

## Definitions

In these conditions of sale:

- "The Company" means Cabbola Ltd T/A Cabbola Foodservice Equipment
- "The Customer" means the person, firm or company whose order is accepted by the Company
- "The Goods" means any goods which are sold by the Company to the Customer under the order placed by the Customer

## General

- These conditions shall govern any sale of the Goods by the Company to the exclusion of any other terms and conditions unless those other conditions have been expressly approved of in writing by a director of the Company.
- Any quotations given by the Company shall be construed as an invitation to treat and orders placed following a quotation are subject to acceptance by the Company. Any quotation shall not be open for more than 30 days from its date and may be withdrawn at any time.
- The Customer acknowledges that in placing the order, the Customer has not been included by any representations made orally [or in writing] by or on behalf of the Company
- The Customer acknowledges that the Customer is not purchasing as a consumer.

## Prices

- The Company reserves the right to increase prices (whether specifically quoted or not) to take account of any increase in the cost of raw materials, taxes, transport or charge in the international value of sterling.
- Prices are exclusive of VAT or other duty, tariff or charge arising in the United Kingdom or elsewhere.
- Prices are ex-works, insurance, carriage and packing extra.
- If at request of the Customer or as a result of any action or inaction by the Customer work on contract of delivery of the Goods is suspended, the Company shall have both the right to increase the price and to alter the time of delivery.

## Sale of Goods

- "We may deliver goods by separate installments. Each separate installment shall be invoiced and paid for in accordance with the provisions of the applicable contract. Each installment delivery will be a separate contract and no cancellation or termination by either party of any one contract relating to an installment will entitle you to repudiate or cancel any other contract or installment.
- Each invoice raised by us to you will be payable in full, without deduction or set off, in accordance with our standard payment terms. You agree that you will not be entitled to set off any claim against an invoice:
  - Unless you have notified us in writing within 14 days of delivery of any defect or shortage in the goods delivered;
  - Any claim arising out of the supply of goods under a contract other than that which gave rise to the debt forming the subject matter of the invoice".

## Supply of Services

- Each contract for the supply of our services will be performed, invoiced and paid for in accordance with the provisions of the applicable contract and independently of any other contract made between us. No cancellation or termination of any one contract will entitle you to repudiate or cancel any other contract.
- Each invoice raised by us to you will be payable in full, without deduction or set off, in accordance with our standard payment terms. You agree that you will not be entitled to set off any claim against an invoice:
  - Unless you have notified us in writing within 14 days of the performance of the relevant services of any dissatisfaction with our performance of the services

## Delivery Dates

- Any dates or time given for delivery are approximate. Time shall not be of the essence.
- Whilst every effort will be made to adhere to the agreed dates or times, the dates and times are not guaranteed and the Company accepts no liability for delay in delivery however such is delayed.
- The Company may, at its discretion, deliver the Goods in instalments.
- Where goods are offered for delivery to a site, the Company's obligation is to deliver as near to the site as safe hard roads permit. The Customer must provide, at its own expense, the labour required for unloading and stacking.
- Where goods are held by the Company awaiting the call off by the Customer, the Company may make a storage charge and an additional charge for insurance.
- The Company shall have a lien on all goods appropriated to the contract, the title to which has passed to the Customer. The lien shall secure all sums due from the Customer to the Company.
- If the Customer fails to take delivery of the Goods, then without prejudice to any other right or remedy available to the Company, the Company may:
  - Store the Goods until actual delivery and charge the Customer for the costs of storage and insurance.
  - Sell the Goods at the best price obtainable and, after deducting all reasonable storage charges and the cost and the expenses of the sale, account for any excess over the contract price or charge the customer for any shortfall.
- On delivery the Customer shall examine the goods for defects and completeness. No claim for damage in transit or short delivery will be entertained unless a notice is given to the carriers or the Company within three working days of the delivery of Goods. The notice must give details

of the alleged damage or shortage and the Company must be given an opportunity to inspect the goods. A signature "unexamined" shall be deemed to be an unconditional acceptance of the Goods.

## Warranty and Liability

- In addition to all warranties and conditions implied by law the Company gives the following warranties:
  - That the Goods will be manufactured to the usual standards and specifications employed by the Company. That in the case of goods being manufactured to a specification set by the Customer the Goods will be manufactured to that specification. In the event the shall be any defect in materials or workmanship which become apparent under normal use within twelve months of delivery, the Company will repair or replace the defective article at its own expense.
  - That the Goods do not breach any industrial property rights of any third party. In respect of any goods being manufactured to the Customer's specification, the Customer warrants that the specification does not breach any rights of any third party and will indemnify the Company against all actions claims costs and demands of any nature which may be made on the Company arising out of or incidental to the use of the Customers specification.
- The Company shall not:
  - In any circumstances be liable, whether in contract or in tort, for any indirect or consequential loss or damage or for any claim against the Customer by any third party.
  - Be liable for any design defects, unless new design work is necessary specifically to fulfil the contract.
  - Be liable for technical advice or assistance which it was not contractually required to provide. Any such advice or assistance is given on the basis that it is not intended to create any legal obligation on the Company.
  - Be liable for loss caused by delay.
  - Be liable for any loss which the Company is precluded from recovering from recovering from a carrier by reason of the failure by the Customer to give the notice necessary to make such recovery.
  - Any alleged defect in the Goods which the Customer or any person acting on its behalf shall have rectified or attempted to rectify.
- The Company's liability for damage or non delivery shall be limited to replacement of the Goods within a reasonable time or (at the option of the Company) refunding the purchase price.
  - The Company does not exclude or limit liability for death or personal injury arising as a result of any negligent act on its behalf.
- In the case of goods supplied by the Company which have not been manufactured by it, the Company will (so far as possible) assign to the Customer the benefit of any warranty made by the manufacturer of the Goods or the person who supplied them to the Customer for any costs or liabilities incurred or undertaken by the Company, will (so far as possible) use its best endeavours to enforce those warranties for the benefit of the Customer.
- The warranties given by the Company are personal to the Customer and cannot be assigned or held for the benefit of any other party.
- The Company will deliver the Goods a delivery note and unless the contents of the note are disputed by the Customer within seven working days after the date recorded upon it, the particulars shown upon the delivery note shall be conclusive against the Customer.
- Any description of goods appearing in the Company's advertising material or in a catalogue or literature produced by the Company is given by way of description only and the use of such a description shall not constitute a sale by description. In so far as any information contained in any advertisement, catalogue or literature has been compiled from information supplied to the Company by any other party, the Company accepts no responsibility for its accuracy.

