

1. DEFINITIONS

- 1.1 'Buyer' means the person who buys or agrees to buy the goods from the Seller.
- 1.2 'Conditions' means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller.
- 1.3 'Delivery Date' means the date specified by the Seller when the Goods are to be delivered.
- 1.4 'Goods' means the articles which the Buyer agrees to buy from the Seller.
- 1.5 'Price' means the price for the goods including carriage, packing and insurance but excluding VAT.
- 1.6 'Seller' means Lister Trade Frames Limited of Unit 2, Govan Road, Stoke on Trent Staffs, ST4 2RS.

2. CONDITIONS OF SALE

- 2.1 These Conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order, confirmation of order or similar documents.
- 2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.
- 2.3 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller. Where the Seller extends any indulgence to the Buyer, the indulgence does not affect the Seller's strict rights under this contract.

3. QUOTATION AND PRICES

- 3.1 Quotations are for information only and are not binding on the Seller until it has accepted an order in writing.
- 3.2 The Price of the Goods shall be the Seller's quoted price. If no price has been quoted, it is the price given for the goods in the Seller's price list effective at the date that the order is accepted. The Seller may by giving notice to the Buyer at any time up to 7 days before delivery increase the Price of the Goods to reflect any increase in the cost to the Seller which is due to factors occurring after the making of the contract of sale which are beyond the reasonable control of the Seller (including, without limitation, foreign exchange fluctuations, taxes and duties and the cost of labour, materials and other manufacturing costs). The Price is exclusive of VAT which shall be due at the rate ruling on the date of the VAT invoice.

4. PAYMENT

- 4.1 Unless otherwise agreed in writing, where Goods are delivered in the United Kingdom payment of the Price and VAT shall be due on the last working day of the month in which the Goods are delivered.
- 4.2 Where Goods are delivered outside the United Kingdom payment is by irrevocable letter of credit in London or by such other method as the Seller may specify. Payment will (unless otherwise agreed) be made in Sterling at the rate of exchange current at the date of the invoice.
- 4.3 The Seller may make discounts to the Buyer at its discretion. The Seller reserves the right to cancel discounts if payment is not made in accordance with these Conditions.
- 4.4 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 2% above Barclays Bank Plc's base rate from time to time in force and shall accrue at such a rate after as well as before any judgment.
- 4.5 Should payment not be received then the outstanding account will be passed to civil enforcement officers for its collection. This recovery will incur costs that will be charged to the debtor.

5. THE GOODS

- 5.1 The Goods shall be supplied in accordance with the description contained in the Seller's specification. The Seller may from time to time make changes in the specification of the Goods which are required to comply with any applicable safety or statutory requirements or which do not materially affect the quality or fitness for purpose of the Goods.
- 5.2 The Buyer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that such discrepancy in quantity shall not exceed 10%.
- 5.3 Unless specified lengths of the Goods are requested by the Buyer and accepted by the Seller when the order is placed, the Seller will supply the Goods ordered in reasonable lengths.

6. DELIVERY

- 6.1 The Goods shall be delivered on the Delivery Date at the Buyer's address, or if agreed by the Seller in writing, at an address nominated by the Buyer. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- 6.2 If the Goods are available for delivery by the Seller but the Buyer has not provided delivery instructions or has not made all arrangements necessary to take delivery of the Goods, the Goods shall be deemed to be delivered on the date on which the Seller notifies the Buyer that the Goods are available for delivery. In the event of the Buyer failing to accept the delivery within 21 days of the date of notification, the Seller will be free to resell or otherwise dispose of the Goods without prejudice to any rights which it may have against the Buyer for the recovery of the Price plus VAT, breach of contract or otherwise.
- 6.3 The delivery date is given and intended as an estimate only and the Seller shall not be liable for any loss or

damage whatsoever resulting from any delay in delivery howsoever arising.

