

TERMS & CONDITIONS

These Conditions contain provisions by way of exclusion and limitation in favour of the Company.

1. General

In these Conditions, the following meanings shall apply:

"Conditions" means these standard terms and conditions of sale and any special terms agreed in writing between the Company and the Customer.

"Company" means Cater Design Limited.

"Customer" means the company or person to whom the Goods are to be supplied by the Company.

"Goods" means the goods (including any instalment or parts for them) or any services which the Company is to supply in accordance with these Conditions.

"Contract" means the contract for the sale or supply of the Goods.

These Conditions shall apply to and be deemed incorporated into the Contract. No agent or employee of the Company has the Company's authority to alter or vary these Conditions.

These Conditions supersede and exclude all general or special terms or conditions of the Customer.

2. Basis of sale and Customer's Authority

a) The company's employees or agents are not authorised to make any representation concerning the Goods unless confirmed by the Company in writing. In entering into the Contract, the Customer acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed.

b) Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents 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 Customer's own risk.

c) Any typographical clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

d) Customers entering into transactions with the Company expressly warrant that they are authorised to accept and are accepting these Conditions not only for themselves but also as agents for and on behalf of all other persons who are or may become interested in the Company's Goods whether in whole or part.

e) All Contracts arising out of orders accepted by the Company will be subject to availability of materials and to the Company being able to obtain and maintain any necessary authorisation or licences.

3. Order and specifications

If the Goods are to be manufactured or adapted or any process is to be supplied to the Goods by the Company in accordance with a specification submitted by the Customer, the Customer shall supply all necessary details of the specification in reasonable time and shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim of infringement of any intellectual property right of any person which results from the Company's use of the Customer's specification.

4. Delivery

a) Where the Goods are to be delivered in instalments, each delivery will constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.

b) If the Customer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery then without prejudice to any right or remedy available to the Company, the Company may (i) store the Goods until actual delivery and charge the Customer for storage and insurance; or (ii) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the customer for any shortfall below such price.

5. Validity and Withdrawal or alterations of quotations

a) Unless previously withdrawn or otherwise specified the company's quotation is open for acceptance within 30 days, but such acceptance is conditional upon the Company's confirmation at the time of its receipt.

b) Any quotation is subject to withdrawal or alteration in whole or in part by the Company at any time until the Customer's acceptance of quotation or order has been confirmed by the Company in writing (which confirmation may involve the obtaining of references and or guarantees, which are satisfactory and acceptable to the Company). Quotations are strictly an offer to the addressee only and for the avoidance of doubt cannot be accepted by any other party whether acting as an agent for the addressee or otherwise whatsoever.

6. Company's agents and suppliers

The company may provide or supply all or part of the Goods or supply any services itself or through a sub-contractor. Any terms and conditions of any such sub-contractor shall be deemed to form part of this Contract and bind the Customer accordingly.

7. Prices

a) Prices are based on costs at the date of quotation. Should these costs vary between the date of the Company's quotation and the date of delivery then, the Company will notify the Customer of the increase and prices ruling on the date of delivery will apply, unless otherwise specifically stated in the Company's quotation. All prices are stated exclusive of VAT, for which the Customer shall be additionally liable.

b) The Contract covers the items specified in the quotation only and unless otherwise expressly stated does not include the cost of any installation or other work to be done or fees incurred in connection with the times specified in the quotation and in particular do not include builders, joiners, masons, painters or electricians work or any work of any other outside contractor, nor does any quotation include the supply or erection of scaffolding, ladders or moveable platforms, hoisting and/or lowering gear or off loading from the Company's transport, fuel, water, gas or electric current, lighting fees, or district surveyor's insurance inspector's or any other such fees.

c) The Company's quotation is based on the work being done in the recognised normal working hours specified according to the tradesmen involved. Overtime authorised by the Customer or his Architect or other agent shall be an additional charge.

