

# CONDITIONS OF SALE



Traymate Products Limited

Unit C19

Ensign Estate

Botany Way

Purfleet

Essex

RM19 1TB

In these conditions, the 'Company' Traymate Products Ltd. and 'goods' means the subject matter of the contract.

## 1. GENERAL

- 1.1 The Company's quotations are not binding on the Company and a contract (the 'contract') will only come into being upon acceptance by the Company of the Customer's order and the following conditions shall be deemed to be incorporated therein.
- 1.2 The contract will be subject to these conditions. All terms and conditions appearing or referred to in the Customer's order otherwise stipulated by the Customer shall have no effect. Any variation of the contract must be confirmed in writing by the Company.
- 1.3 Where goods are to be supplied from stock, such supply is subject to availability of stocks at the date of delivery.
- 1.4 Tenders and quotations submitted by the Company shall remain open for acceptance for a period of 30 days from the date of the tender or quotation, unless in the tender or quotation, some other period is specified or accepted and unless the tender or quotation is withdrawn by the Company.

## 2. PRICES

- 2.1 Notwithstanding goods may be sold by reference to the Company's published price list, the price payable for the goods shall, subject to clause 1.4 be the price notified to the Customer.
- 2.2 There shall be, added to the price of the goods, any value added tax and any other tax or duty relating to the manufacturer, transportation, export, import, sale or delivery of the goods or performance of the services (whether initially charged or payable by the Company or the Customer).
- 2.3 Prices quoted are the delivered prices unless otherwise stated. If, however, the Company arranges or undertakes the carriage, freight, insurance or any other transportation costs beyond the point of delivery originally quoted by the Customer, such cost shall be for the Customer's account and shall not affect the provisions of the contract as to the passing or risk.

## 3. TERMS OF PAYMENT

- 3.1 Prices quoted are net unless otherwise agreed.
- 3.2 Subject to credit being approved, accounts are due for payment not later than the end of the month following the month of the invoice; otherwise payment must be received by the Company before delivery.
- 3.3 All payments shall be made without deduction or set off.
- 3.4 When deliveries are spread over a period, each consignment will be invoiced as dispatched and each month's invoices will be treated as a separate account and be payable accordingly. Where contract work is to be performed over a period in excess of one month, the value of the work will be ascertained by the company at the end of each month and (unless the contract otherwise expressly provides) a sum equal to such value (or any percentage thereof specified in the contract) shall be invoiced and such invoices shall be paid in accordance with the forgoing provisions of this clause.
- 3.5 Failure to pay any invoice in accordance with the forgoing terms of other terms specified in the contract shall entitle to the Company to suspend further deliveries and work both on the same order and on any other order from the Customer without prejudice to any other right the Company may have. The Company also reserves the right to charge interest on overdue account such interest to be calculated on a day to day basis on the amount outstanding at a rate of 4% above the base rate of Lloyds TSB Bank PLC.
- 3.6 The Company reserve the right, where genuine doubt arise, as to a Customer's financial position or in the cases of failure to pay for any goods or services or any delivery or installment as aforesaid, to suspend delivery or performance of any order or any part installment without liability until payment or satisfactory security for payment has been provided.



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## 4. TITLE TO GOODS

4.1 Legal and beneficial ownership of goods shall remain with the Company until payment has been received by the company;

4.1.1 for those goods;

4.1.2 for any other goods supplied by the Company;

4.1.3 of any other monies due from the Customer to the Company on any account. 4.2 Until property in the goods passes to the Customer under conditions 4.1 above, the Customer shall:

4.2.1 be bailee of the goods;

4.2.2 keep the goods separately and readily identifiable as property of the Company,

4.2.3 not attach the goods to property without the Company's consent.

4.3

4.3.1 Notwithstanding conditions 4.1 above, the customer may (as between it and its Customer only) as principal in the ordinary course of its business, sell the goods by bona fide sale at full market value or in the ordinary course of its business, use the goods

4.3.2 Goods shall be deemed sold or used in the order delivered to the Customer.

4.3.3 Any resale by the Customer of the goods in which property has not passed to the Customer shall (as between the Company and the Customer) be made by the Customer as agent for the Company.

4.4

4.4.1 If goods in which property has not passed to the Customer are mixed with, or incorporated into other goods, the property in those other goods shall be held on trust for the Company to the full extent of the sums recoverable by the Company under condition 4.1 above.

4.4.2 The proceeds of sale of any goods and any other goods referred to in 4.4.1 above shall be held by the Customer in trust for the Company to the full extent of all sums recoverable by the Company under condition 4.1 above.

4.4.3 The Customer shall keep any proceeds of sale as referred to in condition 4.4.2 above in a separate account and the Company shall have the right to trace such proceeds (according to the principles in re Halletts Estate (1880) 13 CHD 696)

4.4.4 Upon accounting to the Company for the entire proceeds of sale made under conditions 4.3.3 and 4.4.2 above; the Company will pay to the Customer a commission equivalent to the difference between the

sums owed to the Company and the value of such proceeds.

