

# K2 Associates Ltd

## CONDITIONS OF SALE

### DEFINITIONS

- 1 In these conditions the following expressions shall have the following meanings.
- (1) 'the company' shall mean K2 Associates Ltd and also where the context so permits any subcontractor for the said company.
- (2) 'Goods' shall mean the article or thing or any of them described in the contract between the company or the buyer for the sale or supply of goods.
- (3) 'the Buyer' shall mean the person, firm or company with whom any contract to sell goods is made by the Company whether directly or indirectly through an agent or factor who is acting for or instructed by any such person, firm or company of whose actions are subsequently to the contract ratified by the actual buyer.
- (4) 'Company's Premises' shall mean the premises mentioned in the Company's quotation or other contractual document or if not so mentioned shall mean the Company's works at Unit 6 Haslemere Industrial Estate, Pig Lane, Bishop's Stortford, Herts, CM23 3HG.

### GENERAL

2 These conditions shall be deemed to be incorporated in all contracts of the Company to sell Goods and in the case of any Inconsistency with any letter or quotation incorporation or referring to these conditions or any order, letter or form of contract sent by the Buyer to the Company or any other communication between the Buyer and the Company whatever may be their respective dates the provisions of these conditions shall prevail unless expressly varied in writing and signed by a Director of the Company.

Any concession made or latitude allowed by the Company to the Buyer shall not affect the strict rights of the Company under the contract. If in any particular case any of these conditions shall be held to be invalid or shall not apply to the contract the other conditions shall continue in full force and effect.

### ORDERS

- 3 (1) NOTWITHSTANDING that the Company may have given detailed quotation no order shall be binding on the Company unless and until it has been acknowledged in writing by the Company.
- (2) The Company's catalogues, brochures, leaflets or correspondences are not binding as reasonable variations may be made without notice and such Goods as varied shall be accepted as complying with the contract.

### PRICES

- 4 (1) The price payable for Goods shall unless otherwise stated by the Company in writing and agreed on its behalf be the price of the Company current at the date of despatch and in the case of an order for delivery by instalments the price payable for each instalment shall be the list price of the Company current at the date of despatch of such instalment unless otherwise stated to be firm for a period.
- (2) Unless otherwise expressly stated to be firm for a period the Company's prices are subject to variation to take account of variations in wages, materials or other costs since the date of the order. The Company accordingly reserves the right to adjust the invoice price by the amount of any increase or decrease in such costs after the price is quoted and the invoice so adjusted shall be payable as if it were the original contract price.
- (3) All prices are exclusive of Value Added Tax and this will be charged at the appropriate rate.

### ADDITIONAL COSTS

- 5 The Buyer agrees to pay for any loss or extra cost incurred by the Company through the Buyer's instructions or lack of instructions or through failure or delay in taking delivery or through any act or default on the part of the Buyer its servants, agents or employees.

### PATENTS

- 6 The Buyer shall indemnify the Company against all costs claims and damages incurred or threatened arising out of any alleged infringement of patents trade marks or copyright occasioned by the manufacture or sale of the Goods made to the specification or special requirements of the Buyer.

### PAYMENT

- 7 (1) Shall be in accordance with the standard terms of payment of the Company in the United Kingdom applicable from time to time and will unless otherwise stated be due in cash not later than 30 days from the date of invoice.
- (2) If the Goods are delivered in instalments the Company shall be entitled to invoice each instalment as and when delivery thereof has been made and payment shall be due in respect of each instalment whereof delivery has been made not withstanding non-delivery of other instalments or other default on the part of the Company.
- (3) If upon the terms applicable to any order the price shall be payable by instalments or if the Buyer has agreed to take specified quantities of Goods at specified times a default by the Buyer of the payment of any due instalment or the failure to give delivery instructions in respect of any quantity of Goods outstanding shall cause the whole of the balance of the price to become due forthwith.
- (4) The price of the goods shall be due in full to the Company in accordance with the terms of the contract and the Buyer shall not be entitled to exercise any set-off lien or any other similar right or claim.
- (5) The time of payment shall be of the essence of the contract.
- (6) Without prejudice to any other rights it may have the Company is entitled to charge interest 2% above the then Current Base Rate or Barclays Bank PLC on overdue payments of the price of the Goods or the price of any instalments thereof.

