

## Terms and Conditions of Sale

### 1. Definitions

In these Conditions:-

- (a) "the Company" means Unico Limited (Company No. 861294) whose registered office is at 5<sup>th</sup> Floor, Condor House, 10 St. Paul's Churchyard, London. EC4M 8AL.
- (b) "the Customer" means the person, firm, company or other entity supplied or to be supplied with Goods by the Company;
- (c) "Goods" means the goods, materials, services and/or other items (whether original or substituted) supplied or to be supplied by the Company to the Customer pursuant to any Contract made under these Conditions (subject to any amendment or alteration thereto agreed in writing by the Company);
- (d) "Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Company and the Customer;
- (e) "the Contract" means the contract for the supply of Goods by the Company to the Customer to which these Conditions (subject to any amendment or alteration thereto agreed in writing by the Company) apply;
- (f) "Intellectual Property Right" means any patent, copyright, database right, trade secrets, know-how, trade marks, trade names and designs (whether registered or unregistered and including applications for any such right) and all other intellectual property rights having similar effect in any part of the world, for the full term of such rights including any renewals or extensions thereof whether now or in the future;
- (g) "Price" means the price of the Goods specified in the Contract.

### 2. General

- (a) Unless otherwise agreed in writing between the parties, the Contract between the Company and the Customer shall be governed by these Conditions which shall apply to the Contract notwithstanding any conditions to the contrary in the Customer's conditions of trading (which so far as inconsistent with these Conditions shall not apply and shall be deemed to be waived).
- (b) All quotations are submitted, all orders are accepted, and all Goods are supplied by the Company subject to these Conditions and all other conditions, warranties and representations, express or implied and statutory or otherwise, except as to title, are hereby excluded. No amendment or alteration to these Conditions shall apply unless specifically agreed to in writing by the Company.
- (c) To the extent that these Conditions do not provide consumers (as defined in Section 25(1) of the Unfair Contract Terms Act 1977) with the statutory protections conferred upon them from time to time by United Kingdom consumer and/or sale of goods legislation, these Conditions will be deemed to be varied or amended to confer such statutory protection upon consumers as so defined who are Customers and these Conditions shall be read and construed accordingly.

### 3. Quotation

No quotation made by the Company shall be valid beyond the period stipulated for acceptance thereof and the Company shall be entitled to refuse to accept any order placed as a result of any quotation made by the Company, which is received outwith such period.

### 4. Orders

- (a) No order made or given by the Customer to the Company shall be accepted or be deemed to have been accepted by the Company and the Contract shall not be made or be deemed to have been made until an acknowledgement of such order has been given in writing by the Company to the Customer or the Goods have been despatched by the Company for delivery to the Customer.
- (b) The right is reserved to the Company (without prejudice to any other remedy competent to the Company) to cancel without penalty to the Company any uncompleted order or the Contract or to suspend delivery on the failure of the Customer to fulfil any of the commitments or obligations of the Customer to the Company howsoever arising whether such commitment or obligation arises pursuant to the Contract or otherwise. Upon such cancellation or suspension by the Company or in the event of any cancellation of the Contract or of any order made or given by the Customer to the Company, the Customer shall, on the demand in writing of the Company to the Customer, indemnify and so free and relieve the Company from and against any loss, cost, charge, expense or damage to, or incurred by, the Company resulting from such cancellation or suspension.

### 5. Extra Costs

- (a) Any Price quoted by the Company shall be subject to increase to cover the expenses incurred by the Company as a result of any delay arising from the Customer's instructions or lack thereof.
- (b) Unless the Company has agreed in writing that the Price of the Goods shall be fixed, the Company reserves the right to invoice the Goods at the price or prices hereof prevailing at the date of supply or despatch thereof to the Customer or to a nominee of the Customer and, without prejudice to the generality but subject as aforesaid, the Company reserves the right to increase the Price of the Goods to cover any increase in the cost of production or supply of the Goods howsoever arising. All Prices are quoted exclusive of all present or future government or local taxes of whatever nature (including, without limitation, VAT). Where applicable, such taxes shall be added to the invoice as a separate charge and shall be payable by the Customer at the time of payment of the Price.

