

## **TERMS & CONDITIONS OF BUSINESS (Customer)**

### **1. DEFINITIONS**

In any contract to which these terms of business apply ("the Terms"):

- 1.1. "the Company" means Weir & Carmichael Limited
- 1.2. "the Customer" means the person firm company or public authority who accepts a quotation of the Company or whose order is accepted by the Company or the sale of goods or supply of work or services.
- 1.3. "the Goods" means the goods or any part thereof being the subject of any quotation or contract to which these Terms apply.

### **2. INCORPORATION OF TERMS**

- 2.1. These Terms together with such further special conditions as may be prescribed in writing by the Company (if any) shall form the entire agreement between the Company and the Customer and supersede any prior promises representations or undertakings whatsoever. In the event of any conflict between the special conditions and these Terms the special conditions shall prevail. Save as aforesaid no other express terms written or oral shall be incorporated into the contract.
- 2.2. No variation or promise not to enforce the obligations under this contract shall be effective unless it is in writing and signed by a Director of the Company.
- 2.3. All terms and conditions referred to by the Customer or contained in any order or acceptance of quotation or otherwise brought to the notice of the

Company are hereby excluded unless otherwise specifically agreed in writing by Director of the Company.

2.4. The Company salesmen are not authorised to do any of the following things on behalf of the Company:

2.4.1. remove or vary any of these Terms or introduce any other terms, written or oral, into the contract;

2.4.2. make any representation, agree any condition precedent or enter into any collateral contract;

2.4.3. accept any offer or counter-offer made by the Customer.

2.5. Quotations given by the Company are not offers capable of acceptance and all orders placed by the Customer are subject to acceptance by the Company and a contract will only be formed when the Company has accepted the Customer order in writing.

### 3. **PRICES**

3.1. Unless otherwise stated all prices quoted are exclusive of VAT packing and carriage charges.

3.2. The prices quoted in the Company price lists do not include any charge for handling or delivering the Goods.

3.3. Unless otherwise stated the price quoted is for delivery of the Goods to the address as set out in the quotation. The Company reserves the right to make an additional charge to cover any extra costs involved for delivery to a different address.

3.4. If the Company agrees to expedite delivery the Company reserves the right to make an extra charge to cover any overtime or other additional costs incurred.

3.5. The Company reserves the right in respect of contracts which exceed 12 months in duration to increase the price for the Goods after acceptance of the Customer order on 90 days written notice to take account of any increase in the

cost of labour materials or any other matter beyond the Company's reasonable control.

3.6. Subject to clause 3.5 above, the Company reserves the right to cancel any customer order if completion of such order becomes economically unviable as a result of an increase in labour, materials or any other matter beyond the Company's reasonable control.

3.7. The Company shall charge for all work carried out at the Customer's request whether experimental or otherwise.

3.8. If the Company incurs any costs (including storage or insurance charges) as a result of the Customer's neglect or default the Customer shall pay those costs in addition to the contract price.

#### 4. **DELIVERY**

4.1. Delivery of the Goods shall be deemed to have taken place:

4.1.1. if the Goods are to be transported by the Company when the Goods are physically delivered to the Customer's address or such other place as the Customer may reasonably nominate; or

4.1.2. if the Goods are not to be transported by the Company when notification has been given by the Company to the Customer that the Goods are ready for collection; or

4.1.3. if the Goods are transported by an independent carrier, when the Goods are collected from the Company by such carrier.

4.2. Delivery dates for the Goods mentioned by the Company in any quotation estimate or acceptance of order or other document are approximate only and are deemed to take effect from and including the date on which the Company accepts [in writing a written] order from the Customer or, if later, the date on which the Company receives from the Customer all necessary information to enable the Company to carry out the contract and time for delivery shall not be of the essence of the contract. The Company shall not be liable to the Customer for any

damages for any claim of whatsoever kind as a result of loss suffered by the Customer in consequence of late delivery, non-delivery, damage, short delivery or otherwise of the Goods.

