

TERMS AND CONDITIONS

1. ACCEPTANCE

All orders are subject to acceptance and confirmation by the Company.

2. TERMS OF PAYMENT

- (a) All goods will be paid for by the Customer to the Company on or before the 20th of the month following supply, unless the Company has agreed in writing to a variation of such terms. All prices are exclusive of GST unless otherwise stated. Every attempt will be made to supply goods at the price listed, however, prices are subject to change without notice, and the price for any delivery shall be that ruling at the time of dispatch.
- (b) Should payment not be made on the due date we may charge interest at the rate of 20% per month on any overdue amount on a compounding basis. This is without prejudice to our rights and remedies in respect of Customer default in not making payment by due date. In charging interest the Company does not agree to an extension of the due date for payment and neither does the charging of interest constitute a forbearance to sue for or seek recovery of the overdue monies by any other legal process.
- (c) The Customer agrees to pay the Company the full amount of invoices without deduction whether by way of set-off, counterclaim or legal or other equitable claim whatsoever.
- (d) Any costs whatsoever incurred by the Company in the recovery of the monies due and/or the goods shall be payable by the Customer to the Company including but not exclusive to all solicitor client costs and collection charges incurred by the Company.
- (e) The Company hereby has the right to apply or appropriate any payment to any account of the Customer. Should the Customer have a number of accounts, then the Company is given the right to combine any account and also set-off any amount between accounts.

3. DELIVERY

- (a) All goods are delivered in accordance with the Carriage of Goods Act 1969.
- (b) It is agreed that delivery is deemed to have occurred by the Company issuing an invoice provided with the goods. No further proof of delivery can be raised by the Customer, unless the Company is notified in writing, forwarded to the Company's credit controller within two calendar months from the date of issue of the invoice.

4. RISK AND OWNERSHIP

- (a) Risk in the goods supplied by the Company to the Customer shall pass when the goods are delivered to the Customer or his agent subject to clause 4(b) herein. The goods shall be held at the Customer's risk upon delivery, at which time insurance shall become the Customer's responsibility.
- (b) The property in the goods shall not pass to the Customer until payment both in respect of the goods and all other debts and liabilities (together called "Liabilities") owed by the Customer to the Company at the date of delivery of the goods, has been received by the Company. The Company may appropriate all payments received from the Customer in payment for such goods and Liabilities as the Company determines.
- (c) Until the Liabilities have been fully discharged in accordance with the clause 4(b), the Company shall have the right to search for and retake possession of any such goods or the proceeds of the sale thereof, and for this purpose may enter, without notice, any premises occupied by the Customer or any other premises, acting as the Customers agent. The Customer hereby grants to the Company a license to enter the Customers premises or that of the Customer's agent for the purposes referred to herein. The Company shall have the right to make an inventory in respect of such goods and the Customer shall provide to the Company any records to enable the Company to effect a reconciliation of the goods still in the possession of the Customer.
- (d) The security interest in the goods created pursuant to clause 4(b) extends to the proceeds of any dealing with the goods in accordance with the Personal Property Securities Act ("the PPSA").
- (e) Subject to the following subclauses, notwithstanding the security interest in the goods created by the Customer in favour of the Company, the Customer is authorised by the Company, and undertakes that it will only sell the goods for full consideration in the ordinary course of its business.
 - (i) Any sale to an Associated Person (as defined in clause 10(b)) is not a sale in the ordinary course of business, and any such sale is expressly made subject to the security interest created by this clause.
 - (ii) Any purchase from an Associated Person of goods purchased by such Associated Person from the Company is not a sale in the ordinary course of business, and any such purchase is expressly made subject to any security interest that the Company may have in respect of such Associated Person, or if no security interest is held, such goods are held by the Customer subject to the security interest created by this clause 4.
- (f) Pursuant to s.109 of the PPSA, the Company may take possession of and sell the goods if the Customer is in default in payment or the goods are "at risk". In accordance with s.109 of the PPSA, goods are "at risk" if the Company has reasonable grounds to believe that the goods have been or will be destroyed, damaged, endangered, disassembled, removed, concealed or otherwise disposed of contrary to the provisions of these Terms and Conditions.
- (g) The Company reserves the right to dispose of the goods in whatever manner it deems fit, failing payment in full for all the goods supplied to the Customer being received in accordance with these terms. The Company shall not be liable for any damage, injury or loss sustained in respect of any recovery or resale of the goods including any sale at below market price.
- (h) The Customer acknowledges that the Company will register (and as appropriate register a renewal of) the security interest created by these Terms and Conditions in the Personal Property Securities Register established under the PPSA.
- (i) To the fullest extent permitted by law the Customer waives any rights it may have now or in the future to receive a copy of any verification statement or other confirmation related to these registration of the security interest as acknowledged in clause 4(h).
- (j) Upon the prospective insolvency or receivership of the Customer, including but not exclusive to the Customer ceasing or threatening to cease to carry on business or attempting to make any arrangement with creditors, or the issue of any s.289 Notice under the Companies Act 1993, then the Company shall immediately have all the rights and remedies referred to in these terms and in particular the terms referred to in Clauses 4(c) and 4(f) herein.
- (k) The Customer will keep the goods insured against fire, accident, theft and other risk as the Company may require in the names of the Company and the Customer for their respective rights and interests and providing for payment of policy proceeds to the Company as unpaid or partly paid until such time as payment in full is made for the goods and title has passed to the Customer.

