

James Patrick Partnership Ltd.

Terms and Conditions of Sale

1. INTERPRETATION

1.1 In these conditions the following words have the following meanings:

"Buyer" means the firm or company who purchases the Goods from the Company (including but not limited to its employees and agents) and shall not include any party who subsequently purchases the Goods from the Buyer;

"Company" means James Patrick Partnership Limited;

"Contract" means any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions;

"Delivery Point" means the place where delivery of the Goods is to take place under condition 4;

"Goods" means any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3 the Contract will be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, call-off form, specification or other document).

2.2 No terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, confirmation of order, call-off form, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing by the Company.

Nothing in these conditions will exclude or limit the Company's liability for fraudulent misrepresentation.

2.4 Any advice or recommendation given by the Company to the Buyer as to the storage application or use of the Goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Buyer's own risk and accordingly the Company shall not be liable.

2.5 Each order for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase Goods subject to these conditions.

2.6 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.

2.7 No order which has been accepted by the Company may be cancelled by the Buyer except by agreement in writing by the Company and in any such situation the Buyer shall indemnify the Company in full against all loss (including but not limited to loss of profit), costs (including but not limited to the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of the cancellation.

2.8 The Company reserves the right to reject any order by giving written notice thereof to the Buyer within 14 days of receipt of a purchase order and in the event of such rejection no liability whatsoever shall accrue to the Company.

2.9 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate and provided to the Company within a sufficient time to enable the Company to perform the Contract, in accordance with these conditions.

2.10 Any quotation is given on the basis that no contract will come into existence until the Company despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 28 days only from its date, provided that the Company has not previously withdrawn it. Any purchase order received by the Company outside of this time period may be accepted by the Company at its complete discretion and, if so accepted, shall be binding upon and enforceable against the Buyer.

2.11 In the event that the quotation is not accepted the Company shall be entitled to charge on a time basis for all drawings and specifications prepared for the Buyer (whether regarding design, layout or otherwise).

2.12 The Buyer must accept sole responsibility for any discrepancies which occur between the quantities or sizes of Goods agreed to be supplied by the Company, and the quantities or sizes needed by the Buyer to satisfy the particular purpose for which the Buyer requires the Goods. Any drawings or details of quantities supplied by the Company must be regarded as approximate representations only and shall be subject to verification by the Buyer and in the event of any alteration, modification or amendment thereto after quotation the Company reserves the right to alter modify or amend its quotation accordingly.

3. DESCRIPTION

3.1 The description of the Goods shall be as set out in the Company's quotation.

3.2 All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the goods described in them. They will not form part of this Contract including but not limited to any indication as to the size, thickness, density or other description of the Goods.

3.3 Any typographical, clerical, or other error or omission in any sales literature, quotation, price list, acknowledgement of order, invoice or other document or information issued by the Company shall be rectified by the Company as soon as reasonably possible after discovery and any such errors or omissions shall not be binding upon or enforceable against the Company nor permit the Buyer to vary the Contract in any way.

3.4 The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory requirements.

4. DELIVERY

4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Company's place of business.

4.2 The Buyer will take delivery of the Goods within 7 days of the Company giving it notice that the Goods are ready for delivery.

4.3 Any dates and times specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.

4.4 Subject to the other provisions of these conditions the Company will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, loss of profits, loss of business, depletion of goodwill and like loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor will any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.

4.5 If for any reason the Buyer will not accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

4.5.1 risk in the Goods will pass to the Buyer (including for loss or damage caused by the Company's negligence);

4.5.2 the Goods will be deemed to have been delivered; and

4.5.3 the Company may store the Goods until delivery whereupon the Buyer will be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.6 The Buyer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for unloading the Goods. Where the Delivery Point is a customer site, the Goods will be unloaded at the first point of hard standing at that customer site. Any unloading time in excess of one hour will be charged to the Customer at the Company's hourly charge rate.

4.7 The Company may deliver the Goods in instalments. Default by the Company, howsoever caused, in respect of one or more instalments shall not entitle the Buyer to terminate the Contract as a whole.