4.3. If, in accordance with clause 4.1.2 above if the Customer shall delay or postpone physical delivery of the Goods, the Customer shall be liable for any storage and handling costs incurred by the Company. The Company also reserves the right to raise an invoice for the full value of the goods when they are ready for delivery which would be payable in the same way as if physical delivery had been made.

4.4. The Company shall have the right, where it considers appropriate, to send a delivery acknowledgement to the Customer. In the case of non-delivery of the Goods the Customer shall notify the Company within 7 days commencing with the date of the delivery acknowledgement of the Goods. The Company shall not be liable in respect of any such damage, delay or loss unless notice has been given as aforesaid save where the Customer proves that it was not possible to comply with the foregoing requirements and the claim was made as soon as reasonably practicable.

4.5. The Customer must send to the Company and the carrier precise details of any damage, delay or partial loss of the Goods in transit within 48 hours commencing with the date of delivery.

4.6. No delay in delivery or failure by the Customer to collect the Goods (where appropriate) shall entitle the Customer to reject or cancel the delivery or any further delivery relating to the same order or any other order.

## 5. **PAYMENT TERMS**

5.1. Payment of the full invoice price for the Goods (including VAT packing, carriage where appropriate) shall be made in sterling unless otherwise stated by the Company. Payment must be received by the Company within 30 days from the date of the invoice unless otherwise agreed with the Company.

- 5.2. Payment shall not be withheld or deferred on account of any claim, counterclaim or set off.
- 5.3. In the event of non-payment of any monies by the due date the Company shall have the right (in addition to its other remedies) to terminate any other contract with the Customer and in the event of such termination the Customer shall be liable to the Company for any expense, loss or damage suffered by the Company as a result.
- 5.4. Payment of all monies outstanding shall become due immediately upon the happening of any of the events listed in Term 8.1 hereunder
- 5.5. If the Customer fails to pay any instalment on the date it becomes payable the whole of the balance of the price then outstanding shall become payable at once.
- 5.6. The Company reserves the right to charge interest at 4% per cent per above the base lending rate of Barclays Bank plc on all overdue accounts. Interest is deemed to accrue on a daily basis from and including the date for payment under Term 5.1

## 6. **RISK**

- 6.1. Risk in the Goods shall pass to the Customer forthwith upon delivery to the Customer in accordance with Term 4.1 and the Customer shall be liable to insure the same in the amount of the price at which the Goods are sold to the Customer against all insurable risks and shall pay all sums due under this contract whether or not the Goods are lost destroyed damaged or stolen.
- 6.2. If the Goods are destroyed by an insured risk prior to the same being paid for the Customer shall receive the proceeds of any such insurance as trustee for the Company.
- 6.3. All property supplied to the Company by or on behalf of the Customer shall whilst it is in the possession of the Company or in transit to or from the Customer be deemed to be at the Customer's risk unless otherwise agreed and the

Customer acknowledges that it should maintain suitable insurance cover in respect of such risk.

## 7. **PROPERTY**

7.1. Notwithstanding risk in the Goods passing in accordance with Term 6.1 title to the Goods shall not pass to the Customer until all such sums due from the Customer to the Company have been paid in full.

7.2. Without prejudice to the generality of Term 7.1 title to the Goods supplied under this contract shall not pass to the Customer until they have been paid for.

7.3. For so long as the Customer remains in possession of the Goods whilst title thereto remains with the Company:-

7.3.1. the Customer shall be bailee of the Goods for the Company; and

7.3.2. the Customer shall store the Goods separately from any other goods so that they are identifiable as the property of the Company.

7.4. At any time after the Company is in default in payment on the due date of any sum due by the Customer to the Company, or if the Customer shall be adjudged bankrupt or suffer any execution to be levied on his property or, if, being a company, it suffers a receiver to be appointed of its undertaking or is placed in liquidation then, in any such event, the Company may forthwith enter upon the premises of the Customer for the purpose of repossessing the Goods and the Customer hereby grants to the Company a licence for that purpose.