5. CANCELLATION

Where the Customer's order has been accepted a contract for supply will be deemed to exist and no cancellation, addition, deletion, amendment or variation may be made except with the consent of the Company in writing.

6. CLAIMS

- (a) The liability of the Company whether in contract or in tort, or any other loss, damage or injury arising directly or indirectly from any defect or non-compliance of the goods supplied is limited to replacement of the goods or damages not exceeding the value of the defective or non-complying goods, at the option of the Company.
- (b) The Customer may reject non-conforming or defective goods only if rejection is notified in writing to the Company within fourteen (14) days of receipt of the goods and the goods are forthwith returned to the Company.

7. SEVERANCE

In the event that any one or more of the provisions set down shall be declared to be illegal or unenforceable under any law, rule or regulation, such illegality or unenforceability shall not affect the validity and enforceability of the other provisions.

8. PRIVACY ACT

The Customer and the Guarantors (if any) each authorise the Company to collect, store and use any personal information relating to the Customer or Guarantors for any purpose reasonably related to the processing of this application or the subsequent operation of this Agreement. The Customer and the Guarantors (if any) each have the right of access to, and may request correction of, personal information held by the company under this Agreement

9. CREDIT ENQUIRY CONSENT

I/We authorize irrevocably any person or company to provide you with such information as you may require in response to your credit enquiries. I/We further authorize you to furnish to any third party details of this application and any subsequent dealings that I/we may have with you as a result of this application being actioned by you.

10. CUSTOMERS

- (a) The "Customer" includes the Customer, or any person to whom the goods are invoiced and may include the entity or party who is the recipient of the goods including the Customer's agent or any person receiving or acknowledge receipt of the goods on its behalf.
- (b) For the purposes of these terms and conditions of sale, "Associated Person" means:
 - (i) a Related Company (as defined in the Companies Act 1993) of the Customer where the Customer is a company itself, or if not a company, any company which owns (directly or indirectly) more than 50% of the voting rights in the Customer or other securities referable to that Customer;
 - (ii) a person who owns (directly or indirectly) more than 50% of the voting rights in the Customer or other securities referable to that Customer; and/ or
 - (iii) any trust whereunder the Customer is a beneficiary, or its spouse or child is a beneficiary, or any entity whereunder any beneficial interest exists in favour of the Customer.
- (c) The Customer acknowledges that where any goods are purchased by an Associated Person from the Company, and the Associated Person has not entered in equivalent terms and conditions of sale directly with the Company, the obligations of the Associated Person shall also be the obligations of the Customer as if the Customer were the Associated Person and the Customer shall procure its Associated Person to fully comply with its obligations under these terms and conditions as if the Associated Person was a party to these terms and conditions.
- (d) The Customer guarantees to the Company the due and punctual observance and performance by its Associated Person of all of its liabilities and obligations whether contingent, prospective or actual under these terms and conditions and indemnifies and will keep indemnified the Company against all losses, damages, costs and expenses which may be incurred, suffered or sustained by the Company by reason of such default or failure.
- (e) The Customer's obligations are principal obligations and not ancillary or collateral to any other obligation.
- (f) The liability of the Customer is absolute and unconditional and is not affected by any act, omission, matter or thing which, but for this provision might operate or release or otherwise exonerate the Customer from any of its obligations.
- (g) The Customer shall procure that any Associated Person that has purchased goods from the Company and/ or intends to purchase goods from the Company, and has not entered into equivalent terms and conditions of sale with the Company, shall do so as soon as reasonably possible.

11. GUARANTEE

IN CONSIDERATION of the Company supplying or continuing to supply goods to the Customer and/ or any Associated Person within the terms and conditions of trade we, the Guarantors named on the front page agree as follows:

- (a) We guarantee the Customer will pay you any money including interest the Customer owes you when it is due and will perform any other obligation it owes you.
- (b) If you become liable to pay any money or do anything because you supplied goods to the Customer, we will reimburse you in full. We will also reimburse you if you agree to settle any claim with the Customer's approval.
- (c) Our obligations under this Guarantee only end when the Customer has paid you all the money the Customer owes you and performed all the Customer's other obligations to you. But this Guarantee continues even if the Customer's account has a nil or credit balance. We may not cancel this Guarantee.
- (d) This Guarantee applies even if you give the Customer more credit, more time to pay or any other concession, or the Customer buys more than the estimated monthly purchases. No other event or circumstance which would otherwise discharge or limit our liability to you will have that effect.
- (e) You do not have to sue the Customer before you sue us.
- (f) If there is more than one Guarantor, each Guarantor is liable to you for all the money the Customer owes you and all the Customer's other obligations.
- (g) If any Guarantor is a company, the other Guarantors warrant that the company has the power to give this Guarantee.
- (h) This Guarantee binds any of our personal representatives, successors or assignees.
- (i) Any person who signs as a Guarantor is bound by the Guarantee even if one or more other people named as Guarantors did not or were not legally able to sign.
- (j) We authorise any person or company to give you any information you ask for, and authorise you to give any information about us to anyone else.
- (k) For the purposes of this Guarantee, Customer includes an Associated Person of the Customer where that Associated Person has not entered into equivalent terms and conditions of trade.

12. WAIVER

The Terms included herein are irrevocable and no variation shall be recognized by or binding on us unless such variation be in writing and signed by the Managing Director of the Company

