

## CDK ENGINEERING SERVICES LIMITED TERMS AND CONDITIONS OF SALE

### 1 Definitions

1.1 In these conditions (unless the context otherwise requires):

(a) **Additional Items** means the following where incurred:

(i) packaging costs;

(ii) any taxes (including value added tax), duties or other charges levied by any government or other authority in respect of or by reason of the sale, delivery, export or import of the Goods or any part thereof but excluding taxes assessed on profits or gains;

(iii) any works and services provided by the Seller in conjunction with the sale of Goods;

(iv) transportation costs;

(v) storage costs;

(b) **Company** means CDK Engineering Services Limited and also (where the context so permits) its assigns and any sub-contractor for the said company;

(c) **Contract** means the contract between the Customer and the Company for the sale and purchase of the Goods;

(d) **Customer** means the person, firm or company with whom the Contract is made;

(e) **Goods** means the goods (or any instalment or part of them) to be supplied pursuant to the Contract.

1.2 The singular shall unless the context otherwise requires include the plural and vice versa.

1.3 The headings in these conditions are for reference only and shall not affect their interpretation.

### 2 Contract

2.1 These conditions shall apply to the Contract to the exclusion of any other terms and conditions contained or referred to in any order, letter, form of contract or other communication sent by the Customer to the Company and the provisions of these conditions shall prevail unless expressly varied in writing and signed by a director on the Company's behalf.

2.2 Any concession made or latitude allowed by the Company to the Customer shall not affect the strict rights of the Company under the Contract.

2.3 If in any particular case any of these conditions shall be or be held to be invalid or shall not apply to the Contract the other conditions shall continue in full force and effect.

### 3 Orders

3.1 Notwithstanding that the Company may have given a detailed quotation no order shall be binding on the Company unless and until it has been accepted in writing by the Company.

### 4 Prices

4.1 Unless otherwise agreed by the Company in writing:

(a) the price payable for Goods shall be the list price of the Company current at the date of despatch;

(b) in the case of an order for delivery by instalments the price payable for each instalment shall be the list price of the Company current at the date of despatch of such instalment;

(c) any Additional Items shall be added to the price;

(d) the Company's prices are subject to adjustment to take account of any variation in the Company's costs including (but not limited to) variations in wages, the cost of materials, exchange rate fluctuations, alteration of duties and other costs since the date of the Company's quotation or (if no quotation is issued) the Customer's order. The Company reserves the right to increase the number of items in the Goods to be supplied by a variation not exceeding 10 per cent and to decrease this number by a variation not exceeding 5 per cent and the Company accordingly reserves the right to adjust the invoice price by the amount of any increase or decrease in such costs after the price is quoted and the invoice so adjusted shall be payable as if the price set out therein were the original contract price.

4.2 All prices are exclusive of value added tax and this will be charged by the Company and will be payable by the Customer at the appropriate rate.

### 5 Additional costs

The Customer shall indemnify the Company in respect of any loss, cost or expense incurred by the Company as a result, directly or indirectly, of the Customer's instructions or lack of instructions or through any failure or delay whatsoever in taking delivery or through any other act, neglect or default on the part of the Customer, its servants, agents or employees.

### 6 Intellectual property

6.1 The Customer represents and warrants that any manufacture of the Goods by the Company in accordance with the Customer's specification or specific requirements will not infringe or misappropriate any patent, copyright, trade secret or other intellectual property or other rights of any third party.

6.2 The Customer shall indemnify the Company against all costs, claims, losses, expenses and damages incurred by the Company or for which it may be liable due to or arising directly or indirectly out of any infringement or alleged infringement of patents, trade marks, copyright, design right or other intellectual property right occasioned by the importation, manufacture or sale of the Goods if made to the specification or special requirements of the Customer.

### 7 Terms of payment

7.1 The Customer shall pay for the Goods (and any Additional Items) in full and in cash (without any deduction by way of set-off, lien or any other similar right or claim) on the date stated in the Company's acceptance of the relevant order or, if no such date is given, within 30 days of the date of the invoice save that payment shall become due in any event forthwith upon the occurrence of any of the events referred to in condition 13.2.