### 6. Delivery

- (a) Unless otherwise agreed in writing between the parties all Goods delivered to the Customer shall be delivered "Ex Works" as defined in the Incoterms 2000.
- (b) The Company accepts no liability for failure to meet quoted delivery times which shall be treated as estimates only and any such failure shall not entitle the Customer to cancel or terminate any order or the Contract. Time shall not be of the essence in respect of quoted delivery dates or times.
- (c) Any claim by the Customer in respect of the non-delivery or non-supply of the Goods must be notified in writing by the Customer to the Company not later than seven days after the receipt by the Customer of the delivery note or invoice in respect of the Goods, whichever shall be the later.
- (d) Unless the Company shall otherwise agree in writing, the Company shall not be bound to deliver or supply the Goods in one lot, shipment or consignment and the Customer shall be bound to accept split deliveries or delivery or supply of the Goods by instalments.

- (e) The Company shall have no liability in respect of any shortfall or shortweight in the Goods or in respect of the Goods being damaged upon delivery unless the Customer shall have notified both (i) the Company in writing of such shortfall, shortweight or damage within three days of the delivery or supply of the Goods to the Customer or to a nominee of the Customer and (ii) the carrier of the Goods within such period as the carrier's conditions may specify, in such manner as shall preserve a right of recourse against the carrier.
- (f) Where the Customer requests that delivery or supply of the Goods be delayed beyond the quoted delivery or supply date, then the Company shall be entitled to invoice the Customer for payment of the Goods as if the Goods had been delivered or supplied to the Customer on the quoted delivery or supply date and the Customer shall reimburse to the Company, on the demand in writing of the Company, all costs and expenses (including storage and insurance costs) incurred by the Company in connection with the Goods from the quoted delivery or supply date of the Goods to the date of actual delivery or supply thereof to the Customer or to a nominee of the Customer.

7. Title

- (a) Unless otherwise agreed in writing between the parties and notwithstanding any other provision of these Conditions, risk of damage to or destruction of the Goods shall pass to the Customer when the Goods are delivered to the Customer or its nominee or agent.
- (b) Where the Goods are stored in Scotland title in the Goods will not pass to the Customer until payment of the Price has been made in full by the Customer together with all other monies owing by the Customer to the Company. Where the Goods are to be stored at premises outwith Scotland then legal title in the Goods will not pass to the Customer until payment of the Price has been made in full by the Customer. Until such time as title in the Goods passes to the Customer:-
  - (i) the Customer acknowledges that he is in possession of the Goods to the order of the Company and shall hold the Goods on behalf of the Company and shall use reasonable endeavours to where possible keep the Goods separate from the property of the Customer and in such a way as to identify them as clearly belonging to the Company and shall take all steps to ensure that the Customer is not deemed to be the reported owner of the Goods. If the Goods are resold or otherwise disposed of by the Customer, the Customer will ensure that the entire proceeds of the sale are held on behalf of the Company and shall not be mixed with any other monies or paid into an overdrawn bank account and shall at all times be identifiable as monies belonging to the Company;
  - (ii) the Customer shall be obliged to keep the Goods free from the rights of third parties and shall not pledge or purport to transfer title to the Goods as security; and
  - (iii) the Company retains the right to recover the Goods from the Customer's premises (and for this purpose may enter into the Customer's premises) at the Customer's expense.
- (c) Nothing in this Condition 7 shall confer any right upon the Customer to return the Goods sold to the Company.

8. Price and Payment

- (a) Subject to Condition 5 hereof, the Price payable by the Customer to the Company for the Goods shall be the price thereof specified by the Company in the quotation made by the Company for the supply of the Goods or, if different, the price for the Goods specified in the order acknowledgement in respect of the Goods given by the Company to the Customer.
- (b) Unless otherwise agreed in writing between the parties, the Price quoted is "Ex Works" as defined in Incoterms 2000 edition. Unless otherwise provided for in the Contract, all loading, transport, shipment and other costs arising subsequent to delivery of the Goods including, without limitation, transport, insurance and any Value Added Tax or other tax and charges imposed by the law of England and Wales or any other country ("Additional Costs") shall be met by the Customer or the Customer's agent. If the Additional Costs are paid by the Company they shall be invoiced additionally and/or separately from the Price of the Goods and shall be payable by the Customer in accordance with these Conditions.
- (c) Unless otherwise provided in the quotation made by the Company for the supply of the Goods or in the order acknowledgement given by the Company to the Customer in respect of the Goods, payment for the Goods shall be made by the Customer to the Company thirty days from the date of the invoice rendered to the Customer by the Company in respect of the supply of the Goods and, in either event, time for payment shall be of the essence of the Contract.
- (d) Unless otherwise specifically provided in the quotation made by the Company for the supply of the Goods or in the order acknowledgement given by the Company to the Customer, accounts are strictly net.
- (e) Interest at the rate of two per centum per annum above the base lending rate from time to time and for the time being of Clydesdale Bank plc shall be payable on any sum payable by the Customer to the Company and not paid on the due date from the due date for payment thereof until the date of actual payment thereof to the Company and that whether or not after judgement or decree. Such interest shall be calculated on the basis of the actual number of days elapsed.

