

### **1. Definitions**

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| Buyer      | the person who buys or agrees to buy the goods from the Seller.   |
| Conditions | the terms and conditions of sale as set out in this document and any special terms and conditions agree in writing by the Seller. |
| Goods      | the articles which the Buyer agrees to buy from the Seller, to include tooling  |
| Price      | the price for the Goods, excluding VAT and any carriage, packaging and insurance costs  |
| Seller     | means Collcap Packaging Ltd of Unit 1, Leekbrook Way, Leek, Staffordshire, ST13 7AP   |

### **2. Conditions**

- 2.1 These Conditions shall form the basis of the contract between the Seller and the Buyer in relation to the sale of Goods, to the exclusion of all other terms and conditions including the Buyer's standard conditions of purchase or any other conditions which the Buyer may purport to apply under any purchase order or confirmation of order or any other document.
- 2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods from the Seller pursuant to these Conditions.
- 2.3 Acceptance of delivery of the Goods shall be deemed to be conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4 These Conditions may not be varied except by the written agreement of the Seller
- 2.5 These Conditions represent the whole of the agreement between the Seller and the Buyer. They supersede any other conditions previously issued.

### **3. Price**

The Price shall be the price quoted on the Seller's confirmation of order. The Price is exclusive of VAT which shall be due at the rate in force on the date of the Seller's invoice.

### **4. Payment and Interest**

- 4.1 Payment of the Price and VAT shall be due within the agreed payment terms which are displayed on the seller's Enquiry Quotation and invoice.
- 4.2 Interest on overdue invoices shall accrue from the date when payment becomes due calculated on a daily basis until the date of payment at the rate of 8% per annum above the Bank of England base rate from time to time in force. Such interest shall accrue after as well as before any judgment.
- 4.3 The Buyer shall pay all accounts in full and not exercise any rights of set-off or counter-claim against invoices submitted by the Seller.

### **5. Goods**

The quantity and description of the Goods shall be as set out in the Seller's confirmation of order.

### **6. Delivery of the Goods**

- 6.1 Delivery of the Goods shall be made to the Buyer's address. The Buyer shall make all arrangements necessary to take delivery of the Goods on the day notified by the Seller for delivery.
- 6.2 The Seller undertakes to use its reasonable endeavours to despatch the Goods on an agreed delivery date, but does not guarantee to do so. Time of delivery shall not be of the essence of the contract.
- 6.3 The Seller shall not be liable to the Buyer for any loss or damage whether arising directly or indirectly from the late delivery or short delivery of the Goods. If short delivery does take place, the Buyer undertakes not to reject the Goods but to accept the Goods delivered as part performance of the contract.
- 6.4 If the Buyer fails to take delivery of the Goods on the agreed delivery date or, if no specific delivery date has been agreed, when the Goods are ready for despatch, the Seller shall be entitled to store and insure the Goods and to charge the Buyer the reasonable costs of so doing.
- 6.5 Unless specifically agreed otherwise at Order Acceptance state, in the event that the Buyer has not arranged for delivery of the Goods within 3 months of being notified of receipt by the Seller or within 3 months of an agreed call of schedule, the Buyer will accept an invoice for the full value of the Goods plus a charge for insurance and storage and for that invoice to be payable within 30 days of date of invoice. The Buyer will be contacted to make delivery arrangements for the Goods or alternatively, to agree ongoing storage or destruction terms.

### **7. Acceptance of the Goods**

- 7.1 The Buyer shall be deemed to have accepted the Goods 48 hours after delivery to the Buyer.
- 7.2 The Buyer shall carry out a thorough inspection of the Goods within 48 hours of delivery and shall give written notification to the Seller within 3 working days of delivery of the Goods of any defects which a reasonable examination would have revealed. Details should be sent to [qms@collcap.co.uk](mailto:qms@collcap.co.uk).
- 7.3 Where the Buyer has accepted, or has been deemed to have accepted, the Goods the Buyer shall not be entitled to reject Goods which are not in accordance with the contract.

### **8. Title and Risk**

- 8.1 Risk shall pass on delivery of the Goods to the buyer's address.

