

# GENERAL CONDITIONS OF SALE

## Definitions

1. In these Conditions the expression "the Seller" shall mean Mark Two Distributors Ltd. The registered office of the Seller is Stanmore House, 64/68 Blackburn Street, Radcliffe, Manchester M29 9TF.

The expression "Buyer" shall mean the person, firm, company, local authority, any local government department government, any government department, state department, federal state, federal government or federal government department from whom an order for Goods is received by the Seller.

The expression "the Goods" shall mean articles, things, materials or commodities or any of them described in the order.

The expression "Specification" means the technical description (if any) of the Goods contained or referred to in the order.

The expression "Order" means the Order placed by the Buyer with the Seller for the supply of Goods.

## GENERAL

2. THESE Conditions contain the entire obligations between the Seller and the Buyer and in the case of any inconsistency between any letter or quotation incorporating or referring to these Conditions and any order, letter or form of contract sent by the Buyer to the Seller whatever may be their respective dates, the provisions of these Conditions shall prevail. No variations of these Conditions shall be binding unless made in writing and signed by a duly authorised representative of the Seller on behalf of the Seller and similarly signed on behalf of the Buyer. Any concession made or latitude allowed by the Seller to the Buyer shall not affect the strict rights of the Seller under these Conditions. If in any particular case any or any part of these conditions shall be held to be invalid or shall not apply to the contract the other Conditions shall continue in full force and effect. The headings contained in these Conditions are for reference only and shall be disregarded in interpreting the Conditions.

## ORDERS

3. QUOTATIONS are only submitted and orders are only accepted subject to these Conditions. All prices quoted are exclusive of Value Added Tax and quotations remain open for acceptance for a period of thirty days from the date of the quotation.

4. THE Seller reserves the right to withdraw or revise any quotation after it has been made so that no order shall be binding on the Seller unless and until has been confirmed in writing on behalf of the Seller by a duly authorised representative.

## PRICES

5. (a) SUBJECT to any variations as are mentioned in (b) and (c) below which may be added thereto the Seller's prices which are applicable are the prices ruling at the date of despatch and at the date of order.

(b) The Seller's prices for the time being in force are subject to variation at any time to take account inter alia of variations in wages, materials or other costs and if applicable fluctuations in currency exchange rates and although under no obligation to do so, the Seller will endeavour to inform the Buyer immediately of any price change since the date of the quotation. The Seller accordingly reserves the right to adjust the invoice price by the amount of any increase or decrease in such costs after the prices quoted and the invoice price so adjusted shall be payable as if it were the original contract price.

(c) If after an order has been confirmed in accordance with Condition 4 above the Seller's costs are increased by

(i) legislative measures of any government or legislature involving new or additional duties or charges; or

(ii) any increase in road haulage rates, railway rates, air freights or shipping freights or when goods are sold at a price which includes insurance any increase in the cost of insurance;

the Seller reserves the right to adjust the invoice price by the amount of any such increase and the invoice price so adjusted shall be payable as if it were the original contract price.

(d) In respect of Orders for delivery in the U.K. all prices are inclusive of carriage and packing and Value Added Tax at the appropriate rate will be added thereto. All packages are non-returnable.

(e) In respect of Orders for delivery in the U.K. all invoices must be paid in sterling unless special arrangements are made and confirmed in writing by a duly authorised representative of the Seller.

(f) In respect of Orders for delivery outside the U.K. the Contract will state whether the Goods are sold F.O., C.I.F., F.A.S. or otherwise as the case may be and all prices will be exclusive of packing which is charged at extra cost. All packages are non-returnable.

Where goods are sold F.O.B. the Seller shall be under no obligation to give the notice specified in Section 32 (3) Sale of Goods Act 1979 of any statutory modification, amendment or re-enactment of the same.

(g) If required by the Buyer the Seller may, but shall be under no obligation to, arrange insurance and transportation on the Buyer's behalf and at the Buyer's expense and all such insurance or transport arranged by the Seller shall be deemed to have been arranged by the Seller as agent for the Buyer.

(h) In respect of Orders for delivery outside the U.K. the Order must specify whether the currency in which the invoice is to be paid is to be sterling or another convertible currency and if so which.