9. Description

- (a) The descriptions, illustrations, weights and material contained in any catalogues, Price lists, brochures, leaflets or other descriptive matter prepared, issued or circulated by or on behalf of the Company represent the general nature of the items described therein but neither they nor any verbal statement shall form any part of any order or of the Contract or amount to any representation or warranty.
- (b) The Goods are supplied on the basis that the Goods may differ from samples thereof seen by the Customer.
- (c) The Company does not accept liability for loss or damage arising from any reliance placed upon any advice or information supplied by the Company.
- (d) The Customer shall be deemed to have satisfied itself that the Goods are suitable for the Customer's purpose.

10. Warranties

- (a) Insofar as permitted by law, the Company gives no warranty and makes no representation whether express or implied as to any matter whatsoever including (without limitation) condition, satisfactory quality or fitness for any purpose.
- (b) The Company accepts no liability for any loss or damage suffered by the Customer or any third party as a result of or caused by the use of the Goods for a use or purpose for which the Goods were not designed.
- (c) The Company shall incur no liability in respect of any defect or fault in the Goods unless:-
  - (i) details of the defect or fault in the Goods are notified in writing by the Customer to the Company forthwith (and not later than seven days) following the delivery or supply of the Goods to the Customer or to a nominee of the Customer;

- (ii) the Customer gives the Company such opportunity as the Company may reasonably require to examine or inspect the defective or faulty Goods at the premises of the Customer;
  - (iii) the Customer forthwith upon the discovery of such defect or fault by the Customer ceases to use the defective or faulty Goods unless otherwise authorised by the Company in writing; and
  - (iv) the Customer, unless otherwise authorised by the Company in writing, returns the defective or faulty Goods to the Company (the transport charges being prepaid by the Customer) within fourteen days following the discovery of the defect or fault by the Customer.
- (d) The liability of the Company under this Condition shall be limited to replacing, repairing or making good the defective or faulty Goods or, at the option of the Company, giving credit or reimbursing to the Customer the Price (whether in whole or in part) paid by the Customer to the Company for the defective or faulty Goods.
- (e) Nothing in this Condition 10 shall seek to restrict the Company's liability for death or personal injury caused by the Company's negligence.

11. Customer's Specification

- (a) If the Customer requires the Goods to be manufactured or supplied to the Customer's design, the Customer must provide to the Company a detailed design and/or specification of the Customer's requirements when the Customer orders the Goods. The Company shall not be liable for any defect or fault in the Goods resulting from the Goods being manufactured or supplied in accordance with the Customer's design and/or specification of the Goods.
- (b) The Customer shall indemnify and so free and relieve the Company from and against any claim, cost, charge or expense in respect of the infringement or breach or claimed infringement or breach of any Intellectual Property Right as a result of or caused by the manufacture or supply of the Goods by the Company in accordance with the Customer's design and/or specification.

