4.1 Payment by the buyer to the seller for the price of the goods is due at the time of purchase.

4.2 Payment is to be made in the currency specified at the time of purchase.

4.3 Goods will be despatched to the buyer by the seller, on completion of full payment by the buyer.

### 5. DELIVERY AND RISK

5.1 Risk of damage or loss to the goods shall pass to the buyer at the time of delivery or, if the buyer wrongfully fails to take delivery of the goods, the time when the seller has tendered delivery of the goods.

5.2 The seller shall use reasonable endeavour to deliver the goods to the buyer within the period stated. And where not stated within a reasonable period after a receipt of the order by the seller (unless otherwise agreed in writing by the buyer and seller) but time of delivery shall not be of the essence.

5.3 Unless otherwise agreed in writing, delivery of the goods will be made or arranged by the seller, to the delivery address provided by the buyer.

5.4 The seller shall be entitled to supply the goods in instalments, due to reasons beyond the control of the seller.

5.5 Unattended deliveries, where requested by the buyer, shall be at the buyer's own risk except where the seller has been negligent in respect of that delivery.

### 6. WARRANTY AND LIMITATIONS OF LIABILITY

6.1 The seller warrants that the goods will be of satisfactory quality and fit for the purpose for which they were supplied.

6.2 Except as expressly provided in this agreement the seller excludes all representations, warranties, conditions and other terms implied by statute, common law, or otherwise to the fullest extent of the law. The seller will endeavour to pass on to the buyer the benefit of any guarantees or indemnities given to it for them by its supplier.

6.3 If, notwithstanding the above, the seller is found liable for any loss or damage suffered by the buyer, its aggregate liability shall in no event exceed the price of the goods the subject of the claim and, without prejudice to the above, shall not be liable for any indirect, special or consequential loss, losses sustained in the ordinary course of business, loss of profit, loss of business, depletion of goodwill, loss of business opportunity, revenue, contracts or loss of savings whatsoever.

6.4 Nothing in these conditions shall apply to exclude or limit any liability to the buyer in respect of:

6.4.1 fraud, fraudulent misrepresentations; or

6.4.2 death or personal injury of the buyer caused by the seller's negligence; or

6.4.3 the terms as to title and quiet possession implied by section 12 of the sale

of goods act 1979 or section 2 of the supply of goods and services act 1982; or

6.4.4 liability for the defective products under the consumer protection act 1987; or

6.4.5 the terms as to goods corresponding with their description or sample implied by section 13 and section 15 respectively of the sale of goods act 1979 where the buyer deals as a consumer (as defined in section 12 of the unfair contract terms act 1977)

## **7. OVER/SHORT/NON-DELIVERY**

7.1 If the quantity of the goods delivered is more than that agreed by the seller and the buyer, the buyer shall not be entitled to reject the delivery, but the seller will collect such excess goods from the buyer's premises (or from such address as is reasonably specified by the buyer).

7.2 If the quantity of the goods delivered is less than that agreed by the seller and the buyer, the buyer shall be entitled to reject the delivery, but shall be entitled only to a further delivery of goods, to make up the deficiency, or (at the seller's option) a refund by the way of a credit note of the appropriate part of the purchase price.

7.3 The buyer shall however have no entitlement whatsoever in respect of such non-delivery/over-delivery/short-delivery:

7.3.1 Unless such claim is made (by post, facsimile, e-mail or by telephone) to the seller's sales office by the close of business on the first working day following the day of purported delivery. If the claim is made by telephone, the buyer should note both the name of the person spoken to and any acknowledgement reference given. Any claim made by telephone should be confirmed in writing to the seller by the close of business on the fifth working day following the day of purported delivery; or

7.3.2 unless the buyer:

7.3.2.1 notifies the carrier in writing of any such over delivery, short delivery or non-delivery; and

7.3.2.2 enters a note of the same upon the carrier's receipt (except in the case of non-delivery).

