



## TERMS AND CONDITIONS OF SALE

The buyer's attention is in particular drawn to the provisions of condition 10.4.

### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

**Company:** Universal Products (Lytham) Manufacturing Limited

**Buyer:** the person, firm or company who purchases the Goods from the Company.

**Contract:** any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions.

**Delivery Point:** the place where delivery of the Goods is to take place under condition 4.

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

1.2 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these conditions.

### 2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3 the Contract shall 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, specification or other document).

- 2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall 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 and signed by a Director or Company Secretary of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.4 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.
- 2.5 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

### **3. ORDERS**

- 3.1 The Buyer shall be responsible for ensuring the accuracy of any specification applicable to the goods or services, and for providing to the Company any information required by the Company in connection with the supply of the goods and services. The Company reserves the right to make any changes in the specification of goods which may be required to conform with any applicable statutory requirements relevant to such goods or the method of production thereof.
- 3.2 The Company shall be at liberty in the event of it being unable to supply any particular item ordered by the Buyer either to cancel any order placed by the Buyer.
- 3.3 The Company may at its absolute discretion refuse to supply any goods or services to any Buyer and in such event shall notify such Buyer of its decision not to supply in which event the Buyer shall have no claim against the Company for any loss arising as a result of the Company's refusal to supply.
- 3.4 No order once placed may be cancelled by the Buyer, but notwithstanding the provisions of this condition the Company may at its discretion accept cancellation or postponement of an order subject to the Buyer purchasing all and any raw materials (at cost plus 3%) held by the Company for the purpose of producing the Buyer's goods and any stock (at list price) held by the Company but not yet delivered to the Buyer.
- 3.5 No order once placed with the Company can be varied without the Company's written consent. In the event of the Company agreeing to vary any order the costs of all additional works done by the Company in connection with such variation shall be paid

by the Buyer either at the date of such variation or at the date of delivery of the goods or supply of the services whichever the Company shall decide.

#### **4. DELIVERY**

- 4.1 Any dates quoted or agreed for delivery of goods or for provision of services are approximate only, and although the Company will endeavour to supply goods or services on the dates quoted or agreed, the Company shall not be liable for any delay in delivery of goods or supply of services howsoever caused. Time for delivery of goods or for provision of services shall not be of the essence unless expressly agreed in writing by the Company in accordance with condition 3 above. Goods may be delivered in advance of quoted delivery dates upon giving reasonable notice to the Buyer.
- 4.2 Where goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments and/or any claim by the Buyer in respect of any one or more instalment shall not entitle the Buyer to repudiate the contract as a whole.
- 4.3 Unless otherwise agreed in writing no goods supplied by the Company to the Buyer are on sale or return or sample basis and no goods once delivered may be returned to the Company without prior written authority from the Company unless those goods are accepted by the Company as being defective in some way. In the event of a return being authorised by the Company the Company shall have the right to charge carriage to and from the delivery location and the costs involved in the removal of the goods from the Buyer's premises.
- 4.4 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar 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 shall 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 fails to 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:
- (a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
  - (b) the Goods shall be deemed to have been delivered; and
  - (c) the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.6 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

4.7 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

**5. NON-DELIVERY**

5.1 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received.

5.2 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

**6. RISK/TITLE**

6.1 The Goods are at the risk of the Buyer from the time of delivery.

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:

- (a) the Goods; and
- (b) 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 shall:

- (a) hold the Goods on a fiduciary basis as the Company's bailee;
- (b) 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;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- (d) maintain the Goods in satisfactory condition 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.

- 6.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
- (a) any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
  - (b) 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:
- (a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the grant-ing of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
  - (b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/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
  - (c) 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.
- 6.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be

deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

- 6.9 On termination of the Contract, howsoever caused;
- (a) the Company's (but not the Buyer's) rights contained in this condition 6 shall remain in effect; and
  - (b) the Buyer shall purchase all and any raw materials held by the Company for the purpose of producing the Buyer's goods and any stock held by the Company but not yet delivered to the Buyer at a price calculated in accordance with clause 3.4.

