

# CONDITIONS OF SALE

## 1. INTERPRETATION

1.1 In these Conditions

'Buyer' - the persons who accept a quotation of the Company for the sale of the Goods or whose order for the Goods is accepted by the Company.

'Company' - Bulk Hardware Ltd (registered in England and Wales under number 1177960).

'Conditions' - the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) including any special terms and conditions agreed in accordance with Condition 2.2.

'Contract' - the contract for the purchase and sale of the Goods.

'Delivery Address' - the address for delivery stated on any order or such other address as may be agreed in Writing between the parties.

'Goods' - the goods (including any instalment of such goods or any parts for them) which the Company is to supply in accordance with these Conditions.

'Loan Assets' - storage and display cabinets, carousels, shelving, racks, stands and alike loaned by the Company to the Buyer in accordance with the provisions of Condition 14.

'Minimum Order Requirement' - the minimum monetary value of an order (as determined from time to time by the Company at its entire discretion) which entitles the Buyer to have the Goods delivered by the Company to the Delivery Address in accordance with Condition 7(a).

'Writing' - includes telex, cable, facsimile transmission and comparable means of communication.

## 2. BASIS OF THE SALE

2.1 The Company shall sell and the Buyer shall purchase the Goods in accordance with any quotation of the Company in Writing which is accepted by the Buyer subject to Condition 3, or any order of the Buyer in Writing which is accepted by the Company in Writing, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted or any such order is made or purported to be made by the Buyer.

2.2 The Company reserves the right to change these Terms and Conditions at any time. The Buyer should check these Terms and Conditions regularly on the Company website. Orders placed with our Company after changes are posted on the Company website will be deemed the acceptance of the updated or amended Terms and Conditions.

## 3. QUOTATIONS

Save as otherwise specifically provided, quotations are valid for a period of not more than 30 days from their date. Quotations include only the Goods specified therein and are subject to availability of Goods at the date the Buyer's acceptance is notified to the Company.

## 4. PERFORMANCE, SUITABILITY, ETC

(a) While the Company will do its best to comply with any requirements notified by the Buyer, the responsibility for ensuring that the Goods are suitable for the Buyer's purpose, meet the Buyer's requirements and are in accordance with any description put forward by the Buyer, is the Buyer's.

(b) No warranty, condition, description or representation given or made before the Company's acceptance of an order or the Buyer's acceptance of a quotation is to be treated as a term of the Contract or as inducing it unless expressly incorporated in the Contract.

(c) The Company reserves the right to make changes in the design or specification of the Goods without notice in the light of changes in technical knowledge, production techniques, Government, EEC or other regulations, considerations of safety or other reasonable cause.

## 5. PRICES

(a) Unless otherwise expressly provided and subject to the Minimum Order Requirement, all prices are quoted inclusive of delivery and packing charges.

(b) All prices, pack quantities and all specifications are subject to alteration without notice and Goods will be invoiced at the prices ruling at the date of despatch.

(c) Value added tax is payable on all invoiced prices (where applicable) at the appropriate rate ruling at the tax point.

## 6. PAYMENT

(a) The Company shall be entitled to invoice the Buyer for the price of Goods on or at any time after despatch.

(b) Unless otherwise expressly provided, payment is due without set off, deduction or counterclaim not later than the end of the month following the month in which the relevant invoice is issued.

(c) Accounts unpaid at the due date carry interest (before as well as after any judgement or insolvency) at the rate of 3% per annum above Barclays Bank PLC base rate from time to time calculated on a day to day basis from date of invoice together with all reasonable debt recovery costs.

(d) Unless specifically excluded the Company reserves the right to demand at any time from the Buyer payment in advance before undertaking any work or incurring or committing itself for any expenditure or before delivery of the Goods.

(e) Default in payment by the Buyer for three months from the date of invoice entitles the Company to suspend or terminate the Contract so far as it remains unperformed and to recover damages for breach.

## 7. DELIVERY

(a) Subject to the Minimum Order Requirement delivery of the Goods shall be made by the Company by delivering the Goods to the Delivery Address.

(b) Where the Buyer fails to satisfy the Minimum Order Requirement then delivery of the Goods shall be made by the Company by delivering the Goods to the Delivery Address but at the expense of the Buyer who shall be charged by the Company for the cost of delivery.

(c) The Company will use all reasonable endeavours to meet quoted delivery dates but such dates are estimates only and the Company shall not be liable for the consequences of any delay.