7.5. In the event of the Customer incorporating the Goods with any other goods in a manufacturing process or otherwise altering the Goods in any way the product so produced shall be the property of the Company until title to the Goods themselves would have passed to the Customer under these Terms and Terms 6.1 and 7.1 hereof shall apply to such products as they are applied to the Goods.

7.6. If the Customer shall resell the Goods the Customer shall hold the proceeds of sale thereof or any debt due to the Customer representing the same (or so much thereof as is attributable to the Company's interest therein upon trust for

the Company until title to the Goods would otherwise have passed to the Customer under these Terms. Pursuant to the said trust the Customer shall not permit such proceeds of sale to be mingled with its own moneys but shall pay the same into a separate trust account designated with the name of the Company.

- 7.7. Any debt due to the Customer which is subject to the trust referred to in Term 7.6 (or so much thereof as aforesaid, as the case may be) shall upon demand be assigned by the Customer to the Company together with all such other rights (if any) as the Customer may have against its debtor for recovery of the same.

## 8. **BREACH OF AGREEMENT**

- 8.1. If the Customer:

- 8.1.1. being a company has a petition presented for its winding up or administration or passes a resolution for voluntary winding up (other than for the purposes of a bona fide amalgamation or reconstruction) or compounds with its creditors or has a receiver appointed over all or any of its assets; or being an individual, becomes bankrupt or insolvent; or
- 8.1.2. in either case ceases to pay its debts in the ordinary course of business, enters into any arrangement with its creditors or commits a serious breach of this contract (and in the case of such breach being remediable fails to remedy it within seven days of receiving notice to do so)

the Company may treat the contract as terminated.

- 8.2. In the event of the happening of any of the events set out in Term 8.1 the Company shall have a general lien on all goods and property in its possession for any moneys owing by the Customer to the Company and shall be entitled on the expiration of fourteen days notice to dispose of such goods or property in such manner and at such price as the Company thinks fit and to apply the proceedings of all such outstanding sums.

## 9. **LIABILITY**

- 9.1. The Company and the Customer shall agree a final specification for the Goods prior to the Company placing any orders with its suppliers. Once the final specification for the Goods has been agreed, the Company reserves the right to make an additional charge for any alterations made to the final specification by the Customer following its agreement.
- 9.2. The Company shall in no circumstances whatsoever be liable for any injury, loss (whether direct, indirect or consequential), expense, damage, delay or loss of profits suffered or incurred by the Customer or for any liability to third parties of whatever nature suffered or incurred by the Customer arising out of or connected with or caused by any breach of contract, negligence, breach of statutory duty, omission or default save in so far as death or any personal injury to the Customer or anyone else has been caused by the negligence of the Company.
- 9.3. The Customer acknowledges that it should maintain suitable insurance cover in respect of such risks.
- 9.4. Any liability to which the Company might otherwise become subject shall be limited to the net invoice value paid by the Customer for such Goods as give rise to the claim.
- 9.5. The Customer shall indemnify the Company against all claims, demands, actions, proceedings and liability of whatever nature brought by any third party against the Company which arise in respect of or are connected with the Goods or out of their manufacture or use.

## **10. CANCELLATION**

- 10.1. The Customer is not permitted to cancel the contract with the Company except with the written consent of a Director of the Company.
- 10.2. Where there is an agreed cancellation as permitted by Term 10.1 above, the Customer shall pay to the Company an amount equal to the total loss incurred by the Company as at the date of cancellation representing liquidated damages to compensate the Company against all losses incurred as a result of the cancellation.

## **11. FORCE MAJEURE**

The Company shall be under no liability to the Customer in the event that the Company's performance of the contract is affected wholly or partially by any restriction imposed by a government or other competent authority, strike, lock out, or other action taken by employees in contemplation or furtherance of a dispute, or failure in the Company's anticipated supplies or materials or by any other cause whatsoever which is beyond the Company's reasonable control.

