

1. Introduction

1.1 In these Conditions of Sale 'the Seller' shall mean Michael Pavis Limited, 'the Buyer' shall mean the person, firm or company to whom the Seller agrees to sell or supply the Goods and 'the Goods' shall mean all goods which are the subject of any contract of sale or supply between the Seller and the Buyer.

1.2 These Conditions are the only conditions upon which the Seller is prepared to deal with the Buyer and they shall govern the contract to the entire exclusion of any other express or implied conditions.

1.3 These Conditions (as modified only by the variation in writing signed on behalf of the Seller by a Director and together with the matters referred to on the fact of the Seller's quotation and/or acceptance of order) embody the entire understanding of the parties and supersede any prior promises, representations, undertakings or implications.

1.4 Any quotation in whatever form given to the Buyer is given subject to these Conditions and does not constitute an offer to sell.

1.5 These Conditions shall be construed in accordance with the laws of England and Wales whose courts shall have sole jurisdiction over all matters arising herein.

2. Account Facilities

2.1 Credit facilities may be offered at the discretion of the Seller but, at any time, the Seller may refuse to give credit facilities or where credit facilities have been authorised alter, suspend or withdraw them at any time without stating a reason.

2.2 Michael Pavis Ltd will make a search with a credit reference agency which will keep a record of that search and will share that information with other businesses. We may also make enquiries about the principal directors and proprietors with a credit reference agency.

2.3 If terms for payment or credit limits are exceeded the Seller may suspend or withdraw credit facilities until the account is settled to the satisfaction of the Seller and the Seller shall not be responsible for any delays in acceptance of order or delivery of Goods arising whilst the Buyer's financial status is being verified or during the suspension or withdrawal of any credit facility whether or not the same has been communicated to the Buyer.

3. Price

3.1 Unless otherwise expressly agreed in writing the price of the Goods shall be that ruling on the date of delivery.

3.2 The seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller.

3.3 Prices quoted do not include VAT or any similar tax, levy or duty which will be added to or charged on invoices at the appropriate rates.

4. Payment

4.1 Unless otherwise expressly agreed in writing, payment is due by the last day of the month following the date of invoice.

4.2 If any payment that is to be made hereunder by the Buyer to the Seller is overdue, interest will be chargeable thereon as well after as before judgement on a day to day basis at an annual rate of 3 per cent above National Westminster Bank PLC's base rate from time to time applicable, until the sum due is paid.

4.3 Where any sum owed by the Buyer to the Seller under this or any other contract is overdue the Seller may withhold any deliveries of Goods due to be made under this contract until arrangements as to payment or credit have been established which are satisfactory to the Seller. The Seller will also have the right to pass on in full any debt collection charges it incurs as a result of a non-payment of the account.

5. Delivery

5.1 Unless otherwise stated, the price quoted for the Goods by the Seller shall be inclusive of the basic costs of delivering the same. Any special delivery requirements are excluded and will be invoiced separately. In the event that the Seller incurs any delivery charges from its supplier, these will be added to the invoice and will be payable by the Buyer.

5.2 Unless otherwise agreed in writing the place of delivery shall be the Buyer's normal place of business.

5.3 Any delivery dates are estimates only and the time of delivery shall not be of the essence. The Seller will not be liable to the Buyer for any loss or damage (whether direct, indirect or consequential) sustained by the Buyer as a result of any delay in delivery of despatch of the Goods where such delay is caused by lack of instructions from the Buyer, strikes, lock-outs, other industrial action, failure of the Seller's suppliers to fulfil their obligations, or any other cause beyond the Seller's reasonable control.

5.4 The Seller reserves the right to deliver the Goods by instalments. Where delivery is made by instalments, each delivery shall be deemed for such purpose to be the subject of a separate contract and any failure whatsoever by the Seller in respect of any one delivery shall not entitle the Buyer to repudiate the contract or any instalments remaining to be delivered thereunder.