12. Financial Condition

- (a) If the Company shall consider that the Customer's financial condition does not at any time justify the agreed terms of payment, the Company may, having given notice in writing to the Customer, cancel any unfulfilled order or the Contract unless the Customer shall forthwith make payment to the Company for the Goods already delivered or supplied by the Company to the Customer or shall make prior payment for the Goods ordered but not delivered or supplied, or both, at the Company's option.
- (b) In the event that:-
- (i) an administration order is made in respect of the Customer; or
  - (ii) a company voluntary arrangement is proposed in respect of the Customer; or
  - (iii) a resolution is passed or an order made for the winding up of the Customer (other than a resolution for a member's voluntary liquidation); or
  - (iv) a receiver or administrative receiver shall be appointed over the whole or any part of the Customer's undertaking or assets; or
  - (v) the Customer is unable to pay its debts (within the meaning of Section 123(1) or (2) of the Insolvency Act 1986) or shall cease or threaten to cease to pay its debts as they fall due or shall make or seek to make any composition or arrangement with its creditors; or
  - (vi) the Customer shall cease or threaten to cease trading; or
  - (vii) the Customer is subject to an interim order of the court under Section 252 of the Insolvency Act 1986;
  - (viii) the Customer has entered into an Individual Voluntary Arrangement with creditors; or
  - (ix) the Customer is unable to pay its debts or appears to have no reasonable prospect of paying its debts within the meaning of Section 268 of the Insolvency Act 1986;
  - (x) a bankruptcy order has been made in respect of the Customer's estate under Section 273 of the Insolvency Act 1986;
  - (xi) any event analogous to any of the foregoing under the laws of any jurisdiction occurs,
- then, the Company may, at its option, terminate the Contract by written notice to that effect served upon the Customer. Finished and undelivered or partly manufactured Goods shall be chargeable to the Customer or may be disposed of by the Company at its option and any shortfall in Price obtained shall be chargeable to the Customer.

13. Cancellation and Rescheduling

- (a) The Company will not cancel or reschedule delivery of the Goods at the Customer's request unless the cancellation or reschedule is requested by the Customer in writing (stating the nature and reason for this request). The Company reserves the right to refuse any such request for cancellation or reschedule.
- (b) In the case of cancellation or reschedule the Company reserves the right to invoice the Customer for any sum up to the Price (provided that such sum is a fair reflection of the Company's actual loss resulting from the cancellation or reschedule). A request for the Company to reschedule delivery of the Goods cannot be accepted within 30 days of the scheduled delivery date.

14. Force Majeure

The Company shall not be liable or responsible for any failure to perform in whole or in part or for any delay in performing any of its obligations under these Conditions caused by act of God, war, insurrection, government regulations, embargoes, strikes or walk-outs, illness, flood, fire, equipment breakdown or any other cause beyond the control of the Company. Should any such event occur, the Company at its option may cancel or suspend (or both) the Contract without incurring any liability whatsoever for any loss or damage thereby occasioned.

15. Frustration

If the Contract shall become impossible of performance or otherwise frustrated the Company shall be entitled to reasonable remuneration for work done until the date of such frustration.

16. Remedies

No right, power or remedy conferred upon or reserved to the Company in these Conditions is exclusive of any other right, power or remedy in these Conditions or by law provided, permitted or conferred to or upon the Company but each such right, power or remedy shall be cumulative of every other right, power or remedy permitted or conferred to or upon the Company.

17. Notices

- (a) Any notice, consent, confirmation or other information required or authorised by these Conditions or the Contract to be given by one party to the other may be given in writing by hand or sent by first class recorded delivery post or facsimile transmission to the other party at the address or facsimile number as may from time to time be notified in writing by such party.
- (b) Notices shall be deemed given in the case of notices given by hand at the time of delivery, in the case of notices given by recorded delivery post two business days after the date of posting and in the case of notices by facsimile at the time when the facsimile machine acknowledges receipt thereof.
- (c) The address for notices relating to these Conditions or the Contract, unless otherwise advised in writing, shall in the case of the Company be:-

Company Secretary  
Unico Limited  
North Main Street  
Carronshore  
Falkirk FK2 8HT  
Tel: 01324 573400  
Fax: 01324 573401

18. Law

- (a) These Conditions shall be governed by the law of England and Wales and the Company and the Customer submit to the exclusive jurisdiction of the English Courts.
- (b) The invalidity of one or more provisions of these Conditions shall not affect the remaining provisions and each party shall use their reasonable endeavours in good faith to modify these Conditions so that the intent of these Conditions can be legally carried out.
- (c) Failure, delay or neglect by the Company to exercise any right contained in these Conditions will not prejudice the Company's rights to take subsequent action.
- (d) The parties to these Conditions or the Contract do not intend that any term of these Conditions or the Contract should be enforceable pursuant to the Contract (Rights of Third Parties) Act 1999.