(d) The Company shall in any event be entitled to extend the delivery period where delay is caused by factors outside the Company's reasonable control.

(e) Where the Buyer fails to accept delivery they will be stored at the Buyer's risk and expense. Default by the Buyer for more than two weeks entitles the Company to suspend or terminate the Contract so far as it remains unperformed and to recover damages for breach.

(f) The Company shall be entitled to deliver Goods comprised in one order in several consignments in which event each such consignment shall be treated as the subject of a separate contract.

## 8. CARRIAGE AND DAMAGE IN TRANSIT

(a) Where carriage is arranged by the Company claims for loss, shortage or damage in transit will not be accepted unless the Company is notified in Writing within seven days of the arrival of the Goods; in the case of non-delivery, claims will not be accepted unless received in Writing by the Company within seven days from the estimated delivery date notified to the Buyer.

(b) In all other circumstances, carriage from the Company's premises shall be arranged by and be entirely at the risk of the Buyer.

## 9. RESERVATION OF TITLE

(a) The risk of any damage to the Goods while in the Buyer's possession shall be borne by the Buyer but the legal title to the Goods shall remain with the Company until such time as the Company has received payment of the purchase price of the Goods and of any other goods or services previously or subsequently supplied by the Company to the Buyer whereupon such title shall pass to the Buyer.

(b) Insofar as the Goods may be delivered to the Buyer prior to the time when title thereto passes to the Buyer as aforesaid the Buyer shall until such time hold the Goods as the fiduciary agent of the Company and shall accordingly remain liable to account to the Company for the Goods or, if the same shall be sold by the Buyer, (which the Buyer shall be entitled to do as the fiduciary agent of the Company but, as between the Buyer and the Buyer's customer, only as principal and without creating any relationship, disclosed or undisclosed, between the Company and such customer), for all of the proceeds, tangible and intangible (and including without limitation insurance proceeds and proceeds of proceeds), thereof.

(c) The Buyer shall, as trustee for the Company, pay such proceeds into a bank account separate from all other bank accounts and other monies and assets of the Buyer and of third parties. The Buyer shall store the Goods separate from any other goods of the Buyer and of third parties and shall identify the Goods as the property of the Company. The Buyer shall not remove any identifying marks placed on the Goods by the Company.

(d) While any Goods still in the ownership of the Company remain upon the Buyer's premises or the premises of any agent or associate of the Buyer, the Company shall have the right to enter upon the premises on which the Goods are located for the purpose of inspecting the condition and storage arrangements of the Goods.

(e) The Buyer may exercise its right to sell the Goods as the fiduciary agent of the Company in the usual course of the Buyer's business but such right:

(i) may be revoked at any time by the Company giving notice to that effect if the Buyer is in default for longer than seven days in the payment of any sum whatsoever due to the Company (whether in respect of the Goods or of any other goods or services supplied at any time by the Company to the Buyer or for any reason whatsoever) or if the Company has bona fide doubts as to the solvency of the Buyer; and

(ii) shall automatically cease if a receiver, manager or administrator is appointed over the assets undertaking or property of the Buyer, or a winding up or administration order against the Buyer is made or petitioned, or any petition or order in bankruptcy against the Buyer is presented or made, or the Buyer goes into voluntary liquidation (otherwise than for the purposes of reconstruction or amalgamation while solvent) or calls a meeting of or makes arrangements or compositions with creditors.

(f) Upon determination of the Buyer's rights of sale under paragraph (e) (i) or (ii) above, the Buyer shall place the Goods at the disposal of the Company (who shall be entitled to enter any premises of the Buyer for the purpose of removing the Goods and to remove the Goods from the said premises) and/or as the case may be pay to the Company the proceeds then held by the Buyer as trustee for the Company in accordance with this clause.

## 10. WARRANTIES AND LIABILITY

(a) Subject to the conditions set out below the Company warrants that Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of six months from the date of their delivery.

(b) The above warranty is given by the Company subject to the following conditions:

(i) The Company shall be under no liability in respect of any defect in the Goods arising from any drawings, design or specification supplied by the Buyer.

(ii) The Company shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the Company's, its suppliers and/or the Manufacturers' instructions, misuse or alteration or repair of the Goods without the Company's approval.

(c) Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all other warranties, conditions or terms implied by statute or common law are excluded to the fullest extent permitted by law.

(d) Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.

(e) Any claim by the Buyer which is based on any defect in the quality or condition of Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified in Writing to the Company within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. Full details of fault must be provided. If delivery is not refused, and the Buyer does not notify the Company accordingly, the Buyer shall not be entitled to reject the Goods and the Company shall have no liability for such defects or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with these Conditions.

