

# Terms & Conditions - Supply of Goods



## 1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this condition apply in these conditions.  
**Customer:** the person, business or company who purchases the Goods from the Supplier.  
**Supplier:** means Crescent Industrial  
**Contract:** any contract between the Supplier and the Customer for the sale and purchase of the Goods, incorporating these conditions.  
**Delivery Point:** the location specified in the Contract.  
**Goods:** any goods specified in the Contract, including any replacement or part supplied to the Customer under this Contract.
- 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.

## 2. APPLICATION OF TERMS

- 2.1 These conditions shall be incorporated into the Contract in their entirety and shall prevail over any of the Customer's terms and conditions.
- 2.2 These conditions are subject to any special conditions in the Contract.
- 2.3 Any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed on behalf of the Supplier. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract. Nothing in this condition shall exclude or limit the Supplier's liability for fraudulent misrepresentation.
- 2.4 Any quotation is valid for a period of 30 days only from its date, unless previously withdrawn by the Supplier.

## 3. DELIVERY OF THE PRODUCTS

- 3.1 Delivery of the Goods shall take place at the Delivery Point. Unless otherwise specified in the Contract the Supplier shall arrange for suitable transport to the Delivery Point at the Customer's expense.
- 3.2 Delivery dates in relation to the supply by the Supplier of Goods are approximate only and time is not of the essence for delivery of the Goods.
- 3.3 The Customer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and labour for loading or unloading the Goods.
- 3.4 The Supplier may effect delivery in one or more instalments.
- 3.5 Subject to the other provisions of these conditions the Supplier 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 losses), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Supplier's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 90 days.
- 3.6 If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or the Supplier is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations: (a) risk in the Goods shall pass to the Customer (including for loss or damage caused by the Supplier's negligence); (b) the Goods shall be deemed to have been delivered; and (c) the Supplier may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

## 4. NON-DELIVERY

- 4.1 The quantity of any consignment of Goods as recorded by the Supplier on despatch from the Supplier's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
- 4.2 The Supplier shall not be liable for any non-delivery of Goods (even if caused by the Supplier's negligence) unless the Customer gives written notice to the Supplier of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received.
- 4.3 Any liability of the Supplier 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.

## 5. RISK/TITLE

- 5.1 The Goods are at the risk of the Customer from the time of delivery or deemed delivery whichever is earlier.
- 5.2 Ownership of the Goods shall not pass to the Customer until the Supplier 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 Supplier from the Customer on any account.
- 5.3 Until ownership of the Goods has passed to the Customer, the Customer shall: (a) hold the Goods on a fiduciary basis as the Supplier's bailee; and (b) maintain the Goods in satisfactory condition and keep them insured on the Supplier's behalf for their full price against all risks.
- 5.4 The Customer 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 Customer's business at full market value; and (b) and such sale shall be a sale of the Supplier's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.
- 5.5 The Customer's right to possession of the Goods shall terminate immediately if: (a) the Customer 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 Customer or notice of intention to appoint an administrator is given by the Customer 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 Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or (b) the Customer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between the Supplier and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or (c) the Customer suffers or allows any execution, whether legal or equitable, to be levied on any property belonging to the Supplier; or (d) the Customer encumbers or in any way charges any of the Goods.
- 5.6 The Customer grants the Supplier, 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 Customer's right to possession has terminated, to recover them.
- 5.7 The Supplier shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Supplier.
- 5.8 On termination of the Contract, howsoever caused, the Supplier's (but not the Customer's) rights contained in this condition 5 shall remain in effect.

## 6. PRICE

- 6.1 The price for the Goods shall be set out in the Contract and if the price for the Goods is not specified in the Contract the price for the Goods shall be the price published on the Supplier's website or pricelist as at the date of delivery or deemed delivery.
- 6.2 The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to delivery, servicing, postage, packaging, loading, unloading, carriage, freight, bank charges and insurance all of which amounts the Customer shall pay in addition when it is due to pay for the Goods.

## 7. PAYMENT

- 7.1 Subject to condition 7.4, and unless otherwise specified in the Contract, payment is due in pounds sterling and shall be paid as follows:  
7.1.1 Where the Customer does not have an authorised credit account with the Supplier, the total price of the Goods together with all other payments due to the Supplier shall be payable on delivery.  
7.1.2 Where the Customer has an authorised credit account with the Supplier, the total price of the Goods together with all other payments due to the Supplier shall be payable by the end of the month following the date of the invoice issued by the Supplier.

