

A. LITTLEJOHN LIMITED

TERMS and CONDITIONS OF BUSINESS

1. INTERPRETATION

1.1 Definitions

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 11(c).

Contract: the contract between the Seller and the Purchaser for the supply of Goods and/or Services in accordance with these Conditions.

Force Majeure Event: an event or circumstance beyond the Seller's reasonable control, including the events referred to in clause 10.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Goods: the goods (or any part of them) set out in the Purchase Order which is by way of identification only and shall not constitute a sale by description.

Month of Invoice: the month showing in the despatch date in the Seller's invoice to the Purchaser.

Place of Delivery: shall be the premises described on the quotation or invoice, and in the event of a difference the Seller's invoice shall have precedence.

Price: the total money figure payable by the Purchaser to the Seller as shown in the quotation or invoice in the currency stipulated, or whatever currency shall be determined by the Seller from time to time.

Purchase Order: the Customer's order for the Goods and/or Services, as set out in the Purchaser's purchase order form.

Purchaser: the person or firm who purchases the Goods and/or Services from the Seller and shall include its successors in title.

Seller: A. Littlejohn Limited (registered in England and Wales with company number 3099965), and shall include its successors in title and assignees.

Services: the services or any part of them set out in the Purchase Order.

Shipment: the date that the Goods are loaded by the Seller onto transport at the Seller's premises or the premises at which the Goods have been manufactured.

Special Goods: Goods made or adapted by the Seller specifically to the Purchaser's formulation, design or specification.

Specification: any specification for the Goods and/or the Services that is agreed in writing by the Purchaser and the Seller.

Surcharge: the total cost of tariffs, government taxes, municipal levies, fees for certificates of origin, and all other payments incurred by the Seller in relation to the transport of the Goods to the Place of Delivery.

Supplier: the supplier of the Goods to the Seller.

- 1.2 (a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

(b) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

(c) a reference to writing or written includes faxes and emails.

2. BASIS OF CONTRACT

(a) These Conditions apply to the Contract to the exclusion of any other terms that the Purchaser seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

(b) The Seller shall not be deemed to know of any particular purpose for which the Goods or any product made therefrom is required; if any particular characteristics are required, they must be made clearly known in writing by the Purchaser at the time of the Purchase Order, and the Purchaser must ensure that any such specific request is acknowledged by the Seller in writing.

(c) The Purchase Order constitutes an offer by the Purchaser to purchase Goods and/or Services in accordance with these Conditions. The Purchaser is responsible for ensuring that the terms of the Purchase Order and any applicable Specification submitted by the Purchaser are complete and accurate.

(d) The Purchase Order shall only be deemed to be accepted when the Seller issues a written acceptance of the Purchase Order, at which point the Contract shall come into existence.

(e) Unless the Seller specifically contacts the Purchaser to the contrary, the Purchase Order if in respect of Goods is accepted by the Seller subject to availability of stock. Goods and/or Services ordered by the Purchaser and any Specification relating to them are described in the Seller's acknowledgement of order or, where none, in the Purchase Order. Orders cannot subsequently be cancelled or varied except by mutual agreement in writing. The Purchaser shall take whatever steps are deemed necessary to satisfy itself that a Purchase Order has been received and its content understood by the Seller.

(f) Unless otherwise agreed, no quotation given by the Seller shall be binding until an Order associated with that quotation is accepted by the Seller in writing.

3. PRICE AND PAYMENT

(a) The price for the Goods and/or Services will be the Seller's price at the date of Shipment or, in the event of the Seller requiring payment before delivery of the Goods and/or the supply of the Services, at the date on which payment is due.

(b) The Seller may, by giving notice to the Purchaser at any time before delivery, increase the price of the Goods and/or the Services to reflect any increase in the cost of the Goods and/or the Services that is due to:

- (i) any Surcharge;
- (ii) any factor beyond the Seller's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (iii) any request by the Purchaser to change the delivery date(s), quantities or types of Goods and/or Services ordered, or the Specification; or
- (iv) any delay caused by any instructions of the Purchaser or failure of the Purchaser to give the Seller adequate or accurate information or instructions.