- 6.4 The Seller may deliver the Goods by separate instalments in accordance with an agreed delivery schedule. Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract of sale. The failure of the Buyer to pay for any one or more of the said instalments of the Goods on the due dates shall entitle the Seller (at the sole option of the Seller): without notice to suspend further deliveries of the Goods pending payment by the Buyer: and/or
- 6.4.1 to treat this contract as repudiated by the Buyer.

7. ACCEPTANCE OF THE GOODS

- 7.1 The Buyer shall be deemed to have accepted Goods 24 hours after delivery to the Buyer.
- 7.2 After acceptance the Buyer shall not be entitled to reject Goods which are not in accordance with the contract.

8. RISK

- 8.1 Risk in the Goods will pass to the Buyer immediately on delivery of the Goods.

9. TITLE

- 9.1 Notwithstanding delivery and the passing of risk, property in and title to the goods shall remain with the seller until the seller has received payment of the full price of (a) all Goods and/or Services the subject of the Contract and (b) all other goods and/or services supplied by the seller to the buyer under any contract whatsoever. Payment of the full price shall include, without limitation, the amount of any interest or other sum payable under the terms of this and all other contracts between the seller and the buyer.
- 9.2 Until property in the Goods passes to the Buyer in accordance with Clause 9.1 the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the Goods (at no cost to the Seller) separately from all other Goods in its possession and marked in such a way that they are clearly identified as the Seller's property.
- 9.3 Notwithstanding that the Goods (or any of them) remain the property of the Seller the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principle when making such sales or dealings. Until property in the Goods passes from the Seller the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Seller's money.
- 9.4 The Seller shall be entitled to recover the Price plus VAT notwithstanding that property in any of the Goods has not passed from the Seller.
- 9.5 Until such time as property in the Goods passes from the Seller the Buyer shall upon request deliver up such of the Goods that have not ceased to be in existence or resold to the Seller. If the Buyer fails to do so the Seller may enter upon any premises owned occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of such request the rights of the Buyer under Clause 9.3 shall cease.
- 9.6 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so all sums whatever owing to the Buyer to the Seller shall forthwith become due and payable.
- 9.7 The Buyer shall insure and keep insured the Goods to the full price against "all risks" to the reasonable satisfaction of the Seller until the date that property in the Goods passes from the Seller, and shall whenever requested by the Seller produce a copy of the policy of insurance. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

10. INSOLVENCY OR OTHER DEFAULT OF BUYER

- 10.1 If the Buyer fails to make payment for the Goods in accordance with this contract of sale or commits any other breach of this contract of sale or if any distress or execution shall be levied upon any of the Buyer's goods or if the Buyer offers to make any arrangement with its creditors or commits an act of bankruptcy or if any petition in bankruptcy is presented against the Buyer or the Buyer is unable to pay its debts as they fall due or if being a limited company any resolution or petition to wind up the Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver, administrator, administrative receiver or manager should be appointed over the whole or any part of the Buyer's business or assets or if the Buyer shall suffer any analogous proceedings under foreign law, all sums outstanding in respect of the Goods shall become payable immediately. The Seller may in its absolute discretion and without prejudice to any other rights which it may have:
- 10.1.1 suspend all future delivery of Goods to the Buyer and/or terminate the contract without liability upon its part; and/or
- 10.1.2 exercise any of its rights pursuant to Clause 9.

11. WARRANTIES AND LIABILITY

- 11.1 Subject to clauses 5.2 and 5.3, the Seller warrants that the Goods will at the time of delivery correspond with the description contained in the Seller's specification or quotation.
- 11.2 The Seller warrants that all Goods which have been manufactured by the Seller will be free from any defect of work or materials at the date of delivery as defined by clause 6.

Except where the Buyer is dealing as a consumer (as defined in the Unfair Contract Terms Act 1977 Section 12) the Seller gives no such warranty in respect of Goods not manufactured by it but shall use all reasonable endeavours to procure for or to assign to the Buyer the benefit of any guarantee obtained by it from the manufacturer or supplier of those Goods.

