

# THE JOINT PERFORATING COMPANY LIMITED ("The Company")

## CONDITIONS OF SALE

### 1. Definitions

In these conditions:

"Customer" means the party with whom the Company contracts:

"Contract" means the contract made between the Company and the Customer for supply of the Goods which is subject to these Conditions;

"Goods" means all or any of the goods works and materials to be supplied by the Company;

"Act of insolvency" means any one or more of the following namely the passing of a resolution or the presentation of a petition for winding-up, bankruptcy or for the appointment of an administrator, the appointment of a receiver and/or manager or administrative receiver over the whole or any part of the Customer's undertaking and assets, the making of a proposal for a voluntary arrangement within the Insolvency Act 1986 or of a proposal for any other composition scheme or arrangement with or the calling by the Customer of any meeting of its creditors generally, the levying of execution or distress or diligence, on any of its assets, the failure to pay its proper debts as and when due and anything analogous to any of the foregoing under the law of the jurisdiction where the Customer is established.

### 2. Basis of contract

- 2.1 Any quotation shall remain open for a maximum period of 30 days from its date. Quotations are not binding and shall not be open for acceptance by the Customer. Where goods are quoted for supply from stock they are quoted subject to being unsold when the Customer's order is accepted.
- 2.2 These Conditions shall form the terms and conditions of the Contract and shall apply to the exclusion of any terms or conditions whether put forward by or on behalf of the Customer in or on its order or otherwise or whether implied by law (insofar as the exclusion of the same is lawful).
- 2.3 The placing by the Customer of any order shall constitute an offer by the Customer. No contract shall come into existence unless the Company accepts the Customer's order in writing. Any order placed by the Customer with any of the Company's salesmen or other employees or representatives shall be subject to written acceptance by the Company.
- 2.4 No alteration to these conditions shall be effective unless expressly agreed in writing by a director of the Company.
- 2.5 The Customer shall be responsible to the Company for ensuring the accuracy and sufficiency of its order (including) any applicable specification and/or sample. The Company shall be entitled to charge the Customer for all costs (and a reasonable element of profit) incurred by it where variations to Goods are requested to the Customer and accepted by the Company.

### 3. Delivery

- 3.1 Delivery periods and dates are an estimate only, and time shall not be of the essence of the Contract in these respects no liability will attach to the Company if delivery periods and dates are not met for any reason whatsoever.
- 3.2 The Company reserves the right to deliver all or any of the Goods in advance of the estimated date.
- 3.3 In the absence of agreement to the contrary delivery of the Goods shall be made by the Customer collecting the Goods at the Company's premises as soon as practicable following notification from the Company that the Goods are ready for collection or, if some other place for delivery is agreed by the Company, by the Company delivering the Goods to that place.
- 3.4 The Company reserves the right to deliver by instalments and each delivery shall constitute a separate contract to which these conditions apply. Failure by the Company to deliver any one or more of the instalments or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 3.5 Where delivery of the Goods is to be made by the Company in bulk, the Company reserves the right to deliver up to ten per cent more or less than the quantity ordered, and the Company shall charge for the Goods in accordance with the quantity actually delivered.
- 3.6 If the Customer fails to take delivery of or collect the Goods or fails to give the Company adequate delivery instructions after notification by the Company that the Goods are ready the Company may (without prejudice to its other rights and remedies):
  - 3.6.1 store the Goods (on its own or any third party's premises) and charge the Customer for its reasonable costs (including without limitation VAT costs of storage, carriage and insurance); and/or
  - 3.6.2 sell the Goods at any time and after deducting all costs and expenses account to the Customer for any excess over the price already paid under the Contract or charge the Customer for any shortfall between the Contract price and such costs and expenses.
- 3.7
  - 3.7.1 Notification of short delivery or damage in transit must be made in writing to the Company within three days of the receipt of the Goods.
  - 3.7.2 Notification of non-delivery must be made in writing to the Company within 14 days after the date of the Company's Invoice.
  - 3.7.3 The Company shall at its option either make good the whole or part of the price (and where relevant, as a deduction from any part of the price remaining unpaid) or by repair or replacement any such non-delivery short delivery or damage notified as aforesaid end save as provided in this condition.
  - 3.7.4 shall not be liable for any such non-delivery, short delivery or damage in transit nor for any loss, financial or otherwise resulting directly or indirectly there from, in no event shall the Company be liable to the Customer in connection with any damage or loss in transit where delivery takes place at the Company's premises.
- 3.8 Packaging, carriage and insurance charges in respect of delivery of the Goods to the Customer will be charged to the Customer at cost to the Company.

