

Kartell UK Ltd Conditions of Sale

INTERPRETATION

- 1 1.1 In these Conditions:
"BUYER" means the person who accepts a quotation of the seller for the sale of Goods or whose order for the Goods is accepted by the seller.
"SELLER" means Kartell UK Ltd (registered in England number 6682104)

BASIS OF THE SALE

- 2 2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with these conditions which shall govern the contract to the exclusion of any other terms and conditions which are purported to be made by the Buyer.
2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representative of the Buyer and Seller.
2.3 For the avoidance of doubt, this contract does not transfer any intellectual Property Rights owned by the Seller to the Buyer.

ORDERS AND SPECIFICATIONS

- 3 3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the Terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the contract in accordance with its terms.
3.2 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).
3.3 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
3.4 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

PRICE OF THE GOODS

- 4 4.1 The price of the Goods shall be the Seller's quoted price, or where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.
4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller, or any increase in import duty or any additional European Community Levy made against the Seller or its supplier.
4.3 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

TERMS OF PAYMENT

- 5 5.1 Subject to any special terms agreed in writing between the Buyer and Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
5.2 Unless varied in writing by the Seller the Buyer shall pay the price of the Goods within 30 days of the date of Seller's invoice, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the contract. Receipts for payment will be issued only upon request.
5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right of remedy available to the seller, the Seller shall be entitled to :
5.3.1 cancel the contract or suspend any further deliveries to the Buyer
5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the Goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
5.3.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of four percent per annum above Barclays bank base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

DELIVERY

- 6 6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering Goods to that place.
6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
6.3 Where delivery of the Goods is to be made by the Seller in bulk, the Seller reserves the right to delivery of up to 3 per cent more or 3 per cent less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered.
6.4 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
6.5 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
6.6 If the Buyer fails to take delivery of the Goods or fails to give the Seller delivery instructions at the time

stated for delivery (otherwise than by reason of any cause beyond the buyer's reasonable control or by reason of the Seller's fault) then without prejudice to any other right or remedy available to the Seller, the Seller may ;
6.6.1 store the Goods until actual delivery and charge the buyer for the reasonable costs (including insurance) of storage ; or
6.6.2 sell the Goods at the best price readily obtainable and after deducting all reasonable storage and selling expenses, account to the buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

RISK AND PROPERTY

- 7 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer ;
7.1.1 in the case of the Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection ; or
7.1.2 in the case of the Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other Goods agreed to be sold by the Seller to the Buyer for which payment is then due.
7.3 The Seller shall be entitled to recover the price of the Goods (including VAT) notwithstanding that property in any of the Goods has not passed from the Seller.
7.4 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell the goods in the ordinary course of its business.
7.5 Until such time as the property in the Goods passes to the Buyer, the Buyer shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
7.6 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, the Seller shall have the right to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
7.7 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
7.8 In the event that any provision of this Clause 7 is deemed by a court to create a security requiring registration in accordance with Part XII of the Companies Act 1985 as amended or any statutory re-enactment thereof, and such security is void for want of registration, the Court shall have the power to sever the relevant provision creating the security and all other provisions of this Clause 7 shall remain in full force and effect.
7.9 If requested to do so by the Seller, the Buyer will supply the Seller with all documentation necessary to enable the Seller to register these terms as a charge at Companies House.

WARRANTIES AND LIABILITY

- 8 8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery.
8.2 The above warranty, and any special warranty stated overleaf, is given by the Seller subject to the following conditions :-
8.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer ;
8.2.2 the Seller shall be under no liability in respect of any defect arising from air wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval ;
8.2.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment ;
8.3 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
8.4 Where the Goods are sold under a consumer transaction (as defined by The Consumer Transactions (Restrictions on Statement) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.
8.5 Any claim by the Buyer which is based on any defect in the quality or conditions of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (whether the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure or within the time limit specified in any special condition concerning warranty set out on the reverse side of this order form. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
8.6 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these conditions the Seller shall be entitled, at its sole discretion, to repair or replace the Goods (or the part in question) free of charge (if delivered to the Seller carriage paid by the Buyer) or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer.
8.7 Except in the respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation made in good faith, or any implied warranty, condition or other term, or any duty at common law, or under express terms of the Contract, for any consequential loss

or damage (whether for loss of profit or otherwise), costs expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.

- 8.8 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of and delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control ;
8.8.1 Act of God, explosion, flood, tempest, fire or accident
8.8.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition
8.8.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the of any governmental, parliamentary or local authority.
8.8.4 import or export regulations or embargoes
8.8.5 transport delays caused by the unilateral action of the Shippers, Hauliers or other delivery agents
8.8.6 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party)
8.8.7 difficulties in obtaining raw materials, labour, fuel, parts or machinery
8.8.8 power failure or breakdown in machinery

INDEMNITY

- 9 9.1 If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that ;
9.1.1 the Seller is given full control of any proceedings or negotiations in connection with any such claim
9.1.2 the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations
9.1.3 except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the seller (which shall not be reasonably withheld)
9.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do)
9.1.5 the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonable withheld) to be paid by any other party in respect of any such claim ; and
9.1.6 without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller shall be entitled to require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause

INSOLVENCY OF BUYER

- 10 10.1 This clause applies of ;
10.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) ; or an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer ; or
10.1.2 the Buyer ceases, or threatens to cease, to carry on business ; or
10.1.3 the Seller reasonably apprehends that any of the events mentioned above is about occur in relation to the Buyer and notifies the Buyer accordingly
10.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary and, if the price is not paid on demand, the Seller shall be entitled to enter the Buyer's premises where the Goods are stored and repossess them.

GENERAL

- 11 11.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principle place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
11.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
11.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

JURISDICTION

- 12 12.1 The Contract shall be governed by the laws of England and English courts shall have sole jurisdiction in all matters arising out of the Contract.