## **7. PRICE**

- 7.1 The prices quoted to the Customer for the goods or services are subject to any increase by the Company becoming effective between the date of order and the date of delivery or supply, and any goods or services supplied shall be invoiced at the price current therefore at the date of delivery or supply.
- 7.2 Unless otherwise stated all prices quoted shall be exclusive of value added tax at the appropriate rate and except where otherwise agreed in writing between the Company and the Customer all prices given by the Company are on an ex works basis and where the Company agrees to deliver goods the Company's charge for such delivery shall be added and shall be payable by the Customer as part of the invoice price.
- 7.3 Unless otherwise agreed in accordance with condition 2.3 above, all invoices are payable at the end of the month following the month in which the invoice was raised.
- 7.4 Any sums due under any invoice shall bear interest at the rate of interest prescribed under the Late Payment of Commercial Debts (Interest) Act 1998 and regulations made thereunder, on the value of the invoice (or such part thereof as is unpaid) from the due date for payment until the date of actual payment, such interest to be calculated on a daily basis.
- 7.5 There will be no discounts on invoices unless specifically agreed in writing between the Company and the Customer and in the event of any invoice upon which discount has been agreed not being paid by its due date then all such discount shall be forfeit and the full amount of the invoice shall be payable.
- 7.6 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the contract and/or suspend any further deliveries to the Customer.
- 7.7 In the event that the Company employs solicitors or other agencies to collect all or any sums due from the Customer to the Company the costs so incurred by the Company shall

be payable by the Customer in addition to the amount of the invoice and any interest thereon and such costs shall not be limited to those recoverable under a court action.

## **8. PAYMENT**

- 8.1 Subject to condition 8.4, payment of the price for the Goods is due in pounds sterling on the last working day of the month following the month in which the Goods are delivered or deemed to be delivered.
- 8.2 Time for payment shall be of the essence.
- 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 on its termination despite any other provision.
- 8.5 The Buyer shall make all payments due under the Contract in full 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 shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 2% above the base lending rate from time to time of National Westminster Bank Plc, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

## **9. QUALITY**

- 9.1 The Company warrants that (subject to the other provisions of these conditions) upon delivery the Goods shall:
- (a) be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
  - (b) comply with the specification
- 9.2 The Company shall not be liable for a breach of any of the warranties in condition 9.1 unless:
- (a) the Buyer gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit to the carrier, within 14 days of the time when the Buyer discovers or ought to have discovered the defect; and

- (b) 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.

9.3 The Company shall not be liable for a breach of any of the warranties in condition 9.1 if:

- (a) the Buyer makes any further use of such Goods after giving such notice; or
- (b) the defect arises 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; or
- (c) the Buyer alters or repairs such Goods without the written consent of the Company.

9.4 Subject to condition 9.2 and condition 9.3, if any of the Goods do not conform with any of the warranties in condition 9.1 the Company shall at its option replace such Goods or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.

9.5 If the Company complies with condition 9.4 it shall have no further liability for a breach of any of the warranties in condition 9.1 in respect of such Goods.

## **10. LIMITATION OF LIABILITY**

10.1 Subject to condition 4, condition 5 and condition 9, 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:

- (a) any breach of these conditions;
- (b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
- (c) 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:

- (a) for death or personal injury caused by the Company's negligence; or
- (b) under section 2(3), Consumer Protection Act 1987; or

- (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- (d) for fraud or fraudulent misrepresentation.

10.4 Subject to condition 10.2 and condition 10.3:

- (a) 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 the Contract shall be limited to the Contract price; and
- (b) the Company shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## **11. ASSIGNMENT**

- 11.1 The Company may assign the Contract or any part of it to any person, firm or company.
- 11.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the 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, flood, 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 90 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 shall 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 shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 13.5 The parties to the Contract do not intend that any term of the Contract shall 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 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.

#### **14. COMMUNICATIONS**

- 14.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:
- (a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or
  - (b) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.
- 14.2 Communications shall be deemed to have been received:
- (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
  - (b) if delivered by hand, on the day of delivery; or
  - (c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
- 14.3 Communications addressed to the Company shall be marked for the attention of Mike Peters.