6. WHERE Specifications are to be supplied the Buyer shall supply such Specifications in reasonable time to enable the Seller to complete delivery within the period agreed.

## ADDITIONAL COSTS

7. THE Buyer agrees to pay for any loss or extra cost incurred by the Seller through the Buyer's instructions or lack of instructions or through failure or delay in taking delivery or through any act or default or negligence on the part of the Buyer, its servants, agents, officers or employees.

## TERMS OF PAYMENT

8. (a) THE terms of payment in respect of Orders for delivery in the U.K. are that payment must be made in full on or before the thirtieth day of the month following the date of invoice and time shall be of the essence in respect of such payment. In default of payment on the due date the Seller without prejudice to any other rights may charge interest (both before and after judgement) at the rate of 3% over Barclays Bank PLC base lending rate from time to time in force on all monies which are overdue from the date when payment became due up to the date actual payment (both dates inclusive).

(b) The price of the Goods whether for delivery outside the U.K. or inside the U.K. shall be due in full to the Seller in accordance with the terms of the Order and the Buyer shall not be entitled to exercise any set-off, lien or any other similar right or claim.

(c) All payments shall be applied to invoice and to Goods listed in such invoices in the order determined in its discretion by the Seller.

(d) If full payment is not received by the Seller by the due date then without prejudice to its other rights the Seller shall be entitled to require the immediate return to the Seller of all Goods agreed to be sold by the Seller to the Buyer in which the property has not passed to the Buyer in accordance with the provisions of Clause 13 below and the Buyer hereby agrees to reimburse to the Seller upon demand the Seller's costs or expenses in recovering such Goods.

9. (a) IF the Goods are delivered whether outside or inside the U.K. in instalments payment shall be due in respect of the instalments whered delivery has been made whether or not the Buyer claims any of the Goods are defective.

(b) If upon the terms applicable to any order the price is payable or the Goods are to be delivered by instalments and the Buyer defaults on payment of any due instalment of the price or fails to take delivery of any instalment of the Goods, then without prejudice to its other rights the Seller shall be entitled at its option either to demand the whole of the balance of the price forthwith or to terminate the Contract forthwith

(c) Every delivery of instalments and every delivery of any quantity of Goods under the terms of an Order shall be subject to all the Conditions hereof.

(d) Without prejudice to any other rights the Seller may have under these Conditions, if the Seller receives information which throws doubt on the creditworthiness of the Buyer, then the Seller shall have the right to demand immediate payment of all outstanding invoices and to demand payment on account in respect of Orders which have been placed and confirmed in writing by the Seller but for which no invoices have been submitted and if no payment in advance is made in respect of such Orders, the Seller may at its absolute discretion without any liability whatsoever cancel such Order.

## DELIVERY

10. (a) THE date or period for delivery shall be the date or period stated in the Order.

(b) All times or dates given for delivery of the Goods are given in good faith but without any responsibility on the part of the Seller. Time shall not be of the essence of any contract nor shall the Seller be under any liability for delay in delivery for any reason whatsoever. Whether or not such reason is beyond the Seller's reasonable control unless expressly agreed in writing at or before the date of the Order in which case the Seller's liability shall be limited to such liquidated damages as may be specifically agreed in writing. Without prejudice to the generality of the foregoing any delay in delivery of any instalments of Goods shall not entitle the Buyer to refuse any subsequent instalment or otherwise repudiate the contract.

(c) All the Goods for delivery in the U.K. shall cease to be at risk of the Seller in accordance with the contract and depending on whether the Goods are sold F.O.B., C.I.F., F.A.S. or otherwise as the case may be.

(d) If the Goods are to be delivered outside the U.K. the Buyer will be responsible for obtaining all consents and licences which are necessary to enable it to import and use the Goods and for all necessary consents (including Exchange Control consent) to enable it to make payment for the Goods and the Buyer shall pay all expenses whatsoever incurred in connection with such matters all import duties fees and charges and all taxes on importation.