5.5 If the Buyer fails to take delivery of the Goods when they are ready for delivery the Seller may, at its option, either store them itself or have them stored by third parties on such terms as the Seller may in its absolute discretion think fit. In any event the cost of storage will be borne by the Buyer and insofar as the storage is done by the Seller then such cost will be the Seller's storage charges current at the time of storage. The cost together with any additional insurance or double handling charges will be added to and form part of the price for the Goods.

5.6 Unloading shall be the entire responsibility of the Buyer who will provide the necessary labour and facilities. The Buyer shall indemnify the Seller against all and any claims whatsoever arising from unloading, and the compliance by the Seller with the Buyer's delivery instructions.

5.7 Goods shall only be accepted for return if the Seller has issued a Collection Note and any goods so returned by agreement must be in good order and resaleable condition and adequately packed. The Seller reserves the right to charge a restocking charge or to pass on a manufacturer's restocking charge for any returned Goods which it agrees to accept, or any specially ordered goods received from a manufacturer but cancelled by the Buyer prior to delivery.

6. Initial Defects

6.1 The Buyer shall have no claim under clause 7 in respect of any defect which should have been apparent on a reasonable visual examination of the Goods unless the conditions in paragraph 6.4 hereof are satisfied.

6.2 If the quantity of Goods delivered does not correspond with the quantity required to be delivered in that consignment the Buyer shall not be entitled to reject that consignment but shall be entitled only:-

6.2.1 if the quantity delivered is less than the contract quantity, to a further delivery of Goods to make up the deficiency or (at the Seller's option) a refund of the appropriate part of the purchase price, and

6.2.2 If the quantity delivered exceeds the contract quantity, to return the excess or to retain the whole, in which case the price shall be adjusted at the contract rate then prevailing.

6.2.3 Provided that the Buyer shall have no entitlement whatsoever in respect of that deficiency unless the conditions in paragraph 6.4 hereof are satisfied.

6.3 The Buyer shall have no claim under clause 7 in respect of the fact that the Goods delivered are of the wrong description unless the conditions in paragraph 6.4 hereof are satisfied.

6.4 The conditions before referred to are that:-

6.4.1. the receipt for the Goods is qualified by a remark to that effect and

6.4.2. the claim is made upon the Seller within 48 hours of delivery and is confirmed in writing by letter within five days of delivery.

6.5 In any event the Buyer shall be treated as having accepted any consignment of the Goods if it retains them for longer than seven days after their delivery.

6.6 In respect of any defects in part of the Goods or in the event of a defect in Goods forming one instalment out of a series of instalments any default in respect thereof by the Seller shall not entitle the Buyer to repudiate the contract with regard to the remainder of the Goods or to any further instalment.

7. Performance

7.1 THE SELLER ITSELF GIVES NO UNDERTAKING OR GUARANTEE IN RESPECT OF THE DESCRIPTION, QUALITY OR FITNESS FOR PURPOSE OF THE GOODS AND ALL IMPLIED CONDITIONS AND WARRANTIES IN RESPECT THEREOF ARE HEREBY EXPRESSLY EXCLUDED. HOWEVER, THE SELLER DOES UNDERTAKE THAT, IN THE EVENT THAT ANY DEFECT IN WORKMANSHIP OR MATERIALS IS NOTIFIED TO IT WITHIN THREE MONTHS OF DELIVERY OF THE GOODS, IT WILL USE ITS REASONABLE ENDEAVOURS TO SECURE RECOMPENSE FROM ITS OWN SUPPLIER IN RESPECT THEREOF AND IT WILL PASS ON TO THE BUYER THE BENEFIT OF ANY GUARANTEES OR INDEMNITIES GIVEN TO IT IN RESPECT THEREOF BY ITS SUPPLIER. THE SELLER SHALL BE UNDER NO LIABILITY FOR ANY LOSS OR DAMAGE (WHETHER DIRECT, INDIRECT, OR CONSEQUENTIAL) HOWSOEVER ARISING WHICH MAY BE SUFFERED BY THE BUYER.

