

TK DISTRIBUTION LTD

STANDARD TERMS AND CONDITIONS

FOR SALE OF GOODS

1 Definitions

In this document the following words shall have the following meanings:

- 1.1 "Seller" means TK DISTRIBUTION LTD, 45 Waterloo Road, Hainford, Norwich NR10 3AX
- 1.2 "Buyer" means the organisation or person who buys Goods from the Seller;
- 1.3 "Goods" means the articles to be supplied to the Buyer by the Seller;
- 1.4 "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trade marks, know-how and all other forms of intellectual property wherever in the world enforceable;
- 1.5 "List Price" means the list of prices of the Goods maintained by the Seller as amended from time to time;

2 GENERAL

- 2.1 These Terms and Conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions referred to, offered or relied on by the Buyer whether in negotiation or at any stage in the dealings between the parties, including any standard or printed terms tendered by the Buyer, unless the Buyer specifically states in writing, separately from such terms, that it wishes such terms to apply and this has been acknowledged by the Seller in writing.
- 2.2 Any variation to these Terms and Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

3 PRICE AND PAYMENT

- 3.1 The price shall be that in the Seller's current List Price, or such other price as the parties may agree in writing. The price is exclusive of VAT or any other applicable costs. Carriage shall be paid for by the Buyer unless agreed by the Seller.
- 3.2 If credit terms have been agreed in advance in writing, payment of the price and VAT and any other applicable costs shall be due within 30 days of the date of receipt of the invoice supplied by the Seller.
- 3.3 The Seller shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of 7.5% per annum above the base rate of the Bank of England.
- 3.4 If payment of the price or any part thereof is not made by the due date, the Seller shall be entitled to:
 - 3.4.1 require payment in advance of delivery in relation to any Goods to be supplied in future
 - 3.4.2 refuse to make delivery of any undelivered Goods whether ordered under the contract or not and without incurring any liability whatever to the Buyer for non-delivery or any delay in delivery;
 - 3.4.3 terminate the contract.

4 DESCRIPTION

Any description given or applied to the Goods is given by way of identification only and the use of such description shall not constitute a sale by description when entering into a contract and the Seller reserves the right to change specification without notice.

5 DELIVERY

- 5.1 Unless otherwise agreed in writing, delivery of the Goods shall take place at the address specified by the Buyer on the date specified by the Seller but time shall not be 'of the essence'. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- 5.2 If the Seller is unable to deliver the Goods because the Buyer is unable to take delivery, then the Seller shall be entitled to place the Goods in storage until such times as delivery may be effected and the Buyer shall be liable for any expense associated with such storage and for any expense associated with re-delivery.
- 5.3 The Buyer shall be entitled to a replacement where the Goods have been damaged during transportation and the Buyer must notify the Seller of any such damage within 24 hours of delivery.
- 5.4 The Seller shall not pay compensation or be liable for any costs due to the late delivery of Goods.

6 RISK

Risk in respect of any Goods supplied shall pass to the Buyer at the time of delivery, or at the time of collection if the Buyer collects from the Seller.

7 TITLE

Title to the Goods shall not pass to the Buyer until the Buyer has paid to the Seller the whole purchase price and until such time will carefully store the Goods with the Seller marked as their owner. If the Buyer should sell any of the Goods before properly completing the purchase, any payment received will be held by the Buyer in trust for the Seller. In the event of non payment by the due date, the Seller shall be entitled to enter the premises of the Buyer and the Buyers clients and remove any goods not paid for.

8 WARRANTY

- 8.1 Where the Goods have been supplied by the Seller and are found to be defective within a specified timescale from the date of sale, the Seller shall in its sole discretion, repair or replace defective Goods free of charge, subject to the following conditions:

- 8.1.1 the defect being due to the faulty design, materials or workmanship of the manufacturer.
- 8.1.2 the Buyer notifying the Seller in writing immediately upon the defect becoming apparent

- 8.2 Any Goods to be repaired or replaced shall be returned to the Seller at the Buyer's expense, if so requested by the Seller.
- 8.3 Where the Goods have been supplied to the Seller by a third party, only the warranty granted to the Seller by the supplier in respect of the Goods shall be passed on to the Buyer, a copy of which, including specified timescales of warranty are available on application to the Seller.
- 8.4 The Seller shall be entitled in its absolute discretion to refund the price of the defective Goods to the extent that such price has already been paid.

- 8.5 The remedies contained in this Clause are without prejudice to the other Terms and Conditions herein, including, but without limitation, Clauses 9 and 10 below.
- 9 LIABILITY**
No liability of any nature shall be incurred or accepted by the Seller in respect of any representation made by the Seller, or on its behalf, to the Buyer, or any party acting on behalf of the buyer, prior to the making of this contract where such representations were made or given in relation to:
- 9.1.1 the description of the Goods;
 - 9.1.2 the quality of the Goods; or
 - 9.1.3 the fitness of the Goods for their purpose
- Unless such representations are agreed in writing
- 10 LIMITATION OF LIABILITY**
Where any court or arbitrator determines that any part of Clause 9 above is, for whatever reason, unenforceable, the Seller shall be liable for loss or damage suffered by the Buyer in an amount not exceeding the contract price.
- 11 INTELLECTUAL PROPERTY RIGHTS**
All Intellectual Property Rights produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of the Seller, and the Buyer shall do all that is reasonably necessary to ensure that such rights vest in the Seller by the execution of appropriate instruments or the making of agreements with third parties.
- 12 HEALTH AND SAFETY**
The Buyer shall indemnify the Seller in respect of all claims, costs, expense and loss or damage, including any monetary penalty or fine in connection with the Goods and arising from:
- 12.1.1 the Health and safety at Work Act 1974
 - 12.1.2 the Consumer Protection Act 1987
- Or any modification to either Act as from time to time.
- 13 FORCE MAJEURE**
The Seller shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the Seller shall be entitled to a reasonable extension of its obligations. If the delay persists for such time as the Seller considers unreasonable, it may, without liability on its part, terminate the contract.
- 14 RELATIONSHIP OF PARTIES**
Nothing contained in these Terms and Conditions shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these Terms and Conditions shall be deemed to construe either of the parties as the agent of the other.
- 15 ASSIGNMENT AND SUB-CONTRACTING**
The contract between the Buyer and Seller for the sale of Goods shall not be assigned or transferred, nor the performance of any obligation sub-contracted, in either case by the Buyer, without the prior written consent of the Seller.
- 16 WAIVER**
The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.
- 17 SEVERABILITY**
If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.
- 18 GOVERNING LAW AND JURISDICTION**
This Agreement shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English.