If by reason of the failure of the buyer to give such notice the seller is prevented from successfully claiming against the carrier for such over delivery, short delivery or non-delivery, the rights of the buyer under this condition shall not apply and the buyer shall be liable to pay full price for all goods which are subject of the contract

## **8.1 RETURNS**

The seller has the discretion (which it may exercise as it wishes) to accept the return of any of the goods supplied but not required by the buyer (upon such terms in respect of a handling charge or otherwise as the seller may choose) and to issue a credit note or a

monetary refund where agreed by the supplier. In such case, the supplier holds the right to withhold, the refund until the buyer has returned the goods and has been received, inspected and deemed to be in acceptable return condition.

8.1 The buyer must notify the seller within 7 working days of delivery of the receipt of goods.

8.2 Such goods will only be accepted by the supplier in their original packaging and be in a re-saleable condition.

## **9. CLAIMS PROCEDURE IN RESPECT OF DEFECTIVE GOODS**

9.1 The seller's customer sales office or services office must be notified of any claim in respect of any of the goods alleged to be defective by post, facsimile, e-mail or by telephone specifying the reason giving rise to such claim or return. Notification must be made within the time limits noted below

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9.1.1 where a product has a manufacturing fault or a part missing or there is some other problem totally attributable to the manufacturer – within 5 working days;

9.1.2 where a product has been damaged by the seller or in delivery of the product – within 5 working days; Where such a claim or request is made by telephone it will only be considered by the seller if it is confirmed in writing by the buyer within a further three working days. Where the buyer makes such a claim or request by telephone it is advised to note the name of the person spoken to and any acknowledgement reference.

9.2 The seller will only consider such a claim in respect of any goods if the following information is provided:

9.2.1 the invoice number of and/ or the advice note in respect of the goods;

9.2.2 the part number of the item (or any description that clearly identifies the item to returned);

9.2.3 the quantity of the goods (expressed in the seller's correct unit of sale) the subject of the claim; and

9.2.4 the reason for the claim

9.3 In addition, where it is alleged by the buyer that any of the goods are defective due to damage occasioned to them, the buyer shall notify the carrier in writing of such damage and notify the seller within three working days time.

If by reason of the failure of the buyer to give any such notice, the seller is prevented from successfully claiming against the carrier for such damage, the buyer shall be liable to pay for the goods as though no such damage occurred.

9.4 Where the buyer could not have discovered the subject of the claim within the time limits set out in condition 9.1, then the buyer must notify the seller within a reasonable time of the discovery of the potential claim.

## **10.1 FORCE MAJEURE**

The seller shall have the right to cancel, or to reduce the volume of the goods delivered, or to delay delivery if it is prevented from or hindered in delivery of the goods 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 there from.

## **11.1 WAIVER**

The failure of either to enforce or to exercise at any time or for any period of time, any term of or any right arising pursuant to these conditions does not constitute and shall not be construed as a waiver of such term or right and shall in no way affect either party's later to enforce or exercise it. Any express waiver of any breach of these conditions shall not be deemed to be a waiver of any subsequent breach.

## **12. SEVERABILITY**

The invalidity or unenforceability of any term of, any right arising pursuant to, the contract shall not in any way affect the remaining terms or rights which shall be construed as if such invalid or unenforceable term or right did not exist.

## **13. ASSIGNMENT**

The contract is personal to the buyer and the seller and neither party may assign, transfer, sub-contract or any right or obligation under it without the other party's prior written consent.

## **14. THIRD PARTY RIGHTS**

A person who is not a party to the contract is not entitled to enforce any of its terms under the contracts (Rights of third Parties) Act 1999 except where the contract expressly provides that such a person is entitled to enforce any of its terms under that act

## **15. DATA PROTECTION**

The buyer acknowledges that the seller is a data controller for the purposes of the Data Protection Act 1998 and may be required to process personal data in connection with the entering into, performance or enforcement of the contract. The buyer in entering into the contract consents to the seller processing personal data concerning the buyer and agrees that the seller may use such data to inform the buyer of future products and services, by way of mailing, electronic mail & facsimile.

## **16. LAWS AND REGULATIONS**

The buyer shall comply with all laws and regulations relating to and at its own expense obtain licences and permits necessary for the purchase, import, ownership and use of the goods. The buyer shall produce evidence of such consents to the seller on demand.

## **17. GOVERNING LAW**

These conditions and the contract shall be governed by and construed in accordance with English law and the seller and the buyer hereby submit to the exclusive jurisdiction of the English courts.