

## Terms and Conditions of Sale – WZ Packaging UK Limited

### 1) Acceptance

- (a) All quotations given and all orders are accepted only upon these Conditions to the exclusion of any other terms and conditions including Buyers' terms and conditions of purchase.
- (b) No quotation given is an order of sale capable of acceptance so as to create a binding contract.
- (c) All orders placed with Seller require its acceptance in writing before any contract arises. Each accepted order constitutes an entire and separate contract to which these Conditions shall apply. Where no formal acceptance is given, by its acceptance of delivery of the goods Buyer is deemed to accept these conditions as the only term and conditions governing its contract with Seller.
- (d) Buyer acknowledges that in entering into any contract hereunder, it does not rely on any representation or statement concerning the goods unless confirmed in writing by Seller and waives any claim for breach of any such representations or statements not so confirmed.
- (e) Where orders are to be communicated via electronic data interchange (EDI) messages or other electronic means any order transmitted to Seller requires Seller's acknowledgement of such order to be transmitted to Buyer before any contract arises. Each such order will be governed by these Conditions to the exclusion of Buyer's tracing terms.

### 2) Price

Goods and any services in respect thereof will be invoiced at the prices ruling at the date of acknowledgement of order. Where a fixed price has been agreed with respect to an order, Seller may increase the price before or after acceptance of the order, without notice, to the extent that the cost to Seller of producing or procuring the goods or services (if any) has increased or is due to any other circumstances beyond the control of the Seller.

### 3) Payment

- (a) Prices quoted are exclusive of VAT which (if applicable) Buyer shall be liable to pay to Seller.
- (b) Unless otherwise agreed, accounts are due for payment by the 20th day of the month following the month of invoice. All payments shall be made without any deduction or set-off whatsoever.
- (c) If any payment is overdue Seller reserves the right to suspend any further contracted deliveries to Buyer and shall charge interest (from due date of payment to date of actual payment) on the amount due on a daily basis at 3%pa above the Base Rate of the HSBC Bank plc from time to time applicable until the amount due (including interest) is paid.
- (d) Seller reserves the right at any time to demand full or partial payment before proceeding or proceeding further with an order.

### 4) Delivery

- (a) Unless otherwise agreed, any delivery date or period specified by Seller is an estimate only and Seller shall not be liable for any loss or damage sustained by Buyer as a result of any delay in delivery.
- (b) Delivery shall be made by Buyer collecting the goods at Seller's premises after Seller has advised goods are available for collection. Buyer shall be responsible for effecting insurance therefrom irrespective of carriage by Seller's, Buyer's or a carrier's transport.
- (c) If an order is accepted on the basis that delivery be at some place other than Seller's premises delivery shall be made by Seller delivering the goods to that place. Seller reserves the right to charge transport, insurance and other costs for goods requiring expedition or special risk.
- (d) Where drawings, specifications or other information or data are to be supplied, Buyer shall supply the same in sufficient time to enable Seller to deliver the goods and carry out any services in respect thereof. If not so supplied Seller may rescind the contract without liability whatsoever and Buyer shall pay for all costs incurred in respect of the order up to the date of rescission.
- (e) If Buyer fails to provide the information to enable delivery to occur or shall otherwise cause or request a delay in delivery of the goods, Buyer shall pay, in addition to the price referred to in Condition 2, all storage, insurance, transportation and other relevant costs incurred as a result including the costs of suspending or cancelling any further contracted deliveries.
- (f) Seller reserves the right to make delivery by instalments and these Conditions shall apply with appropriate amendments to each instalment delivery. Seller is entitled to tender an invoice for each instalment which shall be paid by Buyer in accordance with Condition 3.

### 5) Shortages, Damages and/or loss in Transit

- (a) Any claims by Buyer in relation to goods damaged awaiting transit or in transit or shortage must be made forthwith to Seller and the carrier, in the case of damaged goods or shortage, the claim must be made forthwith upon delivery.
- (b) The goods in respect of which any claim of damage or shortfall is made must be preserved intact (including packing) for a period of twenty-one (21) days from Seller's receipt of notice of the claim within which time Seller and carrier and/or their respective agents shall have the right to attend at Buyer's premises to investigate the claim and inspect the goods.

### 6) Risk and Title

- (a) Risk in the goods shall pass to Buyer upon delivery. Where delivery is withheld or delayed by reason of any default of Buyer risk shall pass to Buyer at such time that Seller would have delivered had such withholding or delay not occurred. In the absence of written claim under Condition 5(a) and (b) above, the goods shall be deemed to have been delivered and accepted by Buyer complete and in satisfactory condition.
- (b) Title to the goods shall remain with the Seller until all debts Buyer owes to Seller are paid. Until such time, Buyer must:

- Store all goods so that they are clearly identifiable as Buyer's property
- Insure all goods (against the risks for which a prudent owner would insure them) and hold the policy on trust for Seller
- Buyer may use the goods and sell them in the ordinary course of business, but not if:
- Seller revokes that right (by informing Buyer in writing); or
  - Buyer becomes insolvent.

