

01.04.2011

## TERMS AND CONDITIONS

### 1. DEFINITIONS

- 1.1. "the Company" means Allsands Supplies Limited [company number 03036575]
- 1.2. "the Customer" means the person or company whose order for the Goods is accepted by the Company in accordance with these Conditions.
- 1.3. "Conditions" means these terms and conditions and any variation thereto which is agreed in accordance with the terms hereafter.
- 1.4. "the Contract" means the contract between the Company and the Customer for the sale and purchase of the Goods.
- 1.5. "Delivery" means the delivery of the Goods by the Company whether by way of delivery by or for and on behalf of the Company, direct delivery by a supplier on behalf of the Company or otherwise.
- 1.6. "the Goods" means the goods which the Company is to supply in accordance with these Conditions.

### 2. BASIS FOR SALE

- 2.1. These Conditions apply to all sales of the Goods by the Company to the exclusion of any other terms and conditions and any variation or additional terms must be expressly confirmed in writing by a director of the Company.

### 3. QUOTATIONS, ORDERS AND SPECIFICATIONS

- 3.1. Quotations are not offers and may be withdrawn or varied at any time prior to acceptance by the Company of the Customer's Order for the Goods being the subject of the quotation.
- 3.2. No order or acceptance of a quotation by the Customer will be deemed to be accepted until the Company issues written acceptance of the order or (if earlier) the Company begins to process the order.
- 3.3. Each order for the Goods by the Customer to the Company shall be deemed to be an offer by the Customer to purchase these Goods subject to these Conditions. No order which has been accepted by the Company may be cancelled or postponed by the Customer except with the agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against all losses (including loss of profit), costs (including the cost of all labour, materials and tipping (where applicable), damages, charges and expenses) incurred by the Company as a result of the cancellation or postponement.
- 3.4. The Company reserves the right to charge the Customer an additional charge where
  - i. the supply of Goods is required by the Customer outside the Company's normal working hours;
  - ii. delivery of the Goods is required in part loads rather than full loads;
  - iii. for any reason, the delivery vehicle is unable to discharge its load within 30 minutes of arrival at the Customer's site
  - iv. the Customer purchases quantities of the Goods which are substantially different from the quantity specified in the quotation.
- 3.5. The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order and any applicable specification.
- 3.6. The quantity, quality, description and specification of the Goods shall be those set out in a quotation or where no quotation as set out in the delivery ticket. Weights or measures given are approximate wherever stated.
- 3.7. The Company is to be presumed ignorant of any special purpose or matter for which the Goods are required or any special conditions under which they are to be used unless the Customer informs the Company in writing of that special purpose or matter or those conditions before the Contract is made. Any intended purpose, matter or conditions of use which are not obvious from the nature of the Goods or their description in the Contract is to be regarded as special for the purposes of this clause.
- 3.8. Where the Company recommends Goods to meet the Customer's specific requirements, the Company shall be entitled to assume that the Customer has given to the Company all relevant information as to the requirements and circumstances of its intended use for the Goods. Provided that the Company's recommendation is a reasonable one to make on those assumptions the Customer shall bear the risk that the Goods supplied may prove to be unsuitable for its purposes under the actual conditions of their application, use or storage.
- 3.9. The Company expressly reserves the right (but accepts no obligation) to make such changes in the Specification of the Goods as are necessary to ensure that the Goods conform with any applicable statutory requirements.
- 3.10. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company. Any samples, drawings, estimates of quantities needed, descriptive matter, or advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them.