4.5 At any time prior to the property in goods passing to the Customer (whether or not any payment to the Company is then overdue or the Customer is otherwise in breach of any obligation to the Company) the Company may without prejudice to any other of its rights;

4.5.1 retake possession of all or any part of the goods and enter any premises for that purpose (or authorise others to do so) which the customer hereby authorise;

4.5.2 require delivery up to it of all or any part of the goods;

4.5.3 terminate the Customer's authority to re-sell or use the goods forthwith by written notice to the Customer which authority shall be automatically terminated (without notice) upon any insolvency of the Customer or its going into liquidation (as defined by the Insolvency act 1986) or it having a receiver or administrative receiver appointed or calling a meeting of its creditors or any execution or distress being levied on goods in its possession.

4.6 The Company may at any time appropriate sums received from the Customer as it thinks fit notwithstanding any purported appropriation to the Customer.

4.7 Each condition and sub-condition of this clause is separate and servable and distinct.

## 5. WARRENTY: LIMIT OF RESPONSIBILITY

5.1 The Company warrants that it will (at the Company's choice) replace any goods which are accepted by the Company as being defective or not in accordance with the contract or any express description or representations given or made by or on behalf of the Company in respect of the goods within a period of twelve months from dispatch of such goods from the Company's works (the warranty period) save that this warranty shall not apply where the defector fault is attributable to defective materials supplied by third parties where the Customer's only remedy will be against that third party or where the defect or fault is attributable to the goods not being installed or maintained in accordance to the Company's installation and maintenance instructions. The Customer's



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remedies in respect of any claim under the foregoing express warranty or any condition or warranty implied by law or any other claim in respect of the goods or any workmanship in relation thereto (whether or not involving negligence on the part of the company) shall in all cases be limited to repair, replacement, re-performance or refund of the purchase price as aforesaid and any conditions or warranty implied by law shall cease to apply after expiry of the warranty period; and the Company shall not in any circumstances be liable for any damages, compensation, costs, expenses, losses or other liabilities, whether direct or consequential and any other remedy which would otherwise be available in law is hereby excluded except to the extent that such exclusion is prohibited by any rule of law. A claim in respect of any defect or failure to comply with the specification or in respect of any delivery or installment of any order or any part thereof shall not entitle the customer to cancel or refuse delivery of or payment for any other order, delivery or installment.

5.2 Where the Company is called out in respect of allegedly defective goods but declines to accept the goods as defective, the Company reserves the right to make a charge in respect of that visit.

### 6. DELIVERY AND COMPLETION DATES

6.1 The delivery dates specified in the contract are approximate only and unless otherwise expressly stated, time is not of the essence for delivery and performance, the Company will not be liable in any circumstances for the consequences of any delay in delivery or performance of failure to deliver or perform.

6.2 No delay shall entitle the Customer to reject any delivery or performance or any other further installment or part of the order or any other order from the Company or to repudiate the contract or the order.

### 7. DAMAGE, SHORTAGE OR LOSS IN TRANSIT

7.1 Unless the contract otherwise stipulates the risk of the goods passes to the Customer when goods are delivered.

7.2 Where the contract provides for the delivery elsewhere than the Company's works, risk will pass at the point specified in the contract and the Company will entertain a claim by the Customer in respect of loss or damage in transit only if the Customer;

7.2.1 gives written notice to the Customer within 21 days of non-delivery or within 7 days of the delivery of the goods in any case; and

7.2.2 where the goods are transported by an independent freight carrier, complies in all respects with the freight carrier's conditions of carriage for notifying claims for loss or damage in transit.

### 8. DELAYED ACCEPTANCE

If for any reason the Customer is unable to accept delivery of the goods the Customer's risk when the goods are due and ready for delivery, the Company may arrange storage of the goods at the Customer's risk and the Customer shall be liable to the Company for the reasonable costs (including insurance) of such storage. This provision is without prejudice to any other right to which the Company may have in respect to the Customer's failure to take delivery of the goods or pay for them in accordance with the contract.

### 9. TERMINATION

If the Customer enters into a deed of arrangement or commits an act of bankruptcy or compounds with his creditors or a receiving order is made against him or (being a Company) it shall pass a resolution or a Court shall make an order that the Customer shall be wound up (otherwise than for the purposes of amalgamation or reconstruction) or if a receiver (including an administrative receiver) shall be appointed of any of the assets or undertaking of the Customer or if circumstances shall arise which shall entitle the Court or creditor to appoint a receiver (including an administrative receiver) or a manager of which entitle the court to make a winding up order or if the Customer takes or suffers any similar action in consequence or debt or is the financial responsibility of the customer, shall in the opinion of the Company become impaired or if the Customer shall commit any breach of any part of the contract the Company may without prejudice to its rights and remedies, hereunder, stop all goods in transit and suspend any further deliveries and in notice by writing to the Customer may forthwith determine the contract.

### 10. NON-STANDARD ORDERS

Where the Customer orders goods or material of a type, size and quality not normally produced by the Company, the Company will use all reasonable endeavours to execute the order, but if it proves



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impossible, impracticable or uneconomical to carry out or complete the order, the Company reserves the right to cancel the contract or the uncompleted balance thereof, in which event, the Customer will only be liable to pay for the part thereof actually delivered or performed.

## 11. SUB CONTRACTING

The Company shall be entitled to sub-contract any of the work relating to the contract without obtaining the consent of, or giving notice to the Customer.

## 12. ASSIGNMENT

None of the rights or obligations of the Customer under the contract may be assigned or transferred in whole or in part without the prior written consent of the Customer.



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