4.8 The Company shall use its reasonable endeavours to deliver the Goods ordered by the Buyer, but reserves the right, without giving the Buyer any prior notice, to supply alternative goods, provided that they are of a quality and standard equal to the Goods.

4.9 Unless the Buyer informs the Company before loading that alternative transport is required, the Company shall be entitled to deliver by large articulated lorry. The Company reserves the right to charge for redelivery where for any reason such transport is unable to gain access to the site and the Buyer has not requested an alternative transport.

5. NON-DELIVERY

5.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence).

6. RISK/TITLE

6.1 The risk in the Goods shall pass to the Buyer:

6.1.1 in the case of goods to be delivered at the Company's premises, at the time when the Company notifies the Buyer that the Goods are available for collection; or

6.1.2 in the case of goods to be delivered otherwise than at the Company's premises, at the time when the Goods are loaded onto the delivery vehicle.

6.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

6.2.1 the Goods; and

6.2.2 all other sums which are or which become due to the Company from the Buyer on any account.

6.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:

6.3.1 hold the Goods on a fiduciary basis as the Company's bailee;

6.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property,

6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.3.4 maintain the Goods in satisfactory condition and indemnify the Company against any loss or deterioration and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company;

6.3.5 hold the proceeds of the insurance referred to in condition 6.3.4 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account; and

6.3.6 deliver up the Goods to the Company forthwith on demand by the Company and/or allow the Company to enter its premises or those of any third party where the Goods are stored, to re-possess the Goods.

6.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

6.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value and the Buyer shall hold such part of the proceeds of sale as represent the amount owed by the Buyer to the Company on behalf of the Company and the Buyer shall account to the Company accordingly; and

6.4.2 any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

6.5 The Buyer's right to possession of the Goods shall terminate immediately if:

6.5.1 the Buyer, being a company, shall call any meeting of its creditors or have a receiver of all or any of its assets appointed or enter into liquidation or if it is insolvent or if, being an individual, he is insolvent or has a receiving order made against him; or

6.5.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or

6.5.3 the Buyer encumbers or in any way charges any of the Goods.

6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

6.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

7. PRICE

7.1 Subject to clause 7.3 and unless otherwise agreed by the Company in writing the price for the Goods shall be the price agreed and set out in writing on the acknowledgment of order.

7.2 The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to packing, loading, unloading and insurance of the Goods all of which amounts the Buyer will pay in addition when it is due to pay for the Goods, unless specifically stated otherwise.

7.3 The Company 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 Company which is due to any factor beyond the control of the Company, such as, without limitation, any foreign exchange fluctuation where the fluctuation exceeds 5%, currency regulation, alterations of duties, significant increases in the costs of labour, 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 the instructions of the Buyer, or failure of the Buyer to give the Company adequate information or instructions.

7.4 The cost of returnable pallets or other packing materials will be charged to the Buyer in addition to the price of the Goods. Full credit will be given to the Buyer if they are returned undamaged to the Company before the due date of payment.

8. PAYMENT

8.1 Payment of the price for the Goods shall be made in sterling and is due 30 days from the date of delivery of the Goods. Where the Goods are delivered to the Buyer in instalments, the Company shall invoice the Buyer for those instalments on a pro-rata basis.

8.2 Payment on or before the due date is of the essence of the Contract and a condition precedent for any future deliveries.

8.3 No payment shall be deemed to have been received until the Company has received cleared funds.

8.4 All payments payable to the Company under the Contract shall become due immediately upon termination of this Contract despite any other provision.

8.5 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

8.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract the Buyer will be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of Barclays Bank PLC, accruing on a daily basis until payment is made, whether before or after any judgment.

9. QUALITY

9.1 Should there be a defect in the Goods, which is not attributable to materials supplied by third parties or as a result of damage in transit, the Company may at its discretion either rectify the defect free of charge or replace the defective goods free of charge or allow to the Buyer a credit in the amount of the defective goods provided that:

9.1.1 the Buyer gives written notice of the defect to the Company, within seven days of delivery of the Goods; and

9.1.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there; and

9.1.3 the Buyer makes no further use of such Goods after giving such notice; and

9.1.4 the defect has not arisen because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade-practice; and

9.1.5 the Buyer does not alter or repair such Goods without the written consent of the Company.