### 4. DELIVERY

- 4.1. Delivery of the Goods shall take place either on discharge into the Customer's vehicle at the Company's premises or on discharge from the Company's vehicle at the Customer's site or other delivery address/site agreed by the parties.
- 4.2. The Customer must provide suitable and safe means of vehicular access to the point of discharge of the goods, including adequate manoeuvring space for the delivery vehicle. Failure to comply may result in the Company refusing to make delivery and charging the Customer with the costs incurred.
- 4.3. The Customer shall indemnify the Company and its drivers against damage or injury caused during the presence on the Customer's site or other agreed delivery address/site and access thereto by the delivery vehicle.
- 4.4. The Company may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.5. Except in cases of negligence by the Company or its drivers the Customer shall bear all risks involved in connection with tipping and unloading at the Customer's site or other agreed delivery address/site.
- 4.6. On any delivery (howsoever effected), the Customer must
  - i. satisfy itself as to the condition of the Goods;
  - ii. allow delivery of the Goods when they come onto the Customer's site or other agreed delivery address/site;
  - iii. sign the delivery note;
  - iv. sign any record produced by the Company or its drivers in respect of any delay after the arrival of the Goods at the Customer's site or other agreed delivery address/site, standing time, authorised day work or other records.
- 4.7. Where the Customer fails to comply with any of the conditions contained in Condition 4.5, or the Company is unable to deliver the Goods on time because of the Customer's default then
  - i. risk in the Goods will pass to the Customer (including for loss or damage caused by the Company's negligence);
  - ii. the Goods will be deemed to have been delivered;
  - iii. the Company may store the Goods until delivery whereupon the Customer will be liable for all related costs and expenses (including without limitation storage and insurance);
- 4.8. Any time, period or date specified by the Company for delivery of the Goods is intended to be an estimate only and the Company shall not be liable for any damages or losses (including as a result of negligence of the Company) arising out of failure to meet such time, period or date.

### 5. RISK AND TITLE

- 5.1. Unless otherwise provided in these Conditions, the risk in the Goods shall pass on delivery as provided by these Conditions.
- 5.2. Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of the Goods and all other sums which are or which become due to the company from the Customer on any account and the Company shall be entitled to enter onto the Customer's site or other delivery address/site or any third party's site where the Goods are stored and repossess the Goods.
- 5.3. Until title to the Goods has passed to the Customer, the Customer shall:
  - (a) hold the Goods on a fiduciary basis as the Company's bailee;
  - (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
  - (c) not remove, 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 against all risks for their full price from the date of delivery,but the Customer may resell or use the Goods in the ordinary course of its business at full market value.
- 5.4. The Customer shall hold all proceeds of sale on trust for the Company and assign to the Company all rights and claims which the Customer may have against their customers arising from such sales until payment is made.

5.5. If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 9.1, or the Company reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Company may have, the Company may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## 6. PRICE

- 6.1. The price payable for the Goods shall be the price stated in the quotation or the Company's prices at the date of delivery where no quotation is given. The price for the Goods shall be exclusive of any value added tax (VAT) and any other form of taxation imposed from time to time on the Goods.
- 6.2. The Company may at any time after acceptance of an order, but prior to delivery, revise the price payable for the Goods to reflect any increase in the cost of the Goods that is due to:
- any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or
  - any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate or accurate information or instructions.

## 7. PAYMENT

- 7.1. The Customer shall pay the Company in full on order or on delivery whichever is agreed, unless the Customer holds a credit account with the Company.
- 7.2. Customer's Credit accounts are opened subject to approval of satisfactory references and (unless otherwise agreed by the Company in writing) the terms of payment shall be net cash monthly account due and payable on the last day of the month following the month in which the Goods were despatched or would have been despatched save for postponement otherwise than due to default of the Company. The Company shall be entitled to submit its invoice with its delivery advice note or at any time thereafter save that where Delivery has been postponed at the request of or by the default of the Customer, the Company may then submit its invoice at any time after the Goods are ready for Delivery or would have been ready but for the request or default of the Customer.
- 7.3. Where Goods are delivered by instalments the Company may invoice each instalment separately.
- 7.4. The Customer shall not be entitled to set-off, counterclaim, discount, abatement or otherwise nor to withhold payments for Goods delivered properly due to the Company for any reason whatsoever.
- 7.5. In the event of any payment becoming overdue or credit limit exceeded on any account whatsoever then, without prejudice to any other right or remedy available to it the Company may:-
- terminate the Contract and/or any other contract between the Customer and the Company; and/or
  - suspend all further delivery under the Contract or any other contract between the Customer and the Company and/or;
  - charge interest from the date that the sum becomes due until the date that the sum is paid. Interest on overdue bills is calculated daily at the Bank of England base rate plus 8 per cent on any balance outstanding.
- 7.6. Time of payment shall be of the essence of the Contract and the Customer shall indemnify the Company against any legal or other expenses incurred by the Company in the collection of any outstanding payment on any account whatsoever.