## 12. **CONSUMER PROTECTION**

Where the Company incurs any liability, whether by court proceedings or bona fide out of court settlement, as a result of a claim against the Company under the Consumer Protection Act 1987 in respect of an alleged defect in Goods supplied by the Company to the Customer the Customer shall indemnify the Company against that liability.

## 13. **NOTICES**

Any notices to be given hereunder shall be in writing and shall be served by being sent recorded delivery pre-paid first class post or by facsimile to the last known address or registered office of the person, firm, company or public authority to whom it is addressed and in the case of posting shall be deemed to have been received twenty four hours after the date of posting thereof.

## 14. **WAIVER**

Any failure by the Company to enforce any of its rights under this contract shall not be taken as a waiver of any of the Company's rights hereunder.

## 15. **GENERAL**

15.1. Under this contract all terms and sub-terms and all parts thereof shall be severable. In the event that any one or more of such terms or sub-terms or any parts thereof shall be invalid, illegal or unenforceable in any respect under any relevant law the validity, legality and enforceability of the remaining terms and sub-terms and parts thereof shall not in any way be affected or impaired.

15.2. Breach by the Customer of any of its obligations shall entitle the Company to treat the contract as repudiated.

## 16. **CUSTOMER SUPPLIED MATERIALS**

- 16.1. The Company shall not produce any matter which in its opinion is or may be of an illegal libellous nature or any infringement of the proprietary or any other rights of any third party and the Customer shall indemnify the Company against all liability (including costs and expenses) arising out of the Company's breach of contract, liability in tort or infringement of copyright, patent, design or any other proprietary or personal rights contained in any of the Goods prepared for the Customer. This indemnity shall extend to any sums paid by the Company in settlement of a claim on the basis of professional advice.
- 16.2. The Company may reject and decline to use any materials whatsoever supplied or specified by the Customer which appear to the Company to be unsuitable. The Company reserves the right to charge for any additional cost incurred if during production such materials are found to be unsuitable or if additional work has to be carried out because the copy supplied is not clear and legible.
- 16.3. Where the Customer supplies or specifies the materials to be used by the Company in producing the Goods the Company will take every care to secure the best results but accepts no responsibility for imperfections in the Goods caused by defects in or unsuitability of such materials.

## 17. **VARIATIONS IN QUANTITIES**

The Company shall make every effort to deliver the quantity of the Goods ordered by the Customer. Deviations in quantity of the Goods delivered which represent not more than 10% of the value of the Goods ordered by the Customer do not give the Customer any right to reject the Goods or claim damages and the Customer is to pay for the Goods delivered at the contract rate.

## 18. **ASSIGNMENT**

The Company may assign all or any of its rights and obligations hereunder without notice to the Customer and the Customer shall not assert against any assignee any defence, set off or counterclaim which the Customer may have against the Company hereunder. The Customer shall not be entitled to assign its rights or obligations hereunder without the express written consent of the Company.

## 19. **ORIGINALS**

19.1. Ownership and copyright in any designs, sketches, proofs, layouts, lettering, illustrations, artwork, originations and any other material of a similar nature commissioned by the Company in relation to the Goods shall belong to the Company whether or not a charge is made to the Customer therefor unless and until the Company assigns either the ownership or the copyright to the Customer. The Customer shall have a non-exclusive licence to use any such copyright material for the purpose for which it is prepared but not further or otherwise.

19.2. Tools, moulds, dyes, printing plates, screens, negatives, stocks and engravings provided by the Company shall remain the Company's property whether or not a charge is made to the Customer therefor. If the Customer contributes towards the initial cost of any such items they will be stored and maintained at the Company's expense for three years from the date of most recent use. Any alterations made to such materials at the Customer's request will be at the Customer's expense and risk.

## 20. **THIRD PARTY RIGHTS**

20.1. The parties to this contract do not intend that any term of this contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

## 21. **APPLICABLE LAW**

21.1. The formation, existence, construction, performance, validity and all aspects of this contract shall be governed by English Law and the parties submit to the exclusive jurisdiction of the English courts.