7.2 If the Goods are delivered in instalments the Company shall be entitled to invoice each instalment as and when delivery thereof has been made and payment shall be due in respect of each instalment whereof delivery has been made notwithstanding non-delivery of other instalments or other default on the Company's part.

7.3 If upon the terms of the Contract the price shall be payable by instalments or if the Customer has agreed to take specified quantities of Goods at specified times a default by the Customer in the payment of any due instalment or the failure to give delivery instructions in respect of any quantity of Goods outstanding shall cause the whole of the balance of the price to become due forthwith.

7.4 The time of payment shall be of the essence of the Contract.

7.5 Without prejudice to any other rights of the Company, if the Company has reason to doubt that the amounts due from the Customer under the terms of the Contract will be paid in full, the Company reserves the right to require payment in full before delivering any other Goods or performing any other work or services whatsoever for the Customer.

7.6 Without prejudice to any other rights it may have, in the event that payment is not made on the due date the Company is entitled (both before and after any judgment) to charge interest at a rate equal to the higher of the interest rate payable on court judgements or 4% above the base rate from time to time of Barclays Bank plc on overdue payments of the price of the Goods or the price of any instalments thereof.

7.7 Where payment for the Goods is not received within 30 days of the due date, the Company reserves the right to sell or dispose of the relevant Goods and to recover any additional loss from the Customer.

### 8 Delivery

- 8.1 All times dates or periods given for delivery of the Goods are given in good faith but without any responsibility on the Company's part.
- 8.2 Time of delivery shall not be of the essence of the Contract.
- 8.3 No liability (whether in contract or for negligence or otherwise howsoever) for loss of or damage to the Goods occurring prior to delivery or for any claim that any item delivered pursuant to the Contract is defective or is otherwise not in accordance with the Contract (being a defect or loss, damage or non-compliance which would be obvious upon a reasonable inspection of the Goods) or for non-delivery will attach to the Company unless claims to that effect are notified in writing by the Customer to the Company (and in the case of claims for loss, damage or non-delivery with a copy to the carrier if the Company's own vehicles have not been used to deliver the Goods):
- (a) within 7 days of delivery for loss, damage, defect or non-compliance with the Contract; or
- (b) within 10 days of the date of the invoice for non-delivery.
- 8.4 In the event of a valid claim for defect, loss, damage, or non-compliance with the Contract or non-delivery the Company undertakes at its option either to repair, reprocess or replace the items concerned at its expense but shall not be under any further or other liability in connection with such non-delivery, loss, damage or non-compliance.
- 8.5 If the Customer shall fail to give notice in accordance with condition 8.3 above the items delivered shall be deemed to be in all respects in accordance with the Contract and without prejudice to earlier acceptance by the Customer it shall be bound to accept and pay for the same accordingly and all claims in respect of non-delivery, loss, damage, defect or non-compliance shall (save as set out in condition 12 below) thereafter be wholly barred.
- 8.6 If for any reason the Customer is unable to accept delivery of the Goods at the time when the Goods are due and ready for delivery the Company may at its sole discretion without prejudice to its other rights and for such period as the Company may determine store the Goods at the Customer's risk and take all reasonable steps to safeguard and insure them at the Customer's cost, provided that the Customer shall be immediately informed thereof.
- 8.7 The Company shall have the right to make delivery by instalments of such quantities and at such intervals as it may decide, and any express provision as to instalments in the Contract shall be in addition to and not in derogation of this right. At the option of the Company, where the Goods are delivered by instalments