### 4. Price

- 4.1 Subject to prior written agreement to the contrary, the Company shall be entitled to invoice the Customer for the price of the Goods on or at any time after the Company has notified the Customer that the goods are ready for collection or the Company has tendered delivery of the Goods.
- 4.2 Any price quoted by the Company is based upon costs current as at the date of quotation. The price charged to the Customer under the Contract may be charged to take account of costs current at the date of invoice.
- 4.3 Unless otherwise expressly stated in writing, all prices are exclusive of VAT which shall be charged where appropriate at the rate prevailing at the relevant tax point.
- 4.4 The Customer shall make payment in full by the last day of the month of invoice notwithstanding that the delivery may not have taken place and the property in the goods may not have passed to the Customer.  
Interest at the annual rate of 4 % over the base rate of the National Westminster Bank Plc will be charged at the rate prevailing on the due date on all amounts outstanding at the due date until the actual date of payment (both before and after judgement, and any cash discount will not be allowed to the Customer).
- 4.5 Where payment is agreed to be made by instalments, any delay or default by the Customer in making payment in respect of any one instalment shall render all the remaining instalments due forthwith, and interest will be charged in accordance with condition 4.4 with immediate effect until the date of actual payment.
- 4.6 The Company may appropriate any payment made by the Customer to such of the Goods (or the, goods supplied under any other contract between the Company and the Customer) as the Company may think fit (notwithstanding any purported appropriation by the Customer).

### 5. Warranty

The Company warrants that all Goods supplied by it will correspond to their specification and will be free from defects on materials or workmanship for a period of 12 months from the date of delivery. The Company's obligation in the event of a breach of this warranty is limited, at its option, to the repair or replacement of any defective Goods which shall be returned to the Company at the Customer's risk and expense. This warranty is subject to the following conditions.

- 5.1 Claims must be notified in writing to the Company within seven days from the date of delivery or (where the defect is not apparent on reasonable inspection) as soon as practicable after discovery of the defect.
- 5.2 The Company shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Customer.
- 5.3 The Company shall be under no liability if the defect or failure, in the reasonable opinion of the Company, arise from wear and tear, wilful damage or misuse, negligence by the Customer or any third party, lack of proper maintenance or servicing, abnormal working conditions, failure to follow the Company's instructions, or alteration or repair of the Goods without the Company's prior approval.
- 5.4 The Company shall be under no liability if the price for the Goods has not been paid in full by the due date for payment.
- 5.5 The above warranty does not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Customer shall be entitled only to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company and can be transferred.
- 5.6 provided that nothing in this Condition shall operate so as:
  - 5.6.1 to exclude the Company's non-excludable liability in respect of death or personal injury caused by the negligence of the Company its servants or agents.
  - 5.6.2 to affect the statutory rights of the Customer where goods are sold to a Customer dealing as a consumer within the meaning of Unfair Contract Terms Act.