8. Alterations, additions, inspections

a) The Company reserves the right to make an additional charge for any extras ordered and not specified in the quotation and also for the expense of all inspection tests, alterations or additions or any other work undertaken at the Customer's request.

b) Re-erection of equipment after any necessary dismantling for access to buildings, transport, or installation of apparatus or equipment is not included in the Contract, unless expressly stated.

c) Removal of old apparatus or equipment preparation or completion of site or foundations and installation of supply services or metering are not included in the Contract unless expressly stated.

Equipment supplied in kit, knock down or component form is priced as such and assembly or re-assembly on site is an extra to the Contract price unless otherwise expressly specified in the quotation

9. Deliveries

a) Delivery under the Contract may be suspended by the Company wholly or in part without liability during and for a reasonable time after any event or cause beyond the company's reasonable control.

b) All times or periods given by the Company for delivery installation or other performance are estimates only and time shall not be of the essence regarding delivery. Such estimates are subject to site or foundation or other ancillary work not included in the Company's quotation being ready at the time represented to the Company and are to be calculated from time of actual readiness unless otherwise agreed by the Company in writing. Such estimates are based on current conditions as to labour and materials and any change in those conditions causing delay shall not give rise to any claim against the Company.

c) Where Goods are sold carriage paid the extent of packing and protection will be at the Company's discretion unless the customer stipulates special packing in which case such packing will be charged extra. Goods will be despatched by any means of transport at the Company's discretion. No responsibility will be accepted by the Company for loss or damage in transit and the Customer must insure accordingly. The Company shall not be liable for any damage caused during unloading.

10. Risk in Goods

(i) Where delivery is quoted as ex. works the Goods and risks therein shall become the Customer's responsibility as soon as the Goods leave the Company's premises.

(ii) Where delivery is quoted as carriage paid by us to a specified place (without prejudice to clause 14 of these Conditions) the goods and risks therein shall become the Customer's responsibility as soon as they arrive at their destination. If the Contract includes installation or other work, the Goods and risks involved become the Customer's responsibility as soon as they arrive at the site unless agreed otherwise in writing.

11. Descriptions drawings and illustrations

a) Any descriptions, illustrations, weights, dimensions or particulars of performance capacity or output submitted by the Company are approximate only and intended only as a general guide and the Company will not be liable for any error or omission therein.

b) The Company reserves the right to vary the detail in any description, illustration or catalogue or in any quotation provided by it without notice and further gives no warranties, express, implied or otherwise that any Goods are available for immediate transmission or delivery to a Customer.

c) Any drawing, photographic material or any description, catalogue, literature, leaflets, blueprints, quotations, and all or any documents produced for the purpose of any Contract or tender shall remain the exclusive property of the Company and will be returned on demand and shall not be copied or otherwise reproduced without first obtaining the written consent of the Company. Consent for the use of any drawing will be subject to payment of adequate compensation for the design submitted. The Company reserves the right to charge accordingly for the preparation and submission of drawings.

12. Warranties and guarantees

a) All Goods of the Company's own manufacture are sold under and subject to the guarantee set out at b) below and Goods of other manufactures (including proprietary articles or equipment supplied with or incorporated in Goods of the Company's manufacture) are sold subject to the manufacturers guarantee (if any) in so far as the Company is able to pass on the benefit to the Customer. Such guarantees are given in lieu of and to the exclusion of all other conditions, warranties and guarantees (express or implied) and, except as stated in clause 22, the Company accepts no responsibility for any loss or damage howsoever caused by reason of any defect in such Goods and all express or implied conditions or warranties statutory or otherwise as to quality or fitness for any purpose or correspondence with description or sample or otherwise are expressly excluded.

b) All Goods of the Company's own manufacture are guaranteed against defects in materials or workmanship for 12 calendar months from the date of delivery to the original Customer to the extent that, subject to the conditions set out below, the Company will repair or replace free of charge any part or parts which within that period are returned by the original Customer carriage paid to the Company's office and are found by the Company to be defective by reason of bad materials or workmanship.

i) The guarantee does not apply to proprietary parts not of the Company's own manufacture.

ii) The Company shall be under no liability under the above guarantee if the Goods are misused or if any alterations or additions are made or repairs are done to the Goods except by the Company or its authorised representative.

iii) The Company shall be under no liability in respect of any defect in the Goods or performance of a site arising from any drawing, design or specification supplied by the Customer or by the company at the customer's request.

iv) The Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions or failure to follow the Company's instructions.

v) The Company shall be under no liability under the above guarantee (or any other guarantee, warranty or condition) if the total price for the relevant Goods has not been paid by the due date.

vi) If service under the guarantee is required where the Goods are installed, the Company reserves the right to charge for labour and expenses involved.

vii) This guarantee is given in lieu of and to the exclusion of all other express or implied conditions or warranties.

viii) The benefit of the guarantee shall not be assignable by the original Customer without the Company's written consent.