## **9 Passing of title and risk**

- 9.1 From the time of delivery the Goods shall be at the Customer's risk who shall be solely responsible for their custody and maintenance but, unless otherwise expressly agreed in writing, the Goods shall remain the Company's property until all payments to be made by the Customer under the Contract and any other contract between the Company and the Customer and on any other account whatsoever have been made in full and unconditionally. Whilst the Company's ownership continues the Customer shall keep the Goods labelled as belonging to the Company and separate and identifiable from all other goods in its possession as bailee for the Company.
- 9.2 The Customer may only re-sell the Goods to the Customer's customers in the ordinary course of the Customer's business as a fiduciary and trustee for the Company. In the event of any resale by the Customer of the Goods the Company's beneficial entitlement shall attach to the proceeds of sale or other disposition thereof so that such proceeds or any claim therefor shall be assigned to the Company and until such assignment shall be held on trust in a separate identified account for the Company by the Customer and such proceeds shall not be mingled with other moneys or paid into any overdrawn bank account and shall at all times be identifiable as the Company's moneys.
- 9.3 Without prejudice to the equitable rules as to tracing, in the event of failure to pay the price in accordance with the Contract the Company shall have power to re-sell the Goods, such power being additional to (and not in substitution for) any other power of sale arising by operation of law or implication or otherwise and for such purpose the Company and its servants and agents may forthwith enter upon any premises or land occupied or owned by the Customer to remove the Goods.
- 9.4 The Customer grants the Company and its agents and shall procure the grant to the Company and its agents by any owner or operator of premises where the Goods are or may be stored an irrevocable licence to enter at any time, with or without notice and without liability, any premises where the Goods are or may be stored during normal business hours in order to recover them.
- 9.5 Pending payment of the full purchase price of the Goods the Customer shall at all times keep the Goods comprehensively insured against loss or damage by accident, fire, theft and other risks usually covered by insurance in the type of business carried on by the Customer. The policy shall bear an indorsement recording the Company's interest.

## **10 Dies and Tools**

- 10.1 All dies and tools used in the production of the Goods are the property of the Seller who may, without any obligation to do so, retain for not more than three years from the date of completion of the last order for the relevant Goods. Only where specifically agreed between the parties will any of such dies and tools become the property of the Customer.
- 10.2 The Customer's own dies and tools are operated at the Customer's sole risk and responsibility and without any liability either in contract, tort or otherwise being attached to the Seller.

## **11 Conditions and warranties**

- 11.1 The Contract shall not constitute a sale by description or sample.
- 11.2 Any conditions or warranties (whether express or implied by statute or common law or arising from conduct or a previous course of dealing or trade custom or usage or otherwise howsoever) as to the quality of the Goods or their fitness for any particular purpose (even if that purpose is made known expressly or by implication to the Company) or as to the correspondence of the Goods with any description or sample are hereby expressly negated.

## **12 Defective Goods**

- 12.1 In substitution for all rights which the Customer would or might have but for these conditions the Company undertakes in the case of Goods manufactured by the Company that if within [6] months of delivery of any item of the Goods a defect in materials or workmanship appears therein being a defect which would not be obvious on reasonable inspection thereof (whether such an inspection was carried out or not) it will at its own discretion either credit to the Customer the full price paid by the Customer to the Company for such item or repair it or supply a replacement thereof free of charge at the place of delivery specified by the Customer for the original Goods provided that in any case the original Goods have been accepted and paid for.
- 12.2 In order to exercise its rights under this condition the Customer shall inform the Company within seven days of the date when such defect appeared or ought reasonably to have been discoverable and shall at the Company's written request return the defective Goods carriage paid to the Company's premises.
- 12.3 Nothing herein shall impose any liability upon the Company in respect of any defect in the Goods arising out of the acts, omissions, negligence or default of the Customer, its servants or agents including in particular (but without prejudice to the generality of the foregoing) any failure by the Customer to comply with any recommendations of the Company as to storage and handling of the Goods.
- 12.4 Where the Goods are for delivery by instalments any defect in any instalment shall not be a ground for cancellation of the remainder of the instalments and the Customer shall be bound to accept delivery thereof.
- 12.5 Nothing in these conditions shall exclude or restrict the liability of either party for death or personal injury resulting from the negligence of that party or any of its officers, employees or agents or the liability of either party for fraud.