- 5.6.3 to exclude the application of Section 12 of the Sale of Goods Act 1979, or  
5.6.4 to exclude liability for fraudulent misrepresentation.  
All other warranties or conditions implied by statute or common law are excluded to the fullest extent permitted by law.
- 5.7 The Company, shall not be liable to the Customer in contract tort (including without limitation negligence) and/or breach of statutory duty for any loss or damage which the Customer may suffer by reason of any act, omission, neglect or default (Including negligence) in the performance of the Contract by the Company its servants or agents, in a sum which is greater than the Contract price.
- 5.8 The Company shall not be liable to the Customer in contract tort (including without limitation negligence) ant/w breach of statutory duty for any indirect or consequential (including economic) loss of any kind which the Customer may suffer by reason of any act, omission, neglect or default (including negligence) in the performance of the Contract by the Company, its servants or agents.
6. **Health and safety**  
For the purposes of Section 6(8) of the Health and Safety at Work Act 1974 the Customer undertakes to comply with all instructions relating to Goods received from the Company from time to time and to take such other steps sufficient b ensure, so far as is reasonably practicable, that the Goods will at all times be safe ant without risk to health when being properly used, set, cleaned and maintained by a person at work.
7. **Risk**  
The risk in the goods shall pass to the Customer on delivery to the Customer or lit earlier) when possession of the Goods is taken by a carrier for delivery to the Customer.
8. **Force majeure**  
The Company shall not be liable to the Customer, or be deemed to be in breach of any contract with the Customer, by reason of any delay in performing, or any failure to perform, any of the company's obligations in relation to the Goods, if the delay or failure was due to force majeure or to any other cause beyond the Company's reasonable control.
9. **Reservation of title**
- 9.1 The goods sold under there Conditions shall remain the absolute property of the Company and title to the Goods shall remain vested in the Company until payment in full of all amounts invoiced or due to the Company in respect of the goods the subject of the Contract and all other Goods supplied by the Company to the Customer under any other contract whatsoever.
- 9.2 Until property in and title to the Goods passes to the Customer:
- 9.2.1 the Customer shall keep the Goods properly stored, protected and insured and separate from all or any other goods whether belonging to the Company the Customer or any third party;
- 9.2.2 the Company shall be entitled at any time forthwith to revoke the Customer's power to deal with the Goods; and it shall automatically cease if the Customer shall commit or be subject to any Act of Insolvency; and
- 9.2.3 the customer shall not make any modification to the Goods or their packaging or alter remove tamper with any marks, numbers or other means of identification used on or in relation to the Goods.
- 9.3 Upon termination of the Customer's power to deal with the Goods, the Customer shall place the Goods at the disposal of the Company and the Company and its servants and agents are hereby irrevocably authorised without the need for consent of any third party but using only such force as may be necessary, to enter upon any premises of the Customer or any third party for the purpose of removing the goods.
- 9.4 It any of the forgoing provisions of this Condition shall be invalid or unenforceable such invalidity or unenforceable shall not affect the remaining provisions.
10. **Termination and suspension**  
Without prejudice to any rights and remedies available to it, the Company shall be entitled. forthwith on written notice to the Customer either to terminate the Contract wholly or in part and/or any other contract with the Customer or to withhold performances of all or any of its obligation user the Contract ant/or any other contract with the Customer (and on the giving of such notice all monies outstanding from the Customer to the Company shall become immediately due and payable if:
- 10.1 any sum owing to the Company from the Customer many account whatsoever shall be unpaid after the due date for payment (in which event the Company shall have a general lien for any such sum on all and any property of the customer in its possession);
- 10.2 the Customer shall commit or be subject to any Act of Insolvency;
- 10.3 the Customer shall commit any breach of any contract (including without limitation the Contract) with the Company.  
In the event of a suspension of performance, the Company shall be emitted to require, as a condition of resuming performance, pre-payment or such severity as it may require.
11. **Intellectual property rights**
- 11.1 If any claim is made against the Customer that the Goods infringe or that their use or resale infringes ins patent copyright, design right, registered design, trade mark or other industrial or intellectual property rights of any other person or any claim is made in respect of passing off unauthorised use of confidential information in relation to the Goods and/or their use or resale the Customer shall forthwith ratify the Company in writing and the Company shall be given full control of any proceedings or negotiations in connection with any such claim. The Customer shall give the Company all reasonable assistance for the purposes of any such proceedings or negotiations end except pursuant to a final award, the Customer shall not pay or accept any such claims, or compromise any such proceedings without the consent of the Company (which shall not unreasonably withheld). The Customer shall do nothing which would or might vitiate any policy or insurance or insurance cover which the Company may have in relation to such infringement.
- 11.2 If the Goods are to be manufactured w any process is to be applied to the Goods by the Company in accordance with a specification submitted by the Customer, the Customer shall (without prejudice to the other rights and remedies of the Company) indemnity the Company in full against all loss, costs, damages, charges, expenses and other liabilities awarded against or incurred by the Company as a result or in connection with:
- 11.2.1 any claim for infringement of any patent, copyright, design right, registered design, trade mark w other industrial or intellectual property rights of any other person and/or for posing off and/or unauthorised use of confidential information which results from the Company's use of the Customer's specifications;
- 11.2.2 any other liability of any kind to any third party including without limitation for defective Goods, personal injury or death to the extent that it arises from the specification.
12. **General**
- 12.1 It shall be the responsibility of the Customer to ensure that all requirements applicable to the Contract, whether statutory, regulatory, municipal and/or otherwise howsoever, (including without limitation and relating to the importance or use of the Goods in the country of destination and for the payment duties thereon, are duly complied with. It shall be a condition precedent to the performance by the Company of its obligations under the Contract that all necessary licences, permits ant consents shall have been obtained by the Customer.
- 12.2 No failure or delay on the part of the Company to exercise any of its rights under the Contract shall operate as a waiver or nor shall any waiver by the Company of any breach by the Customer of any of its obligations under the Contract shed the rights of the Company in the event of any further or continuing breach.
- 12.3 The Contract is personal to the Customer, who shall not assign or in any way part with the benefit without the Company's prior written consent
- 12.4 Each and every obligation contained in these conditions shall be treated as a separate obligation and shall be severally enforceable as such notwithstanding the non-enforceability of any such obligation.
- 12.5 The clause heading in Mesa conditions are for convenience only ant shall not in any way affect the interpretation of the contract.
- 12.6 The Conditions and the Contract shall not create or evidence, or be deemed to create or evidence, any agency or partnership between the Company on the one hand and the Customer or any third party on the other.
- 12.7 Any notice required to be given in writing under the Contract shall be given, where possible, by facsimile transmission and otherwise by first class post addressed to the registered office of the party for which it is intended, or to such other address as may be notified in writing in accordance herewith for the purpose. and shall be deemed to have been received, in the case of a facsimile transmission, upon transmission and, in the case of a letter, forty eight hours after posting, in proving service by letter, it shall be sufficient to show that the envelope containing the notice was property addressed and stamped and duly posted.
13. **Applicable law**  
These conditions shall be governed by and construed in accordance with English law and the parties acknowledge and accept the exclusive jurisdiction of the English Courts.