- (c) The price of the Goods and/or the Services:
 - (i) excludes amounts in respect of value added tax (VAT), which the Purchaser shall additionally be liable to pay to the Seller at the prevailing rate, subject to the receipt of a valid VAT invoice; and
 - (ii) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Purchaser.
- (d) Unless an earlier date is specified by the Seller, payment shall be made by the Purchaser so as to be received by cheque at the Seller's premises or credited into the Seller's bank account by the 20th day of the month following the Month of Invoice, and time for payment shall be of the essence in the Contract.
- (e) Where Goods are delivered by instalments, the Seller may invoice each instalment separately, and the Purchaser shall pay the invoices in accordance with these Conditions. Any delay in delivery or defect in an instalment shall not entitle the Purchaser to cancel any other instalment.
- (f) If the Purchaser fails to make any payment due to the Seller under the Contract by the due date for payment, then;
 - (i) the Purchaser shall pay interest on the overdue amount at the rate of 3% per annum above NatWest Bank Plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgement; and
 - (ii) the Seller reserves the right to charge the Purchaser recovery costs which will be the full costs incurred by the Seller in the legitimate recovery of any overdue payment plus administration and handling charges which are chargeable on a time/cost basis. Notwithstanding the foregoing, the Seller would wish to communicate beforehand with the Purchaser to endeavour to seek mutually agreeable assurances as to the settlement of any overdue payment prior to exercising its rights under this sub-clause.
 and the Purchaser shall pay such interest and/or recovery costs together with the overdue amount in question.
- (g) The Purchaser shall pay all amounts under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Purchaser against any amount payable by the Seller to the Purchaser.
- (h) The Seller reserves the right at any time to withhold credit facilities from or to limit the amount or period of credit it will grant to the Purchaser.

4. DELIVERY OF THE GOODS

- (a) The Seller shall deliver the Goods to the Place of Delivery. The Place of Delivery is deemed to be the Purchaser's premises unless otherwise agreed and stated on the Seller's invoice. If the Goods are collected by or on behalf of the Purchaser, then the Place of Delivery shall be the place at which the Goods are collected. The Purchaser's attention is drawn to the provisions of the clauses 6(c) and (d).
- (b) Delivery is completed on the unloading of the Goods at the Place of Delivery if delivered by the Seller or the loading of the Goods if collected by the Purchaser. The Seller will endeavour to notify the Purchaser of any alterations in delivery dates. Shipment arrangements are via a standard next working day delivery system but, if required, a faster delivery (e.g. before noon, or before 9am) may be organised and such costs included in the invoice to the Purchaser.

- (c) Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Seller shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- (d) Failure by the Purchaser to take delivery of any one or more instalments of Goods delivered in accordance with the Contract shall entitle the Seller to terminate the Contract either in whole or part.
- (e) The Purchaser must notify the Seller and the Seller's carrier at the earliest opportunity, and in any event within three days of receipt of the Goods, of any damage in transit or short delivery which must also be noted on the carrier's delivery note.
- (f) The Seller shall not be liable for any failure to deliver the Goods at all unless the Purchaser gives written notice to the Seller and to the Seller's carrier within seven days of the date of the invoice to the Purchaser for national deliveries and within twenty one days of the date of the invoice to the Purchaser for international deliveries.
- (g) Containers are not returnable unless otherwise agreed in writing by the Seller.
- (h) The Seller maintains data to ensure that the Goods may be safely handled and without risk to health if properly used. Whenever such data is required, the Purchaser must contact the Seller.

5. WARRANTY

- (a) The Seller warrants only that the Goods and/or Services comply with any Specification and, in the case of any Services, that they will be provided using reasonable care and skill. In the case of Goods not manufactured by the Seller, the Purchaser shall only be entitled to the benefit of any warranty or guarantee as is given by the Supplier.
- (b) Save as mentioned in this clause, all warranties, condition and representations, whether express or implied by statute, trade custom, course of dealing or otherwise and relating to the quality or nature of the Goods, their condition or suitability for any particular purpose or use under any specific conditions are hereby excluded to the fullest extent permitted by law.
- (c) This clause 5 shall survive termination of the Contract.

6. LIMITATION OF LIABILITY

- (a) Nothing in these Conditions shall limit or exclude the Seller's liability for:
 - (i) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - (ii) fraud or fraudulent misrepresentation;
 - (iii) breach of the terms implied by Section 2 of the Supply of Goods and Services Act 1982;
 - (iv) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - (v) any other matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.
- (b) Subject to clause (a):
 - (i) the Seller shall under no circumstances whatsoever be liable to the Purchaser, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, damage to property and wasted expenditure, or any indirect or consequential loss arising under or in connection with the Contract; and
 - (ii) the Seller's total liability to the Purchaser in respect of all other losses arising under or in connection with the Contract, whether in

contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods and/or the Services and, where the Goods have been shown to be defective, to replace them

and the Price is based on the assumption that the Seller's liability is limited as stated in this clause.

- (c) Where the Seller delivers the Goods to the Purchaser, the delivery is completed at the side of the delivery vehicle, and the Seller accepts no liability whatsoever for any losses, costs or other claims in connection with the transfer of the Goods from the side of the vehicle to any other location at the premises concerned.
- (d) Where the Purchaser collects the Goods from the Seller, the Seller shall not be responsible for any losses, costs or other claims as a result of the unsuitability of any vehicle used by or on behalf of the Purchaser to collect the Goods in any respect whatsoever.