## **13 Limitation of liability**

- 13.1 The Company shall not be liable for imperfect work caused by any inaccuracies in any drawing, bill of quantities or specification supplied by the Customer.
- 13.2 The Company shall not be liable for any costs, claims, damages or expenses arising out of any tortious act or omission or any breach of contract or statutory duty calculated by reference to profits, income, production or accruals or loss of such profits, income, production or accruals or by reference to accrual of such costs, claims, damages or expenses on a time basis or to the extent that they arise from any information, drawing, documentation or specification supplied by the Customer.
- 13.3 The aggregate liability of the Company (whether in contract or for negligence or breach of statutory duty or otherwise howsoever) to the Customer for any loss or damage of whatsoever nature and howsoever caused shall be limited to and in no circumstances shall exceed the price of the Goods supplied by the Company giving rise to the liability in question.

#### **14 Termination**

14.1 If the Customer:

- (a) is in material breach of its obligations under these Conditions, and in the case of a breach capable of remedy has failed to remedy such breach within [21] days of receipt of written notice from the other party requesting that it do so, and where such breach is not capable of remedy in [21] days, has failed to take all reasonable steps to prevent its recurrence; or
- (b) ceases to trade, or is unable to pay its debts as they fall due or has a petition presented or a meeting convened for the purpose of winding up the other party or if the other party enters into liquidation whether compulsorily or voluntarily or compounds with its creditors generally or an administration order is made in relation to it or an application is made for the appointment of a receiver or administrative receiver over all or any part of its assets or there is submission of a petition order or distraint is levied over any of its assets or any similar or analogous order is made or proceedings are commenced or an officer is appointed or action is taken in any jurisdiction in consequence of debt
- the Company in its discretion and without prejudice to any other right or claim may by notice in writing determine wholly or in part any and every contract between the Company and the Customer or may (without prejudice to the Company's right subsequently to determine the Contract for the same cause should it so decide) by notice in writing suspend delivery or any further deliveries (as the case may be) of Goods until any default by the Customer be remedied.

#### **15 Force majeure**

The Company shall be entitled to delay or cancel delivery or to reduce the amount of Goods delivered if and to the extent that it is prevented from or hindered in or delayed in manufacturing, obtaining or delivering the Goods by normal route or means of delivery through any circumstances beyond its control including (but not limited to) strikes, lock-outs, accidents, war, fire, reduction in or unavailability of power at manufacturing plant, breakdown of plant or machinery or shortage or unavailability of raw materials from normal sources of supply.

#### **16 Notice**

16.1 Any notice, consent, notification, acknowledgement, authority or agreement required or referred to in the Contract shall be:

- (a) in writing in English;
- (b) given to the party for whom it is intended at such party's last known address or main or registered office;
- (c) given by registered or recorded delivery, telex or fax transmission and shall be deemed to have been received 5 days after the date of posting or 1 day after the date of transmission as the case may be.

#### **17 Third Party Rights**

No person who is not a party to the Contract is entitled to enforce any of its terms, whether under the Contracts (Rights of Third Parties) Act 1999, or otherwise.

#### **18 General**

- 18.1 No statement, description, information, warranty, condition or recommendation contained in any catalogue, price list, advertisement or communication or made verbally by any of the Company's agents or employees shall be construed to enlarge, vary or override in any way any of these conditions.
- 18.2 Save as provided in conditions 13.2 and 15 hereof contracts may not be cancelled except by agreement in writing of both parties and upon the payment to the Company of such amount as may be necessary to indemnify the Company against all loss resulting from the said cancellation.
- 18.3 The Company may assign the Contract with the Customer or sub-contract the whole or any part thereof to any person, firm or company.

#### **19 Proper law**

The Contract shall in all respects be governed by and construed in accordance with English law and shall be deemed to have been made in England and the parties agree to submit to the exclusive jurisdiction of the English courts in relation to all matters arising out of or in connection with these conditions.