(f) Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these Conditions, the Company shall repair or replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Company shall have no further liability to the Buyer.

(g) Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Buyer by reason of any representation, or any warranty, condition or other term (express or otherwise), or any duty at common law, or under the express terms of the Contract with the Buyer, 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 Buyer, except as expressly provided in these Conditions.

## 11. CANCELLATION

Orders placed cannot be cancelled except with the Company's consent and on terms which will indemnify the Company against loss and expenses incurred. Goods ordered in error will be subject to a 50% handling charge, plus carriage costs. Goods are not sold on a sale and return basis and any Goods returned without the Company's consent in Writing will not be accepted for credit.

## 12. BUYER'S INSOLVENCY

If before the Buyer makes payment in full the Buyer becomes insolvent or enters into a scheme of arrangement or composition with creditors or goes into liquidation or has a receiver or administrator appointed, the Company shall be entitled to exercise all or any of the following rights: namely, to retain all monies paid by the Buyer, to stop Goods in transit, to remove the Goods and/or all other goods supplied by the Company to the Buyer which have not been paid for from the Buyer's premises, to exercise a lien over goods, to resell them and to claim from the Buyer any further loss arising in any manner whatsoever and to be indemnified by the Buyer, and to elect to treat the Contract as repudiated or as continuing; provided that the Company will not retain money already paid or arising on a resale in excess of the full loss or damage suffered by the Company, but if the net proceeds of sale plus retained money do not satisfy the Company's full loss, the Company shall be entitled to claim from the Buyer such sums as will satisfy the full loss together with costs and expenses reasonably incurred.

## 13. EXPORT TERMS

13.1 In these Conditions 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

13.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 13 shall (subject to any special terms agreed in Writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.

13.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.

13.4 Unless otherwise agreed in Writing between the Buyer and the Company and subject to the Minimum Order Requirement, the Goods shall be delivered CPT to the Delivery Address and the Company shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979.

13.5 The Company may request at its entire discretion prior to delivery payment of all amounts due to the Company by irrevocable letter of credit opened by the Buyer in favour of the Company and confirmed by a bank in England acceptable to the Company.

## 14. LOAN ASSETS

14.1 The Company may at its entire discretion loan to the Buyer free of charge Loan Assets, which shall at all times remain in the ownership of the Company and the Buyer shall have no rights in the Loan Assets other than as bailee.

14.2 The Loan Assets must only be used by the Buyer and must be kept at the Delivery Address or at such other address as may be agreed in Writing between the parties.

14.3 The Buyer must not sell, assign, charge or create any sub-lease over or otherwise dispose of or abandon the Loan Assets, nor allow the Loan Assets to become a fixture on any land or property.

14.4 The Company may by notice in Writing to the Buyer demand the return of all or any of the Loan Assets to the Company's premises which shall be returned by and at the cost of the Buyer.

14.5 All terms, conditions and warranties (whether express or implied by statute or otherwise) as to description, merchantability and fitness for purpose of the Loan Assets are excluded. The Company does not warrant that it has good title to the Loan Assets and the Buyer will keep the Company indemnified at all times in respect of all claims of whatsoever nature made in respect of the Loan Assets and their use by the Buyer.

## 15. HEALTH AND SAFETY

All Goods supplied by the Company should be installed, used, cleaned, maintained or alike in accordance with the relevant information or advice relating to such matters made available by the manufacturer, designer, importer, supplier and the company.

## 16. FORCE MAJEURE

In addition to the right to extend the delivery period referred to in paragraph 7 above, the Company shall be entitled to suspend or postpone performance of the Contract in the event of strike, lock-out, dispute, breakdown, accident, force majeure or any other circumstance beyond the reasonable control of the Company. In the event of such suspension or postponement beyond the period of 3 months, the Contract shall (with the consent of the Buyer and the Company, such consent not to be unreasonably withheld by either of them) so far as it remains unperformed be deemed to be terminated but without prejudice to the rights of either party arising before the date of termination.

## 17. WAIVER

No waiver or breach of these conditions shall prejudice the Company's rights in respect of any subsequent breach.

## 18. SEVERANCE

If any provision of these Conditions, is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

## 19. APPLICABLE LAW AND JURISDICTION

This contract shall be deemed to have been made in England, the law applicable to it is the Law of England and the parties agree to submit to the non-exclusive jurisdiction of the English courts.