- (c) Buyer must inform Seller in writing immediately if Buyer becomes insolvent.
- (d) If Buyer's right to use and sell the goods ends Buyer must allow Seller to remove the goods.
- (e) Seller has Buyer's permission to enter any premises where the goods may be stored:

- At any time, to inspect them, and
- After Buyer's right to use and sell them has ended, to remove them, using reasonable force if necessary.

- (f) Despite Seller's retention of title to the goods, Seller has the right to take legal proceedings to recover the price of goods supplied should Buyer not pay Seller by the due date.
- (g) Buyer is not the agent for Seller. Buyer has no authority to make any contact on behalf of or in the name Seller.

### 7) Warranty

- (a) Seller warrants that the goods at the time of delivery shall be free from significant defect in design, material or workmanship. If any goods do not conform to that warranty Seller will at its option (i) replace the goods found not to conform to the warranty; (ii) take such steps as Seller deems necessary to bring the goods into a state where they are free from such defects; or (iii) take back the goods found not to conform to the warranty and refund the appropriate part of the purchase price provided that the liability of Seller shall in no event exceed the purchase price of the goods and performance of any one of the above options shall constitute an entire discharge of Seller's liability under this warranty.
- (b) The foregoing warranty is conditional upon:

- Buyer giving written notice to Seller of the alleged defect within seven (7) days of the time when Buyer discovers or ought to have discovered the defect and in any event within 90 days of delivery of the goods;
  - Buyer affording Seller, its agents, or insurer's agents a reasonable opportunity to inspect the goods during a period of twenty-one (21) days and, if so requested by Seller, returning the allegedly defective goods to Seller's works, carriage pre-paid (subject to refund in the event that the claim is found to be justified), for inspection to take place there; and
  - The goods having been stored carefully and in accordance with any instructions issued by Seller and so as not to allow deterioration or damage.
- (c) Seller will use reasonable endeavours to pass on to Buyer the benefit of any guarantee, condition, warranty or servicing arrangement acquired from the supplier of the goods.
- (d) Save as provided above, all conditions and warranties, express or implied are hereby expressly excluded to the extent permitted by law.
- (e) All information as to the methods of storing, applying or using the goods, the purpose to which the goods may be applied, the suitability of using the goods in any manufacturing process or in conjunction with any other materials are given by Seller or its agent in good faith but it is for the Buyer to satisfy itself of the suitability of the goods for any particular purpose.

### 8) Damages

- (a) Save as described in Condition 7, Seller shall not be liable in contract negligence, breach of statutory duty or otherwise for any loss or damage whether for loss of profit, consequential special indirect loss or damage, cost expenses, compensation whatsoever, which arise out of or in connection with the supply of the goods or the use or re-sale thereof.
- (b) Seller's liability to Buyer in respect of any breach or non-performance of Seller's obligations howsoever caused or arising shall be limited to the price of or replacement of the goods, except as expressly provided in these Conditions.
- (c) Nothing herein shall affect the liability of Seller for death or personal injury caused by Seller's negligence.

### 9) Force Majeure

Seller shall not be liable for any loss or damage if Seller is prevented from, or hindered in, or delayed in performing its obligations hereunder where the same is occasioned by any cause whatsoever that is beyond the Seller's reasonable control including but not limited to an act of God; severe weather; war (whether declared or not); civil disturbance; requisitioning; governmental or other authority's regulations; requisitioning or enactment's of any kind import or export regulation; strike; lock-out or trade dispute (whether involving its own employees or those of any other person); power or machinery breakdown; accident non-availability or delay of vessels or other transport. Should any such event occur Seller shall confirm the same in writing to Buyer and Seller may cancel or initially suspend then, if necessary, cancel the performance of the contract without incurring any liability for any loss or damage thereby occasioned.

### 10) Tests and Inspections

Unless otherwise agreed all testing and inspection specified by the Buyer, implied by the order or customary to Seller's practice shall be at Seller's works and shall be final. Seller reserves the right to make a reasonable charge therefore.

### 11) Alteration in Specification

Seller reserves the right to make any changes in the specification of the goods which do not materially alter the quality or performance, or where specification is to conform to any applicable safety or other statutory requirements. If Buyer requires any further information or advice on safe use of the goods in question Buyer shall forthwith contact the Seller.