11. (a) If for any reason whatsoever delivery is not accepted by the Buyer then without prejudice to any other claim or remedy which the Seller may have against the Buyer, the Seller shall have the option either to sell the Goods or any of them elsewhere and charges the Buyer for any difference in the sale price or outside warehouse at the Buyer's expense. In the event of such warehouse charges not being paid by the Buyer then the Seller shall have the right to sell all or any of the Goods to defray the cost of sale and warehousing and charge the Buyer for any difference between the sale price and the contract price of such goods. Without prejudice to the above terms of this clause the Seller shall charge a minimum cancellation charge of 15% of the nett order value as a contribution to the said costs and expenses such cancellation charge to be paid within three days of cancellation.

(b) If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions before the Seller's estimated delivery date, then without prejudice to its other rights the Seller may charge interest (both before and after judgement) at the rate of 3% over Barclays Bank PLC base lending rate from time to time in force on the price payable for the Goods from the due date to the date of actual delivery (both date inclusive).

12. (a) THE Seller shall not be liable for any claim for non-delivery, partial loss or damage to the Goods or any of them unless the Seller is notified in writing by the Buyer to the Seller (with a copy to the carrier if a carrier has been used to deliver the Goods):

(i) within seven days of receipt of the Goods concerned for partial loss or damage followed by a complete claim in writing within 14 days of receipt of the Goods; and

(ii) within fourteen days of the date when the Goods concerned should have been received for non-delivery, followed by a complete claim in writing within thirty days of the date of consignment.

(b) The Seller shall not be liable for any claim in respect of quality of the Goods unless such claim is made in writing by the Buyer to the Seller within seven days from the date of delivery.

(c) Without prejudice to any other provision of these Conditions unless notice of loss or damage to the Goods and the general nature of it be given in writing to the Seller and to the carrier at the place of delivery before or at the time of delivery of removal of the Goods under the custody of the person entitled to delivery thereof or if the loss or damage be not apparent within 7 days thereafter such delivery or removal shall be conclusive proof of delivery of the Goods as described by the Contract.

(d) The Seller's liability in the event of a substantial claim for non-delivery, partial loss or damage and in respect of Goods which the Seller agrees are not of reasonable quality is limited either to giving the Buyer a reasonable credit or allowance in respect thereof (or the option of the Seller to replace the Goods or any of them) or to give the Buyer the benefits (if any) which the Seller may have under any warranty or guarantee. The

Buyer is entitled only to the advantage of one of the options and not both. In no circumstances whatsoever shall the maximum liability of the Seller for the Goods of unmerchantable quality or for non-delivery, partial loss or damage exceed the invoice value of the Goods concerned. Where any such credit or allowance is made or the Goods are replaced as aforesaid, the Buyer shall make no further claim against the Seller whatsoever in respect of the Goods concerned or for any alleged consequential loss arising from their defective condition or from non-delivery, partial loss or damage and the Seller shall forthwith be wholly and completely discharged from all and any liability whatsoever for any claims in respect of such Goods.

## RETENTION OF TITLE

13. (a) Notwithstanding delivery and the passing of risk in the Goods, or any other provisions of these conditions, the property in the Goods shall not pass to the Buyer and shall be retained by the Seller until the Seller has received in cash or cleared funds payment in full of the price of the Goods and of all sums due in connection with the supply of all Goods and services to the Buyer by the Seller at any time.

(b) If any of the Goods owned by the Seller are incorporated into other goods and are not identifiable and separable from the resulting composite or mixed goods, title to the resulting composite or mixed goods shall vest in the Seller and shall be retained by the Seller for so long as and on the same terms as those on which it would have retained title to the Goods in question.

(c) The Buyer shall hold all Goods owned by the Seller as the Seller's fiduciary agent and bailee, shall store them in such a way that they are clearly identifiable as the Seller's property, shall maintain records of such Goods identifying them as the Seller's property and shall keep them properly stored protected, and insured. The Buyer shall be entitled to resell or use such Goods in the ordinary course or its business but shall account to the Seller in respect of the proceeds of sale or otherwise of such Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any other monies or property of the Buyer and third parties and, in the case of tangible proceeds, properly identified, stored, protected and insured. The Buyer shall maintain records of the persons to whom it sells or disposes of such Goods and of the payments made by such persons for such Goods and will allow the Seller to inspect these records and the Goods themselves on request. The Seller shall be entitled to trace the proceeds of sale or otherwise of such Goods.