### DELIVERY

- 8 (1) The period for delivery shall be the period within which the Goods as intended to be despatched from the Company's premises and shall be calculated from the time of the receipt by the Company of the Buyer's order or from the receipt of all necessary information to enable the Company to manufacture or procure the manufacture of the Goods whichever shall be the later and the Buyer shall take delivery of the Goods within that time.
- (2) All times or dates given for delivery of the Goods are given in good faith but without any responsibility on the part of the Company. Time of delivery shall not be of the essence of any contract nor shall the Company be under any liability for delay whether or not by the order the Company's reasonable control unless otherwise expressly agreed in writing at or before the date of the order in which case the Company's liability shall be limited to such liquidated damages as may specifically be agreed at or before that date.
- (3) Where the Goods are handed to a carrier for carriage to the Buyer or to United Kingdom port for export any such carrier shall be deemed to be an agent of the Company and not the Buyer for the purposes of Sections 44, 45 and 46 of the Sale of Goods Act 1979.
- (4) No liability for non-delivery, partial loss or damage to the Goods occurring prior to delivery or for any claim that the goods are not in accordance with the contract will attach to the Company unless claims to that effect are notified in writing by the Buyer to the Company (and in the case of claims for non-delivery, partial loss or damage with a copy to the carrier if the Company's own vehicles have not been used to deliver the Goods.
- (a) within 3 days of delivery for partial loss, damage or non-compliance with the contract or
- (b) within 7 days of the date of the invoice for non-delivery.
- (5) In the event of a valid claim for non-delivery for partial loss, damage or non-compliance with the contract the Company undertakes at its option either to reprocess or replace the Goods at its expense but shall not be under any further or other liability to any person in connection with such non-delivery, partial loss, damage or non-compliance.
- (6) If the Buyer shall fail to give notice in accordance with condition 8 (4) above the Goods shall be deemed to be in all respects in accordance with the contract and the Buyer shall be bound to accept and pay for the same accordingly.
- (7) If for any reasons the Buyer is unable to accept delivery of the Goods at the time when the Goods are due and ready for delivery the Company may at its sole discretion without prejudice to its other rights store the Goods at the risk of the Buyer and take all reasonable steps to safeguard and insure them at the cost of the Buyer, provided that the Buyer shall be immediately informed thereof.
- (8) The Buyer shall be obliged to accept delivery at any time before the contract is determined or instalment cancelled.
- (9) The Company shall have the right to make delivery by instalments of such quantities and at such intervals as it may decide and any express provision as to instalment in the contract shall be in addition to and not in derogation of this right.

### RETURNS

9 GOODS supplied in accordance with the contract cannot be returned without prior written permission of the Company. Duly authorised returns shall be sent to the Company's Premises at the Buyer's expense.

### CARRIAGE

10 WHERE the Buyer requests delivery, prices quoted will be based on a full load, any shortfall resulting in difference in cost shall be charged to the Buyer's account.

### PASSING OF TITLE AND RISK

- 11 (1) FROM the time of delivery the Goods shall be at the risk of the Buyer who shall be solely responsible for

their custody and maintenance as if it were the owner but unless otherwise expressly agreed in writing the Goods shall remain the property of the Company until the payment due under the contract between the parties has been made in full and unconditionally or until resale of the Goods by the Buyer bona fide in the ordinary course of its business and at full market price and the Buyer shall sell as principal only. Whilst the ownership of the Company continues the Buyer shall keep the Goods separate and identifiable from all other Goods in its possession.

- (2) In the event of any resale by the Buyer of the Goods the beneficial entitlement of the Company shall attach to the proceeds of sale or other disposition thereof so that such proceeds or any claim therefor shall be assigned to the Company and until such disposition to such assignment shall be held on trust for the Company by the Buyer who will stand in a strictly fiduciary capacity in respect thereof.
- (3) In the event of failure to pay the price in accordance with the contractual obligations the Company shall have power to resell the Goods after reasonable notice such power being additional to (and not in substitution for) any other power of sale arising by operation of law or in implication or otherwise.
- (4) Not later than the time of delivery of the Goods to the Buyer, the Buyer shall insure the Goods and keep the same insured while they remain the property of the Company against the loss or damage by accident, fire, theft and other risk usually covered by insurance in the type of business for which the Goods are for the time being used. The Goods shall be insured to the full replacement value thereof with some insurance company to be approved by the Company under a comprehensive policy of insurance free from all restriction or excess in the name of the Buyer bearing an endorsement recording the Company's interest and stating that no payment is to be made to the Buyer under the policy until the Company's interest has been discharged and in default of the Buyer so doing the Company may insure as aforesaid and recover the cost form purpose of receiving all monies payable under the said policy and giving a discharge therefor. The Buyer shall punctually pay all premiums payable under the said policy and produce the receipts for such payments to the Company on demand and shall do everything necessary to maintain the said policy in full effect and not do anything whereby the said policy will or may be vitiated.

### CONDITIONS AND WARRANTIES

- 12 (1) EVERY description or specification of the Goods given in good faith based on average results of standard tests but any conditions or warranties express or implied that the Goods shall correspond with such description or specification are hereby expressly negated and the use of any such description or specification shall not constitute a sale by description.
- (2) Any conditions or warranties (whether express or implied by statute common law or arising from conduct or a previous course of dealing or trade custom or usage) as to the quality or fitness of the Goods for any particular purpose even if that purpose is made known expressly or by implication to the Company and hereby expressly negated.
- (3) Notwithstanding that a sample of the Goods may have been exhibited to and inspected by the Buyer or results of standard tests upon a sample furnished to the Buyer it is hereby declared that sample was so exhibited and inspected or tested solely to enable the Buyer to judge for itself the quality of the bulk and not so as to constitute a sale by sample or as to their quality condition or sufficiency for any purpose.