## Force Majeur

- The Company shall be excused non-delivery or delay in delivery directly or indirectly caused by or resulting from, or made fundamentally more onerous by, events or circumstances beyond the Company's reasonable control. Without prejudice to the generality of the foregoing the following matters shall be regarded as being beyond the Company's reasonable control:
  - Act of God, explosion, flood, tempest and fire;
  - war or threat of war, sabotage, insurrection, terrorist activity and civil disturbance;
  - Acts of Parliament, restrictions, regulations, directives of the European Commission, by-laws, prohibitions or measures of any kind made by governmental or supranational or local authority.
  - Import or export regulations or embargoes.
  - Strikes, lockouts or other industrial actions or trade disputes whether or not involving employees of the Company.
  - Difficulties in obtaining materials, fuel or machinery without incurring unreasonable expense.
- In the event of any deliveries being so suspended or delayed, the period of the contract shall be correspondingly extended. If deliveries are suspended for six months or more either party may, by notice in writing sent to the other cancel the contract whereupon the Company shall repay to the Customer all payments made by the Customer for any part of the Goods

## Payment

- Payment shall be Nett and without set off, so as to be received on or before the end of the month following the month of delivery of the Goods.

The Company shall be entitled to charge simple interest on overdue accounts at the rate of 0.05% per day.

- When any payment is overdue, the company may suspend further performance of the contract, or of any other contract which may exist between the Company and the Customer, until payment is made in full together with interest.
- In the event of any legal proceedings being taken by the Company against the Customer to recover payments due under this contract, the Customer shall be responsible for all costs and disbursements on a full indemnity basis.

## Passing of Title and Risk

- Even after the Goods have been delivered to the Customer the property in the Goods and the legal title to the Goods will remain in the Company until the Company has received payment of the purchase price in full together with all the VAT payable thereon. Until then the Customer shall hold the Goods in trust for the Company and shall keep the goods separate from those of the Customer. The Customer will protect insure and protect the Goods and keep them properly identified as the property of the Company. The Company may at any time until payment of all money due to the Company from the Customer has been paid require the Customer to return the Goods or any of them to the Company. The Company may, on demand at any time, enter the Customer's premises to collect the Goods. The cost of recovering the Goods shall be born by the Customer. The Customer may, even though the property in the Goods and the legal title to them has not been passed to the Customer, sell the Goods by way of a bona fide sale in the ordinary course of the Customers business. The sale will be made by the Customer as a principal and not as an agent of the Company. That sale, as the Customer accordingly the Customer will account to the Company for the proceeds of sale received by the Customer up to the amount outstanding in respect of the Goods. Until it has given such an account and until payment of the amount found due has been made by the Customer the Customer will hold the money in trust for the Company.
- The Customer's rights to retain possession of and deal with the Goods and services or implied clause (1) shall automatically and without the need for any further notice to be given be terminated immediately in any of the following circumstances:-
  - if the Customer continues to be in breach of any of the terms of this contract after the Company has served the Customer with a notice in writing complaining of breach;
  - if the Customer (being a limited company) is adjudged bankrupt or has execution levied upon any of his or her assets;
  - if the Customer (being a limited company) has a receiver appointed of all or any part of its property or if it passes a resolution for the creditors winding up or if its directors make proposals for a voluntary arrangement within the meaning of section 1 of the Insolvency Act 1986 or if it is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1926.
- On the occurrence of any of the events specified in clause (2) above, the Company may (in addition to all other rights and remedies available to it) without notice to the Customer terminate this contract and may suspend or cancel any deliveries. The Company shall have a general lien on all the Customer's Goods then in the possession of the Company in respect of any sums which may be owing to the Company by the Customer on any account whatsoever. At the expiration of fourteen days notice by the Company to the Customer, the Company shall be entitled to dispose of any Goods the satisfaction of all moneys owing by the Customer to the Company.

## Return of Packages

- The Company will pack the Goods in accordance with its normal practice. If any special package is required by the Customer the cost of providing that form of packing will be charged as an extra to the purchase price of the Goods.
- A charge may be made for all pallets, drums, packing cases or returnable packages. Full credit for the amount charged will be given if they are returned to the point of dispatch, carriage paid and in good and undamaged condition, within three months of the date of the invoice.

## Assignability

- The Customer may not assign or part with its interest in this contract.
- The Company may delegate or sub contract its duties under this contract but shall despite such delegation or sub contract remain liable to the Customer for the full performance of the contract.

## Interpretation and Law

- These conditions and the contract of which they form a part shall be governed by the law of England and the Customer irrevocably submits to the jurisdiction of the English Courts which alone shall have jurisdiction to try any matters of the English which may arise between the Company and the Customer out of or incidental to this contract.