(d) For the avoidance of doubt, all products and goods into which Goods have been incorporated in the Buyer's possession shall be presumed to belong to the Seller unless the Buyer can prove otherwise.

(e) Until such time as the property in any Goods owned by the Seller passes to the Buyer, the Seller shall be entitled at any time to require the Buyer to deliver up such Goods owned by the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where such Goods are stored and repossess them. The Buyer shall procure that any third party which holds such goods shall permit the Seller to take possession of them. The Seller shall be entitled to use or dispose of such Goods as it wishes PROVIDED THAT, in the case of composite or mixed Goods, title to which vests in the Seller as a result of the incorporation of any item of the Products, the Seller shall account to the Buyer (subject to any set off to which the Seller is entitled) for any excess of the amount received in respect of such Goods over the amount due to the Seller up to the amount of the direct costs or expenses incurred by the Buyer in connection with the production of such Goods but shall itself retain any balance. Unless the Seller expressly elects otherwise any contract between it and the Buyer for the supply of the Products shall remain in existence notwithstanding any exercise by the Seller of any of its rights under the clause.

(f) 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 (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## FORCE MAJEURE

14. (a) THE Seller shall not be liable to the Buyer for any loss or damage or expense whatsoever suffered or incurred by the Buyer due to cause beyond the Seller's control including (without prejudice to the generality of the foregoing expression) acts of government, government department, cancellation of any export or import licence or any prohibition or restriction relating to the Goods, acts of war, civil war, strikes, lock-outs, labour disputes, riots, civil commotion, seizure, requisition, fire, lighting, aircraft, shipping, transport, explosion, flooding, act of God, force majeure, illegality, breakdown, accident or theft.

(b) The Seller shall not be liable to the Buyer for any loss or damage or expense whatsoever suffered or incurred by the Buyer if the Seller's supplier or intended supplier as the case may be is unable for any reason whatsoever to supply the Goods or any of them or refuses to supply the Goods or the Seller is unable to obtain the Goods or any of them, whether due to scarcity or shortage of the Goods or for any reason whatsoever.

(c) After the cessation of the effect of any occurrence as is mentioned in (a) above subject to the rights of the Seller referred to in (d) below, the Seller shall not be called upon to make suspended deliveries in one lot but the Seller can recommence delivery upon restored conditions subject to a variation in contract price to cover any increase in costs arising from any such occurrence as is mentioned in (a) above and the contract period shall be extended accordingly.

(d) In the event of any occurrence as is mentioned in (a) above or the circumstances mentioned in (b) above or (c) above the Seller shall have the option in its absolute discretion of cancelling all or any deliveries under the Contract and there shall be no liability whatsoever on the Seller as a result of such cancellation.

## WARRANTIES

15. (a) NO condition is made or to be implied nor is any warranty given or to be implied relating to the Goods and in particular to their life or wear or merchantable quality or that they will be suitable for any particular purpose or for use under any specific conditions not withstanding that such purpose or conditions may be known or made known to the Seller.

(b) The Buyer acknowledges that it is a commercial trading organisation and is entering into a contract for the purchase of Goods from the Seller with full knowledge of these Conditions and is relying only on its own skill, knowledge and experience in entering into such contract.

(c) Subject to such benefit (if any) as the Seller may receive in accordance with the provisions of (d) below and liability of the Seller to the Buyer (inclusive of interest and costs) shall be limited to the price of the Goods or such part of the Goods to which any claim relates and without prejudice to the generality of the foregoing the Seller shall not be liable to the Buyer for loss of market or profit, actual, contingent or consequential losses, expenses or damages whatsoever arising, suffered or incurred by the Buyer.

(d) Goods represented by the Buyer to be defective shall not form the subject of any claim for work done by the Buyer or for any loss, damage or expense whatsoever arising directly or indirectly from such defects and the Buyer shall be entitled only to such benefits (if any) as the Seller may receive under any guarantee or warranty given to the Seller by a supplier in respect of Goods or any of them. Defects in quality shall not be a ground for cancellation of the contract, or if it is a contract for delivery by instalment, future instalments.

(e) The Seller shall be liable for any death or personal injury arising from use or supply of the Goods to the extent that it results from the proven negligence of the Seller or its employees.