## 8. WARRANTY AND LIABILITY

- 8.1. If, subject to clause 8.2, the Customer:
- gives notice in writing to the Company within a reasonable time of discovery that some or all of the Goods are defective; and
  - gives the Company reasonable opportunity to examine the Goods; and
  - the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business,
- the Company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 8.2. The Company will not be liable for any defective Goods if:
- the Customer makes any further use of such Goods after giving notice in accordance with clause 8.1; or
  - the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice; or
  - the defect arises as a result of the Company following any drawing, design or specification supplied by the Customer; or
  - the Customer alters or repairs such Goods without the written consent of the Company; or
  - the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.
- 8.3. Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 8.4. Nothing in these Conditions shall limit or exclude the Company's liability for:
- death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - fraud or fraudulent misrepresentation; or
  - any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.
- 8.5. Company shall not be liable to the Customer by reason of any misunderstanding or misrepresentation, or breach of any implied warranty, condition or other term, or breach of any duty at common law or under the express terms of the Contract, for any direct loss or expense and/or any indirect loss or expense suffered by the Customer or liability to third parties incurred by the Customer and/or for any consequential loss or damage, (whether for loss or 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, except as expressly provided in these Conditions AND THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS IN THIS CLAUSE 8.4, 8.5 and 8.6..
- 8.6. Without prejudice to Clause 8.4 or to the Company's other rights hereunder the Company's total liability for any one claim or for the total of all claims arising from any one act or default (whether arising from the Company's negligence or otherwise) shall not in any event exceed the Contract price for the Goods.

## 9. TERMINATION OF CONTRACT

- 9.1. The Company shall be entitled to terminate the Contract and/or any other Contract with the Customer forthwith by notice without prejudice to any of its other rights:-
- if the Customer (whether under this or any other Contract between the Customer and the Company) is overdue with any payment or of Contract which is incapable of remedy or which if the same be capable or remedy it fails to remedy within 7 days of the Company's written notice so to do; or
  - if any distress or execution shall be levied on the Customer's assets, or if the Customer shall make or offer to make any arrangement or composition with creditors or commit an act of bankruptcy or if any petition or receiving order in bankruptcy or administration order shall be presented or made against the Customer or if the Customer is a limited company and any resolution or petition to wind up the same (other than for the purposes of solvent reconstruction or amalgamation) shall be passed or served or an administration order be made if a receiver or administrator be appointed of the Customer's assets and undertaking or any part thereof; or
  - of the opinion of the Customer, serious doubts arise as to the solvency of the Customer.

## 10. HEALTH AND SAFETY

- 10.1. Certain Goods supplied by the Company could, if incorrectly used, give rise to risks to health and safety. Information in respect of such Goods is available from us. The Customer undertakes that they will ensure compliance by their employees, agents and customers with any instructions given by the Company or the manufacturer or the Company's supplier and will take any necessary steps or precautions, having regard to the nature of the Goods, as are necessary to preserve the health and safety any person handling, using or disposing of them.

## 11. WASTE

- 11.1. The Customer will be responsible for the disposal of any waste arising from the Goods and will comply with all applicable laws, regulations and waste management licences relating to such waste, save where the Customer is a consumer and it is the Company's responsibility in law. The Customer will indemnify the Company against all costs, claims, liabilities, and expenses arising from any breach of this clause.

12. FORCE MAJEURE

12.1. Deliveries may be totally or partially suspended during any period in which the Company may be prevented or hindered from manufacturing, supplying or delivering the goods due to breakdown of plant, non-availability of material, labour disputes, fire accident or inclement weather, transport difficulties or delays or any circumstances outside the Company's control. The Company will inform the Customer should any such an occasion arise, but shall be under no liability to the Customer for failure to deliver in such circumstances. Whilst every effort will be made to meet any agreed requirements of the Customer the Company shall not be liable for any loss or damage arising through its failure to meet such requirements.

13. LEGAL

13.1. All aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

13.2. Any provision of the Contract held by any competent authority to be illegal, invalid, void, voidable, unenforceable or unreasonable, in whole or in part, shall be deemed severable and all remaining conditions of the Contract shall not be affected thereby.

13.3. Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this condition to the party giving the notice.

13.4. (a) The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the contract. (b) The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the contract without the prior written consent of the Company.

13.5. A person who is not a party to the contract shall not have any rights under or in connection with it.

13.6. A waiver of any right or remedy under the contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.