9.2 If the Company does exercise its discretion in relation to condition 9.1 it shall have no further liability in respect of such Goods.

9.3 Where material or other property is supplied to the Company by the Buyer, or on behalf of the Buyer (whether owned by the Buyer or not), whether to be held or to be worked upon by the Company for the purposes of the contract, the Company accepts no responsibility for imperfect work caused by defects in, or the unsuitability of any material or property so supplied.

10. LIMITATION OF LIABILITY

10.1 The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

10.1.1 any breach of these conditions; and

10.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.

10.4 All goods are sold on the basis that the Buyer is neither a consumer nor deals as a consumer within the meaning of the Unfair Contract Terms Act 1977 and that the Buyer has satisfied itself as to the suitability of the Goods for the use or resale in accordance with its own specialist knowledge and skill.

10.5 Subject to condition 9.1:

10.5.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the contract price; and

10.5.2 the Company shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

10.6 The Company shall not be liable for any damage or loss which may arise from the fixing or installation of the Goods by the Buyer or any person on its behalf and such installation shall be carried out strictly in accordance with instructions of the Company.

10.7 The Buyer agrees to indemnify the Company against all claims relating to the Goods in respect of any loss, damage or expense sustained by any third party save only in respect of death or personal injury caused by the negligence of the Company or any of its employees or agents.

11. ASSIGNMENT

11.1 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

11.2 The Company may assign the Contract or any part of it to any person, firm or company.

12. FORCE MAJEURE

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion. Hood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials provided that, if the event in question continues for a continuous period in excess of 60 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

13. GENERAL

13.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

13.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

13.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

13.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

13.5 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

13.6 The Buyer shall keep confidential and not use all and any information supplied by the Company to the Buyer or disclosed to or obtained by it pursuant to or as a result of the Contract, and shall not divulge the same to any third party except to the extent that any such information is or becomes public through no fault of the Buyer, or disclosure of the same is required by law or by any other governmental or other regulatory body.

13.7 All drawings, documents and other information supplied by the Company are supplied on the express understanding that copyright and all other intellectual property is reserved to the Company and that the Buyer will not without the written consent of the Company either give away, loan, exhibit or sell any such drawings, documents or other information or extracts therefrom or copies thereof or use them in any way except in connection with Goods in respect of which they are issued. The Buyer shall indemnify the Company against all claims arising out of the manufacture of the Goods to the drawings or specifications of the Buyer where such drawings or specifications are at fault or where it is alleged that they involve the infringement of any patent, copyright, registered design or other third party right.

13.8 The Buyer shall be solely responsible for ensuring that all drawings, information, advice and recommendations given to the Company either directly or indirectly by the Buyer or by the Buyer's agents, consultants or advisers are accurate, correct and suitable. Examination or consideration by the Company of such drawings, information, advice or recommendations shall in no way limit the Buyer's responsibility hereunder.

13.9 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

13.10 The Company shall be entitled to sub-contract any work without the consent of the Buyer.

14. DEFAULT

14.1 Without prejudice to any other rights it may have the Company may by notice in writing to the Buyer terminate any Contract forthwith if: -

14.1.1 the Buyer shall commit any breach of any of the terms of any Contract with Company provided that if the breach is remediable the Company has given to the Buyer notice of such breach which has not been remedied within seven days thereafter; or

14.1.2 the Company reasonably believes the Buyer will not be able to pay the purchase price of the Goods; or

14.1.3 if the Buyer, being a company, shall call any meeting of its creditors or have a receiver of all or any of its assets appointed or enter into liquidation or if it is insolvent or if, being an individual, he is insolvent or has a receiving order made against him.

15. COMMUNICATIONS

15.1 All communications relating to the Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission.

15.2 Communications addressed to the Company should be sent to James Patrick Partnership Limited, 6 Hillcrest, Beighton Road, Acle, Norwich, NR13 3DA