### 12) Indemnity

- (a) Where Buyer provides drawings, specifications, information or data to Seller for the purposes of any order Buyer shall indemnify Seller against any and all claims, damages, loss, costs, and expenses for which Seller may, become liable as a result of the infringement of any patent copyright, design right or other intellectual property, of any third party.
- (b) Buyer shall indemnify Seller against any and all claims, damages, loss, costs and expenses suffered or incurred by Seller as a result of any claim by a third party arising out of or in connection with the sale of the good including any claim under the Consumer Protection Act 1987.
- (c) Buyer shall be responsible for effecting and maintaining insurance cover as appropriate in particular for Condition 12(a) and (b) and upon request shall provide a copy of the insurance policy and evidence of premiums paid in respect thereof.

### 13) Cancellation

No order which has been accepted by Seller may be cancelled by Buyer except with the agreement in writing of Seller and on terms that the Buyer shall indemnify Seller in full including but not limited to, for and against all loss or damage (whether loss of profits, consequential special or indirect loss or damage), cost (including those of labour and materials used), damages, charges (including forward currency exchange, forward purchase of metal) and expenses incurred by Seller as a result of cancellation.

### 14) Breach

Seller shall be entitled by notice in writing to terminate any contract with Buyer and that without any liability whatsoever to the Buyer if: -

- Buyer shall commit any breach of default whether material or otherwise of its obligations to the Seller in terms of any contract with the Seller; or
- Any distress or execution shall be levied on, or executed against Buyer or any of its assets; or
- Buyer makes or attempts to make any arrangement or composition with its creditors; or
- Where Buyer is a public or private limited company, any resolution is passed or Petition presented to wind up its business (except for the purpose of reconstruction or amalgamation) or a receiver or administrator or liquidator is appointed of Buyer or of any of its undertakings, property or assets or any part thereof or Buyer ceases or threatens to cease business; or
- Where Buyer is an individual, a partnership including a dissolved partnership, a corporation or local authority, or an unincorporated body or is subject to a Petition for Bankruptcy. In the event of termination in terms hereof Buyer shall become liable for immediate payment for all goods delivered and services provided by Seller at the date of said termination.

### 15) Assignment and Severability

- (a) Buyer shall not assign or transfer or purport to assign or transfer any contract to which these Conditions apply without the Seller's prior written consent.
- (b) If any provision or term of these Conditions shall become or be declared illegal, invalid or unenforceable in whole or in part by any Court or other authority having jurisdiction over the parties hereto the same shall be divisible from this agreement in the jurisdiction in question to the extent (but not greater) necessitated by the Court or other authority.

### 16) Waiver and Amendment

- (a) No failure or delay on the part of Seller to exercise any rights or remedy under any Contract governed by these Conditions (whether a single or partial or further exercise) shall be construed or operate as a waiver therefore. The rights and remedies provided are cumulative and are not exclusive of any rights or remedies provided by law
- (b) These Conditions shall not be amended, modified or varied except in writing signed by Seller.

### 17) Notices

Any notices to be given shall be in writing and be deemed to be given if left at the last known address of Seller or as the case may be, the Buyer (marked for attention of Managing Director) or sent to the same by first class post or facsimile and shall be deemed to have been received, five days after despatch if by post or six hours after receipt of a transmission in legible form if by facsimile, or after delivery, if by hand.

### 18) Governing Law

The construction, validity and performance of these conditions shall be governed by the laws of England and Buyer submits to the exclusive jurisdiction of the Courts of England.

### 19) Export Contracts

The following additional provisions will apply to any order for the sale of goods when goods are exported outside the United Kingdom:

- Buyer shall be solely responsible for the obtaining of any necessary import licences or authorisations in respect of the goods and Seller shall be under no liability whatsoever in respect of goods exported without the necessary licences.
- Where goods sold FOB or CFR (formerly C&F), Incoterms (1990), Seller shall be under no obligation to give Buyer notice specified in Section 32(3) of the Sale of Goods Act 1979.
- Incoterms (1990) shall apply except and to the extent that they may be inconsistent with these Conditions.
- All claims for damage or loss incurred awaiting or in transit must be made in accordance with the instructions of the insurance company: details of which are given on the insurance certificate with the applicable shipping documentation.

### 20) Printing and Embossing cylinders

Printing and embossing cylinders will be charged to the customer at cost and the cylinders will remain the property of the Seller.

### 21) Packing

Packing cases and cartons are returnable and their cost is excluded from selling prices. The Seller reserves the right to charge in full for all packing cases or cartons if not returned within two calendar months from the date of despatch in serviceable condition carriage paid to the Seller's Works.

### 22) Tolerances

All aluminium foil goods supplied will be subject to the tolerances generally accepted in the trade for aluminium foil.

### 23) Quantity Variations

Any deficiency or surplus not exceeding 10 per cent of the quantity ordered shall be considered as due execution of the contract and charged pro rata.