(f) The Seller shall be liable to the Buyer for any direct physical damage other than death or personal injury to the extent that it results from the negligence of the Seller or its employees up to a maximum of (£50,000).

(g) Except pursuant to (e) above, no action, regardless of form, arising out of the transactions under these Conditions may be brought by the Buyer more than 2 years after the cause of action has accrued.

## TRADE MARKS

16. (a) THE Buyer shall not use in relation to any Goods the registered trade marks of the Seller or any other trade mark registered from time to time by the Seller.

(b) (i) Subject to (c) below, the Seller shall at its expense defend any action against the Buyer and pay all damages and costs awarded against the Buyer (except to the extent that the Buyer is entitled to recover such sums under a policy of insurance) based on a claim that any of the Goods constitute an infringement of any patent or copyright or other intellectual property rights of the United Kingdom or misuse any confidential information belonging to any third party ("a Claim") PROVIDED THAT:-

(1) The Seller shall be notified promptly in writing by the Buyer of any notice of a Claim.

(2) The Seller shall have the sole control of the defence of any action on a Claim and all negotiations for settlement or compromise;

(3) The Buyer shall allow its name to be used in proceedings if necessary and provide all reasonable assistance in defending any action; and

(4) The Buyer shall take all steps reasonably possible to mitigate or reduce any damages and costs which may be awarded against it as a result of a Claim.

(ii) If a Claim is successful or the Seller considers that it is likely to be successful, the Seller may, at its option or as part of a settlement or compromise, procure for the Buyer the right to continue using the Goods modify the Goods so that they are non-infringing or terminate the Order insofar as it applies to those Goods subject to the Claim, in which latter case the Seller shall refund to the Buyer the price paid for such Goods less depreciation on straight line basis over the life of the Goods as determined by the Seller.

(iii) In no event shall the Seller have any liability under this clause with respect to any Claim based on the use of the Goods in combination with any other product or equipment not supplied by the Seller.

(iv) This clause states the entire obligation and liability of the Seller with respect to infringement of any patent or copyright or other intellectual property rights or misuse of confidential information.

(c) In no event shall the Seller have any liability under (b) above with respect to any Claim based on the use of the Goods where the specifications for such Goods have been provided in whole or in part by the Buyer.

## STOPPAGE OF DELIVERIES - TERMINATION

17. If the Buyer shall make default in or commit a breach of the contract including any of these conditions or of any other of its obligations to the Seller, whether under this Contract or these Conditions or otherwise, of it any distress or execution shall be levied upon the Buyer's property or assets, or if the Buyer shall make an offer to make an arrangement or composition with its creditors or commit an act of bankruptcy, or if any petition or receiving order shall be presented or made against it or if the Buyer is a limited company any petition or resolution to wind up such company shall be presented or passed, or if a receiver or a receiver and manager of such company's undertaking, property assets or any part thereof shall have been appointed, the Seller shall have the right forthwith at its discretion to terminate any contract then subsisting with the Buyer and upon written notice of any such termination being given to the Buyer, any such contract shall be deemed to be terminated without prejudice to any claim or right the Seller might make or exercise.

## DETAILS - SPECIFICATIONS

18. No statement, description, information, warranty, condition or representation contained in any catalogue, price list, advertisement or communication or made verbally by any agent, representative, employees or officers of the Seller shall be construed to enlarge, vary or override in any way any of these Conditions. The Seller reserves the right in its absolute discretion at any time to change any Specifications in respect of the Goods.

## NOTICE

19. Any notice to be given hereunder shall be deemed to have been given two days after its being posted to the last known address of the Seller or Buyer as the case may be provided that if the Buyer's address is outside the U.K. notice shall be deemed to have been given ten days after its being posted. The Seller and the Buyer agree to give the other notice of any changes of address within seven days of such change taking place and if such notice is not given may be validly served at the last known address of the Seller or Buyer as the case may be.

## BUYER CANNOT ASSIGN

20. THE Buyer hereby acknowledges that it cannot assign its rights under this agreement.

## GOVERNING LAW

21. THESE Conditions and any contract of which they form a part shall in all respects be governed by English law and shall be deemed to have been made in England. The parties hereby submit to the non-exclusive jurisdiction of the English Courts.