7. RISK AND TITLE

- (a) Risk of loss or damage to the Goods shall pass to the Purchaser on completion of delivery pursuant to clause 4(b).
- (b) Title to the Goods shall not pass to the Purchaser until the earlier of:
 - (i) the Seller receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Seller has supplied to the Purchaser in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
 - (ii) the Purchaser resells the Goods, in which case title to the Goods shall pass to the Purchaser at the time specified in clause (d).
- (c) Until title to the Goods has passed to the Purchaser, the Purchaser shall:
 - (i) store the Goods separately from all other goods held by the Purchaser so that they remain readily identifiable as the Seller's property;
 - (ii) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (iii) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (iv) notify the Seller immediately if it becomes subject to any of the events listed in clause 9; and
 - (v) give the Seller such information relating to the Goods as the Seller may require from time to time.
- (d) Subject to clause (e), the Purchaser may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Seller receives payment for the Goods. However, if the Purchaser resells the Goods before that time:
 - (i) it does so as principal and not as the Seller's agent; and
 - (ii) title to the Goods shall pass from the Seller to the Purchaser immediately before the time at which resale by the Purchaser occurs.
- (e) If before title to the Goods passes to the Purchaser the Purchaser becomes subject to any of the events listed in clause 9, then, without limiting any other right or remedy the Seller may have:
 - (i) the Purchaser's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
 - (ii) the Seller may at any time:
 - (A) require the Purchaser to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and

- (B) if the Purchaser fails to do so promptly, enter any premises of the Purchaser or of any third party where the Goods are stored in order to recover them.

8. INTELLECTUAL PROPERTY

- (a) All Intellectual Property in the Goods or arising out of or in connection with the Services is owned by the Seller and/or in the case of Goods not manufactured by the Seller, the Supplier. The Seller reserves the right at any time to require the Purchaser forthwith to discontinue its use in any such Intellectual Property. The Seller will never knowingly infringe the rights to any Intellectual Property belonging to any third party.
- (b) The Purchaser warrants and represents to the Seller that neither the Special Goods nor the manufacture thereof by the Seller will infringe the Intellectual Property rights of any third party, and the Purchaser shall indemnify the Seller against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Seller in connection with any claim made against the Seller for actual or alleged infringement of a third party's Intellectual Property rights arising out of or in connection with the Special Goods or the manufacture thereof by the Seller. This clause 8(b) shall survive termination of the Contract.

9. TERMINATION

- (a) Without limiting its other rights or remedies, the Seller may terminate this Contract with immediate effect by giving written notice to the Purchaser if:
 - (i) the Purchaser commits a continuing or material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of being notified in writing to do so;
 - (ii) the Purchaser takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction in connection with any analogous procedure in the relevant jurisdiction;
 - (iii) the Purchaser suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
 - (iv) the Purchaser's financial position deteriorates to such an extent that in the Seller's opinion the Purchaser's capability to fulfil adequately its obligations under the Contract has been placed in jeopardy; or
 - (v) if there is a change of control of the Purchaser.
- (b) Without limiting its other rights or remedies, the Seller may suspend provision of the Goods or the supply of the Services under the Contract or any other contract between the Purchaser and the Seller if the Purchaser becomes subject to any of the events listed in clause 9(a), or the Seller reasonably believes that the Purchaser is about to become subject to any of them, or if the Purchaser fails to pay any amount due under this Contract on the due date for payment.
- (c) Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Purchaser if the Purchaser fails to pay any amount due under the Contract on the

due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.

- (d) On termination of the Contract for any reason the Purchaser shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Seller shall submit an invoice, which will be payable by the Purchaser immediately on receipt.
- (e) Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- (f) Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

10. FORCE MAJEURE

The Seller shall not be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure results from a Force Majeure Event, including act of god, war, riot, fire, explosion, flood, strike, lockout, injunction, inability to obtain fuel or raw materials, break down of equipment or acts of government.

11. GENERAL

- (a) **Assignment and other dealings.**
 - (i) The Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
 - (ii) The Purchaser may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Seller.
- (b) **Entire agreement.**
 - (i) the Contract shall constitute the entire agreement between the Seller and the Purchaser and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
 - (ii) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.
- (c) **Variation.** No variation of this Contract shall be effective unless it is in writing and signed on behalf of the Seller by an officer of the Seller.
- (d) **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:
 - (i) waive that or any other right or remedy; nor
 - (ii) prevent or restrict the further exercise of that or any other right or remedy.
- (e) **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision

or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

(f) Notices.

- (i) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or fax or email.
 - (ii) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in sub-clause 11(f)(i); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.
 - (iii) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- (g) **Third party rights.** No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.
 - (h) **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
 - (i) **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.