13. Terms of Payment

- a) Unless otherwise stipulated by the Company all accounts are strictly net and must be paid in full without discount, deduction, counter claim or set off (whether legal or equitable), by bank transfer to the company's bank account or by approved cheque on the due date (being 30 days after the date of invoice).
- b) Interest at 4% over the base rate of Barclays Bank Plc from time to time per calendar month shall accrue daily and be payable to the Company on any sum which is due from the Customer to the Company from the due date.
- c) In the event of non-payment the Company reserves the right to:
 - (i) terminate the Contract or suspend further deliveries; and
 - (ii) appropriate any payment made by the Customer to such of the Goods (or the goods supplied under any other Contract between the parties) as the Company may think fit (notwithstanding any purported appropriation by the Customer).
 - (iii) set off or contra the amount against any monies due by the company to the customer.
 - (iv) approach and secure payment from any third party who may have subsequently taken possession or purported to buy the goods from the customer which were sold by the company to the customer.

14. Risk and property

- a) Risk of damage to or loss of the goods shall pass to the Customer:
 - 1) In the case of Goods to be delivered at the Company's premises, at the time when the Company notifies the Customer that the Goods are available for collection, or
 - 2) In the case of Goods to be delivered otherwise than at the Company's premises, at the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods.
- b) Notwithstanding delivery and the passing of risk Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Company to the Customer for which payment is then due. The customer warrants that where the goods are sold on that the goods are under the same retention of title as aforementioned and this is for the benefit of the company and that payment for the goods by a third party to the company will act as a full discharge to the customer for any liability the third party may have to the customer with respect to the said goods.
- c) Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Company's property. Until that time the Customer shall be entitled to resell or use the Goods in the ordinary course of its business, (subject to imposing an effective retention of title clause on its sub-purchaser) but shall account to the Company for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Customer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- d) Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence), the Company shall be entitled at any time to require the Customer to deliver up the Goods to the Company and, if the Customer fails to do so forthwith, to enter on any premises of the Customer or of any third party where the Goods are stored and repossess the Goods.
- e) The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Customer does so all moneys owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable. Any money received by the customer in respect of the goods will be held upon trust for the benefit of the company until such goods have been paid for by the customer.

15. Lien

All goods and property of the Customer or third party in the possession or control of the Company shall be subject to a particular and general lien for monies due in respect of any Goods or other monies due from the Customer to the Company. If any monies due to the Company are not paid by the due date the Company may give one month's notice to the Customer or third party and, on the expiry of the notice, the goods or property may be sold by auction or otherwise at the sole discretion of the Company and at the expense of the Customer and the proceeds applied in or towards satisfaction of such indebtedness, with the Company paying the balance, if any, to or to the order of the Customer.

16. Installation

- a) If contracted to do so, the Company will undertake the installation of Goods supplied but reserves the right to instruct or employ a sub-contractor of its choice for that purpose.
- b) The Company will not be responsible for faults resulting from the incorrect installation of Goods or equipment by the Customer or its representatives or agents. In such a case it is the Customer's responsibility to commission and test the installation and to arrange at the Customer's cost for any faults to be rectified whether warranty or otherwise.

17. Destruction or damage, Termination, Cancellation

- a) If the Goods are destroyed or damaged at any time before despatch the Company will be at liberty to terminate the Contract without incurring any liability for any loss or damage resulting from such termination.
- b) In the event of either (i) the Company being delayed in or prevented from making delivery due to act of God, war, civil disturbance, requisitioning, statutory restrictions import or export regulation, strike, lock-out, trade dispute, difficulty in obtaining labour, materials, break down of machine, fire, accident or any other cause whatsoever beyond the Company's reasonable control (force majeure) or (ii) non-delivery by the Company's suppliers or damage to or destruction of the whole or part of the Goods by them, the Company shall be at liberty to cancel or suspend the Contract without incurring any liability for any resultant loss or damage.