- 11.3 Except where the Buyer is dealing as a consumer (as defined in the Unfair Contract Terms Act 1977 Section 12) all other warranties, conditions or terms relating to the quality and/or fitness for purpose and/or condition of the Goods and whether implied by Statute, common law or otherwise are excluded.

11.4 Where material or other property is supplied by the Buyer to the Seller (whether owned by the Buyer or not) to be held by the Seller for the purposes of the contract, the Seller accepts no responsibility for loss of or damage to such material or property, howsoever and whensoever occurring, nor for imperfect work caused by defects in, or the unsuitability of any material or property so supplied.

12 CLAIMS

- 12.1 Where Goods are delivered to the Buyer by carrier, the Buyer must notify both the Seller and the carrier in writing of any non delivery or short delivery or damage in transit within 48 hours of delivery.
- 12.2 The Buyer shall inspect the Goods on delivery and shall within 24 hours of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with description or sample. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery and before any use is made of them. If the Buyer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the contract and free from any defect or damage which would be apparent on a reasonable examination of the Goods and the Buyer shall be deemed to have accepted the Goods.
- 12.3 If the Goods are not in accordance with the contract for any reason the Buyer's sole remedy shall be limited to the Seller making good any shortage by replacing such Goods or, if the Seller shall elect, by refunding a proportionate part of the price.
- 12.4 Save in any case where death or personal injury has been caused by the Seller's negligence, the Seller's liability to the Buyer whether for any breach of contract or otherwise, shall not in any event exceed the Price plus VAT and the Seller shall be under no liability for any direct loss and/or expense or indirect loss and/or expense suffered by the Buyer or liability to third parties incurred by the Buyer.
- 12.5 The specification and design of the Goods (including the copyright, design right or other intellectual property in them) shall as between the parties be the property of the Seller. Where any designs or specifications have been supplied by the Buyer for manufacture by or to the order of the Seller then the Buyer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party. The Buyer will be liable to indemnify the Seller against all expense, loss or damage suffered by the Seller as a result of false trade descriptions, or for claims infringement of patents, trade marks, registered designs or copyright arising out of work done to the Buyer's instructions.
- 12.6 To the maximum extent permitted by applicable law, in no event shall Lister Trade Frames Ltd be liable to you, any user, or third party for any indirect, special, consequential, incidental or punitive damages of any kind, arising in contract, tort, or otherwise, including, but not limited to, injury, loss of revenue, loss of goodwill, loss of business opportunity, loss of data, and/or loss of profits, regardless of the foreseeability thereof or whether Lister Trade Frames Ltd have been advised of the possibility of such damages. And in no event shall the total liability of Lister Trade Frames Ltd exceed the amount received from you, regardless of the legal theory under which the cause of action is brought. The foregoing does not affect any statutory rights which may not be disclaimed.

13 FORCE MAJEURE

- 13.1 If the performance of the Contract by the Seller shall be delayed by any circumstances or conditions beyond the control of the Seller the Seller shall have the right at its option:
- 13.1.1 to suspend further performance of the contract until such time as the cause of the delay shall no longer be present; or
- 13.1.2 to be discharged from further performance of and liability under contract and if the Seller exercises such right the Buyer shall thereupon pay the contract price less a reasonable allowance for what has not been performed by the Seller.

14 REGULATIONS

- 14.1 The Seller shall not be liable for any loss or damage whatever which may be occasioned by reason of the Goods supplied not conforming to the Building Regulations or any other statutory regulations, nor any liability under the Health and Safety at Work Act 1974 to a use of the Goods by the Buyer which as not previously been notified by the Buyer to the Seller and approved by the Seller in writing before such use.

15 GOVERNING LAW

- 15.1 This contract is subject to the law of England and Wales
- 15.2 All disputes arising out of this contract shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

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