### DEFECTIVE GOODS

- 13 (1) IN substitution for all rights which the Buyer would or might have had but for these conditions the Company undertakes at its discretion to credit to the Buyer in full the price paid by the Buyer to the Company or repair or supply free of charge at the place of delivery specified by the Buyer for the original Goods a replacement of the Goods if manufactured or processed by the Company in which a serious defect in materials or workmanship appears within three months of delivery provided in any case the Goods have been accepted and paid for and were manufactured or processed by the Company.
- (2) In the case of Goods not of the Company's manufacture the Company will pass on to the Buyer any benefits obtainable under any warranty given by the Company's supplier provided that the Goods have been accepted and paid for.
- (3) IN order to exercise its rights under this Condition the Buyer shall inform the Company within seven days of the date when such defect appeared or ought reasonably to have been discoverable and shall return the defect Goods carriage paid to the Company's premises.
- (4) Nothing herein shall impose any liability upon the Company in respect of any defect in the Goods arising out of the acts omissions, negligence or default of the Buyer its servants or agents including in particular but without prejudice to the generality of the foregoing any failure by the Buyer to comply with any recommendations of the Company as to storage and handling of the Goods.
- (5) Where the Goods are for delivery by instalments any defect in an instalment shall not be a ground for cancellation of the remainder of the instalments and the Buyer shall be bound to accept delivery thereof.
- (6) Nothing herein shall have the effect of excluding or restricting the liability of the Company for death or personal injury resulting from its negligence.

### BUYER'S DRAWINGS

- 14 THE Company shall not be liable for imperfect work caused by any inaccuracies in any drawing, bills of quantities or specification supplied by the Buyer.

### CONSEQUENTIAL LOSS

- 15 THE Company shall not be liable for any costs, claims or damages or expense arising out of any act or omission or any breach of contract or statutory duty calculated by reference to profits, income, production or accruals or loss of such profits, income, production or accruals or by reference to accrual of such cost claims damages or expenses on a time basis.

### DEFAULT OR INSOLVENCY OF BUYER

- 16 IF the Buyer shall fail to accept the Goods or any instalment or part instalment thereof or shall fail to pay any sum due to the Company at the proper time or make default in or commit any breach of any other obligation or if any distress or execution shall be levied on the Buyer's property or assets or if the Buyer shall make or offer to make any arrangement or composition with his creditors or commit any act of bankruptcy or if any bankruptcy petition be presented against him or (if the Buyer is a Company) if any Resolution or Petition to wind up such company shall be passed or presented or if a Receiver of the whole or any part of such company's undertaking property or assets shall be appointed, the Company in its discretion and without prejudice to any other right or claim by notice in writing determine wholly or in part any and every contract between the Company and the Buyer or may (without prejudice to the Company's right subsequently to determine the contract for the same cause should it so decide) by notice in writing suspend further deliveries of Goods until any defaults by the Buyer be remedied.

### LIMITATION OF LIABILITY

- 17 THE Liability of the Company to the Buyer for any loss or damage of whatsoever nature and howsoever caused shall be limited to and in no circumstances shall exceed the sales value of the Goods.

### REPRESENTATIONS

- 18 NO statement description information warranty condition or recommendation contained in any catalogue price list advertisement or communication or made verbally by any of the agents or employees of the Company shall be constructed to enlarge, vary or override in any way any of these conditions.

### FORCE MAJEURE

- 19 THE Company shall be entitled to delay or cancel delivery or to reduce the amount delivered if it is prevented from or hindered in or delayed in manufacturing obtaining or delivering the Goods by normal route or means of delivery through any circumstances beyond its control including but not limited to strikes, lock-outs, accidents, war, fire, reduction in or unavailability of power at manufacturing plant, breakdown of plant or machinery or shortage or unavailability of raw materials from normal source of supply.

### CANCELLATION

- 20 SAVE as provided in Conditions 16 and 19 hereof contracts may not be cancelled except by agreement in writing of both parties and upon payment to the Company of such amount as may be necessary to indemnify the Company against all loss resulting from the said cancellation.

### SUB-CONTRACTING

- 21 THE Company may assign the contract with the Buyer or sub-contract the whole or any part thereof to any person, firm or company.

### HEADINGS

- 22 THE headings in these Conditions are intended for reference only and shall not effect their construction.

### PROPER LAW

- 23 THE contract shall in all respects be governed by English Law and shall be deemed to have been made in England and the Buyer and the Company agree to submit to the non-exclusive jurisdiction of the English Courts.

K2 Associates Ltd  
CONDITIONS OF SALE