- 8.2 Notwithstanding delivery and the passing of risk in the Goods, title and property in the Goods, including full legal and beneficial ownership, shall not pass to the Buyer until the Seller has received payment in full (in cash or cleared funds) for:
- 8.2.1 the Goods; and
- 8.2.2 any other Goods, services or interest for which full payment has not been made to the Seller
- 8.3 Until title passes the Buyer shall hold the goods as bailee for the Seller and:
- 8.3.1 shall store or mark the Goods so that they can at all times be identified as the property of the Seller;
- 8.3.2 shall not repack or remove, deface or obscure any shipping labelling or other aspects of packaging on or relating to the Goods;
- 8.3.3 will enable the Seller to have access to the storage location for the Goods to assess whether the Goods are being stored in accordance with these conditions;
- 8.3.4 shall maintain the goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- 8.3.5 maintain adequate stock records and be willing to supply those records to the Seller when requested;
- 8.3.6 will immediately notify the Seller of any event under Clause 9
- 8.4 Tooling remains the property of the Seller, to include full legal and beneficial ownership, unless and until it is sold to the Buyer and full payment is received for the tooling and all other Goods, services or interest. The Buyer has no right to transfer, copy or reproduce tooling without the explicit written consent of the Seller.

### **9. Termination of the Contract**

- 9.1 If the Buyer becomes subject to any of the events listed in clause 9.2, or the Seller reasonably believes that the Buyer is about to become subject to any of them and notifies the Buyer accordingly, then, without limiting any other right or remedy available to the Seller, the Seller may cancel or suspend all further deliveries and all outstanding sums in respect of the Goods delivered to the Buyer shall immediately become due.
- 9.2 For the purposes of clause 9.1, the relevant events are:
- (a) the Buyer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
  - (b) the Buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Buyer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
  - (c) (being an individual) the Buyer is the subject of a bankruptcy petition or order;
  - (d) a creditor or encumbrancer of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - (e) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Buyer;
  - (f) (being a company) a floating charge holder over the assets of the Buyer has become entitled to appoint or has appointed an administrative receiver or administrator
  - (g) A person becomes entitled to appoint a receiver over the assets of the Buyer or a receiver is appointed over the assets of the Buyer;
  - (h) Any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2 (a) to (g) inclusive;
  - (i) The Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
  - (j) The financial position of the Buyer deteriorates that in the opinion of the Seller the capability of the Buyer to fulfil its obligations under the Contract has been placed in jeopardy;
  - (k) (being an individual) the Buyer dies or, by reason of illness or incapacity (mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation;
  - (l) The Buyer fails to pay for an instalment in the agreed manner or fails to pay any amount owing to the Seller in accordance with the relevant agreed terms.
- 9.3 In the event Goods have been made to a Specification or design required by the Customer or otherwise marked with the Customer's name, trademark, logo or other mark, the Customer shall be liable for the amount due under the Contract notwithstanding its termination. Any amount obtained for the Goods if resold by the Supplier or sold for scrap will be deducted less the costs of that sale.
- 9.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

**10. Limitation of Liability**

- 10.1 Nothing in these Conditions shall limit or exclude the liability of the Supplier for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); or
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - (d) defective products under the Consumer Protection Act 1987; or
  - (e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 10.2 Subject to clause 10.1:
- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
  - (b) the total liability of the Supplier to the Customer 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 paid for the goods.

**11. Force Majeure**

- 11.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed, provided that if the period of delay or non-performance continues for 24 weeks, the party not affected may terminate this agreement by giving 7 days written notice to other party.

**12. General**

- 12.1 Assignment and subcontracting.
- (a) The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
  - (b) The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.
- 12.2 Notices
- (a) 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, recorded delivery, commercial courier, fax or e-mail.
  - (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2(a); if sent by pre-paid first-class post or recorded delivery, 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 e-mail, one Business Day after transmission.
  - (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 12.3 Severance.
- (a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
  - (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 12.4 Waiver - A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy..
- 12.5 Third party rights. A person who is not party to the Contract shall not have any rights under or in connection with it.
- 12.6 Variation.

Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional items and conditions, shall only be binding when agreed in writing and signed by the Supplier.

12.7

Governing law and jurisdiction.

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.