- 7.2 Time for payment shall be of the essence.
- 7.3 No payment shall be deemed to have been received until the Supplier has received cleared funds.
- 7.4 All payments payable to the Supplier under the Contract shall become due immediately on its termination despite any other provision.
- 7.5 The Customer 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 Customer has a valid court order requiring an amount equal to such deduction to be paid by the Supplier to the Customer.
- 7.6 If the Customer fails to pay the Supplier any sum due pursuant to the Contract, the Customer shall be liable to pay interest to the Supplier on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of the Bank of England, accruing on a daily basis until payment is made, whether before or after any judgment. The Supplier reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

## 8. QUALITY

- 8.1 Where the Supplier is not the manufacturer of the Goods, the Supplier shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Supplier.
- 8.2 The Supplier warrants that (subject to the other provisions contained in these conditions) on delivery, the Goods shall: (a) be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and (b) be reasonably fit for purpose; and
- 8.3 The Supplier shall not be liable for a breach of any of the warranties in condition 8.2 unless: (a) the Customer gives written notice of the defect to the Supplier within 7 days of the time when the Customer discovers or ought to have discovered the defect; and (b) the Supplier is given a reasonable opportunity after receiving the notice of examining such Goods and the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost for the examination to take place there.
- 8.4 The Supplier shall not be liable for a breach of any of the warranties in condition 8.2 if: (a) the Customer makes any further use of such Goods after giving notice under condition 8.3; or (b) the defect arises because the Customer failed to follow the Supplier'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 Customer alters or repairs such Goods without the written consent of the Supplier.
- 8.5 Subject to the other provisions contained in these conditions, if any of the Goods do not conform with any of the warranties in condition 8.2 the Supplier shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Supplier so requests, the Customer shall, at the Supplier's expense, return the Goods or the part of such Goods which is defective to the Supplier.
- 8.6 If the Supplier complies with condition 8.5 it shall have no further liability for a breach of any of the warranties in condition 8.2.

## 9. LIMITATION OF LIABILITY (THE CUSTOMER'S ATTENTION IS DRAWN TO THIS CONDITION IN PARTICULAR)

- 9.1 Subject to condition 3, condition 4 and condition 8, the following provisions set out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of: (a) any breach of these conditions; (b) any use made or resale by the Customer 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.
- 9.2 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.
- 9.3 Nothing in these conditions excludes or limits the liability of the Supplier: (a) for death or personal injury caused by the Supplier's negligence; or (b) under section 2(3), Consumer Protection Act 1987; or (c) for any matter which it would be illegal for the Supplier to exclude or attempt to exclude its liability; or (d) for fraud or fraudulent misrepresentation.
- 9.4 Subject to condition 9.2 and condition 9.3: (a) the Supplier'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 Supplier shall not be liable to the Customer for loss of profit, loss of business, or depletion of goodwill 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.

## 10. ASSIGNMENT

- 10.1 The Supplier may assign the Contract or any part of it to any person, firm or company.
- 10.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Supplier.

## 11. FORCE MAJEURE

- 11.1 The Supplier reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Supplier 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 Customer shall be entitled to give notice in writing to the Supplier to terminate the Contract.

## 12. GENERAL

- 12.1 The Supplier may at its discretion provide oral advice or assistance to the Customer, but is under no obligation to do so, and it shall be the sole responsibility of the Customer to ensure that all installation or fitting of Goods is conducted by an appropriately qualified professional.
- 12.2 Where the Goods are incorporated by the Customer into an end product, the Customer shall be responsible for ensuring that the end product complies with all relevant safety standards.
- 12.3 Each right or remedy of the Supplier under the Contract is without prejudice to any other right or remedy of the Supplier whether under the Contract or not.
- 12.4 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.
- 12.5 Failure or delay by the Supplier 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.
- 12.6 Any waiver by the Supplier of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 12.7 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.
- 12.8 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.

## 13. NOTICES

- 13.1 All notices between the parties about the Contract shall be in writing and delivered by hand or sent by first class post or sent by fax or email:  
(a) in case of notices to the Supplier to its place of business or such changed address as shall be notified to the Customer by the Supplier; or  
(b) (in the case of notices to the Customer) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to the Supplier by the Customer.
- 13.2 Notices 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 or email on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.