7.2 IN THE EVENT THAT, NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH 7.1 OF THIS CONDITION, THE SELLER IS FOUND LIABLE FOR ANY LOSS OR DAMAGE SUFFERED BY THE BUYER, THAT LIABILITY SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE GOODS.

7.3 THE FOREGOING PROVISIONS OF THIS CONDITION SHALL NOT APPLY TO SALES WHICH ARE MADE TO PERSONS WHO DEAL AS CONSUMERS (AS THAT EXPRESSION IS DEFINED IN SECTION 12 OF THE UNFAIR CONTRACT TERMS ACT 1977), UNLESS THE CONTRACT IS AN INTERNATIONAL SUPPLY CONTRACT (AS DESCRIBED IN SECTION 25 OF THAT ACT).

8. Reservation of Title

8.1 The intending Buyer acknowledges that before entering into an agreement for the purchase of any Goods from the Seller, he has expressly represented and warranted that he is not insolvent and has not suffered any bankruptcy order, or being a company with limited or unlimited liability, knows of no circumstances which would entitle any debenture holder or secured creditor to appoint a Receiver to petition for winding up of the Buyer or exercise any other rights over or against the Buyer's assets.

8.2 The property in the Goods shall not pass to the Buyer until the full price of the Goods and Goods which are the subject of any other contract between the Buyer and the Seller is paid.

8.3 Until such time as the full price of all such Goods has been paid:-

8.3.1. they shall be held by the Buyer in a fiduciary capacity and stored by the Buyer at its premises in such a manner that they are clearly identifiable as the Goods of the Seller and shall be kept separate from any other goods whether or not supplied by the Seller.

8.3.2. they shall be handed over to the Seller on demand and the Seller shall be entitled to re-take possession of them without prejudice to any other rights against the Buyer and the Seller is hereby granted an irrevocable licence to enter into the Buyer's premises for the purpose of recovering the Goods and is hereby authorised (if necessary) to dismantle the Goods from anything to which they are attached including land and buildings.

8.4 The Seller will have the right to maintain an action against the Buyer for the price of the Goods notwithstanding that property in the Goods has not passed.

9. Product Changes and Tolerances

Colour, size and other physical properties of the Goods are subject to reasonable commercial variation.

10. Force Majeure

The Seller shall have the right to cancel or to reduce the volume of the Goods delivered if it is prevented from or hindered in delivery of the Goods through any circumstances beyond its control including (but not limited to) industrial action, war, fire, or prohibition or enactment of any kind, without incurring any liability for any loss or damage whatsoever resulting therefrom.

11. Cancellation

Subject to these conditions any order accepted by the Seller shall not be cancelled, deferred or altered by the Buyer except with the written agreement of the Seller.

12. Termination

If the Buyer makes default in any payment, or commits any breach of the terms and conditions of the contract, or suffers distress or execution, or becomes insolvent, or suffers a bankruptcy order, or enters into any arrangement or composition with his creditors, or shall pass a resolution or suffer an order of a court to be made for its winding up (other than solely for amalgamation or reconstruction), or if any administrative receiver or administrator is appointed over any part of the Buyer's business, or if a petition for an administration order is presented to the court, the Seller may, without prejudice to any rights which may have accrued or which may accrue to it, at its option:-

12.1 require payment in advance for all or any further deliveries or

12.2 suspend any further deliveries until such default or breach, if capable of rectification, is rectified or

12.3 terminate the contract and/or

12.4 terminate any other contracts which the Buyer has placed with the Seller so far as Goods remain to be delivered thereunder.

13. General

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

13.2 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 provisions in question shall not be affected thereby.

NOTE: The Seller's prices are calculated on the basis that the above conditions will apply. Buyers requiring prices to be quoted on a different basis should inform the Seller.