- c) If the Customer shall default in any of its obligations to the Company or commit any breach of the terms of this or any Contract made by the Company with the Customer or any agent or nominee of the Company, then the Company shall have the right to terminate, by notice taking effect immediately, any Contracts, agreements, arrangements, order or obligations of any description and invoice the Customer immediately for any work performed and expense incurred including any loss of profit and the Customer shall pay any such invoices so rendered within 30 days of despatch.
- d) If the Customer shall default in any of its obligations to the Company or commit any breach of the terms of this or any Contract made by the Company with the Customer or any agent or nominee of the Company, then the Company shall have the right to terminate, by notice taking effect immediately, any Contracts, agreements, arrangements, order or obligations of any description and invoice the Customer immediately for any work performed and expense incurred including any loss of profit and the Customer shall pay any such invoices so rendered within 30 days of despatch.

- e) The Company shall also have the right to terminate any Contract, agreement or other obligation if the Customer shall make or offer to make any arrangement or composition with creditors, be unable to pay its debts when they fall due, or if any petition for bankruptcy or a receiving order shall be presented or made against the Customer or if the Customer is a company, then if any resolution or petition to wind up (other than for the purpose of amalgamation or reconstruction) shall be passed or presented or if a receiver of the Customer's undertaking property or assets or any part thereof shall be appointed.
- f) The Customer has no right to cancel the Contract. The Company may consider accepting cancellation, provided that the Customer indemnifies the Company against all losses (including loss of profit) costs and other expenses and damages (whether direct or consequential) occasioned by such cancellation and provides the Company with such security for payment as the Company considers necessary.

18. Performance

The Company will accept no liability for failure to attain any performance figure stated, unless the Company has specifically guaranteed them in writing. Subject to any tolerances specified or agreed by the Company, in particular, the Company accepts no liability in respect of performance figures stated by manufacturers which are passed on by the Company in good faith.

19. Validity of Conditions

In the event that any of these Conditions shall be held to be invalid, unlawful or unenforceable to any extent then such part of these Conditions shall be severed from the remaining Conditions which shall continue to be valid and enforceable to the fullest extent permitted by law.

20. Notice

Any notice required to be given under these Conditions shall be in writing and shall be sent to the place of business of the party concerned. Any such notice may be delivered personally or by first class pre-paid letter, email or facsimile transmission and shall be deemed to have been served if by personal delivery when delivered, if by first class post 48 hours after posting, and if by email or facsimile transmission at the time of transmission if within normal business hours of the addressee and if not at 09.30 hours local time on the next following business day.

21. Legal Construction

Any contract between the Company and the Customer shall in all respects be construed and operate as an English contract in conformity with English Law and the Customer submits to the exclusive jurisdiction of the English Courts.

22. Limitation of liability

- a) Except in respect of death or personal injury caused by the Company's negligence, in respect of which the Company's liability shall be unlimited, the Company shall not be liable to the Customer by reason of any representation or any implied warranty condition or other term or any duty at common law or under the express terms of the Contract for any consequential loss or damage (whether for loss of profit or otherwise) costs expenses or other claims for consequential compensation whatsoever and whether caused by the negligence of the Company its employees or agents or otherwise (which arise out of or in connection with the supply of the Goods or their use or resale by the Customer).
- b) The Company's liability for direct loss to the tangible property of the Customer shall be limited to the value of the Goods supplied under the Contract.

23. Waiver

No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision of the Contract.

24. Precedence of Contract

These general terms and conditions shall have precedence over any conditions appearing on any acceptance form or other document or letter emanating from the customer and such conditions shall have no effect whatsoever except insofar as they confirm this agreement or are expressly in writing in this agreement.

25. Rights of Third Parties

The parties agree that the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this agreement.