

# CONDITIONS OF SALE

## 1 Interpretation

1.1 In these Conditions 'Buyer' means the person whose order for the Goods is accepted by the seller, 'Goods' means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions. 'Seller' means Birtwell and Co. Ltd., 'Conditions' means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller, and 'Contract' means the contract for the purchase and sale of the Goods.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

## 2 Basis of the Sale

2.1 The Contract shall be effected upon the Seller giving written acceptance of the Buyer's order and the date of the contract shall be deemed to be the date of the acceptance unless otherwise expressly specified. The Contract shall incorporate and be subject to these Conditions in all respects and no variation of or addition to these Conditions shall form part of the Contract or be effective against the Company unless expressly made or approved by the Company in writing. All quotations shall be invitations to treat only and shall not constitute offers capable of acceptance by the Buyer and shall be valid only for a period of thirty (30) days from the date of the quotation unless otherwise specifically provided. These Conditions shall override and take the place of any other conditions in any document or other communication used by the Buyer in concluding any contract with Seller. Seller shall have received an order from the Buyer, provided that the Buyer shall have notice of these Conditions, any contract of sale between the Seller and the Buyer shall be deemed to incorporate these Conditions. These Conditions embody the entire understanding of the Seller and the Buyer relating to the Contract and save where otherwise provided herein override and supersede all prior understandings or implications relating thereto.

2.2 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 Seller shall be subject to correction without any liability on the part of the Seller.

## 3 Terms of Payment

3.1 Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.

3.2 The Buyer shall pay the price of the Goods within thirty (30) days' from the date of the invoice, and the Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract.

3.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries to the Buyer; appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer), and charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of two per cent (2%) per month (calculated on a day to day basis) until payment in full is made.

## 4 Delivery

4.1 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

4.2 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage.

4.3 Any query regarding delivery documentation and invoices shall be notified to the Seller within thirty (30) days of the date of invoice. If the Buyer does not notify the Seller accordingly the Buyer shall be deemed to have accepted the sufficiency and accuracy of such delivery documentation and invoices and shall accordingly pay the price on the due date.

## 5 Warranties and Liability

5.1 Subject to the conditions set out below the Seller warrants that the Goods will be of normal commercial quality and where appropriate correspond with their specification at the time of delivery.

5.2 The above warranty is given by the Seller subject to the following conditions: the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer; the Seller shall be under no liability in respect of any defect, failure, breakdown, malfunction or breakage arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval; the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment; the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

5.3 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 warranties, conditions or other terms implied by statute or common law excluded to the fullest extent permitted by law. 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.

5.4 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within seven (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. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

5.5 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 Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportion part of the price), but the Seller shall have no further liability to the Buyer.

5.6 In the case of printed Goods the Seller will not accept liability or responsibility for any infringement of copyrights or trade marks and the Buyer will hold the Seller harmless from any liability therefor. The seller will not be liable or responsible for any errors in proofs which have been passed by the Buyer and any charge incurred by the Seller in the preparation of all special tools, sketches, printing blocks etc. shall be charge extra.

5.7 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under express terms of the Contract for any loss, injury or damage of any nature whatsoever (whether for loss of profits or otherwise) whether direct or consequential, or other claims for compensation whatsoever (whether caused by the negligence of the Seller, 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, and the entire liability of the Seller under or except as expressly provided in these Conditions.

5.8 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control, including but not limited to Act of God, explosion, flood, tempest, fire or accident, war or threat of war, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export.

## 6 Insolvency of Buyer

6.1 This clause applies if: the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or the Buyer ceases, or threatens to cease, to carry on business; or the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

6.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 7 Printing, Sketches, Buyer's Requirements

7.1 All sketches and original work produced by the Seller remain the property of the Seller. Alterations from original copy on and after first proof will be charged extra. Proofs of all work may be submitted for the Buyer's approval and no responsibility will be accepted for any errors in proofs which may be passed by him. The Buyer shall be wholly responsible (in respect of copyright, trade mark, design, all common law and statutory rights and otherwise howsoever) for any matter or work which they instruct the Seller to print or perform and any design, sketch, drawing, painting, construction, work or thing which they supply and/or instruct the Seller to supply or execute and for all claims by third parties arising therefrom and the Buyer shall keep the Seller indemnified against all proceedings, claims, costs, expenses and liability whatsoever in respect thereof.

## 8 General

8.1 The Buyer shall not assign the Contract or any part thereof or any rights thereunder in whole or in part without the prior written consent of the Seller.

8.2 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 provision to the party giving the notice.

8.3 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as waiver of any subsequent breach of the same or any other provision.

8.4 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.

8.5 The Contract shall be governed by and construed in accordance with the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts as regards any dispute arising under or in connection with these Conditions or the sale of the Goods.