

TCB-Arrow Ltd - Terms & Conditions of Sale

1. DEFINITIONS

In this Agreement the following expressions have the following meanings:-

- a) 'the Company' TCB-Arrow Limited (company number 2149877)
- b) 'the Contract' the contract for the sale and purchase of the Goods
- c) 'the Customer' the customer whose details are set out in the Quotation or Order Acknowledgment.
- d) 'the Quotation' the document referencing these terms, including specifications of the Goods and setting out the specific terms of the Contract, or to which these terms are attached,
- e) 'the Goods' the goods specified in the Quotation or Order Acknowledgement to be provided by the Company to the Customer
- f) 'writing' and any similar expression, includes facsimile transmissions and comparable means of communication, but not electronic mail

2. BASIS OF SALE

- 2.1 The Company shall sell and the Customer shall purchase the Goods in accordance with the Quotation/Order Acknowledgement (if accepted by the Customer) subject to these terms, which shall govern the Contract to the exclusion of any other terms subject to which any such quotation/Order Acknowledgement is accepted or purported to be accepted, or any such order is made or purported to be made, by the Customer.
- 2.2 No variation to these terms shall be binding unless agreed in writing between the authorised representatives of the Customer and the Company. In the event of any conflict between these terms and the Quotation, the terms of the Quotation shall prevail.
- 2.3 The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed and that any particulars given in catalogues, price lists, notices and other such documents of the Company are for illustration purposes only and will not bind the Company. However, nothing in these terms affects the liability of either party for fraudulent misrepresentation.

3. ORDERS AND SPECIFICATION

- 3.1 The Customer shall be responsible to the Company for ensuring the accuracy of the terms of the Quotation/Order Acknowledgement (including any applicable specification and any special requirements for packaging and insurance in the delivery of the Goods) and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
- 3.2 The quantity, quality and description of the Goods and any specification for them shall be as set out in the Quotation/Order Acknowledgment accepted by the Customer.
- 3.3 If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the Customer, the Customer shall indemnify the Company against all loss, damage, costs and expenses awarded against or incurred by the Company in connection with, or paid or agreed to be paid by the Company in settlement of, any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Customer's specification.
- 3.4 No order which has been accepted by the Company may be cancelled by the Customer except with the agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.
- 3.5 All Goods supplied hereunder shall be subject to fluctuations of up to 10% in quantity or volume and the Company shall not be liable to the Customer in respect of any such fluctuation and reserves the right to adjust any invoice as appropriate in this respect.
- 3.6 The Company reserves the right to make any changes in the Specification of the Goods which are required to conform with any applicable statutory or E.U. requirements which do not materially affect their quality or performance.

4. PRICES

- 4.1 The price of the Goods shall be that contained within the Quotation/Order Acknowledgement which shall be valid for 30 days only or until earlier acceptance by the Customer, after which time they may be altered by the Company without giving notice to the Customer.
- 4.2 The Company reserves the right, by giving written notice to the Customer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company, any change in delivery dates, quantities or specifications for the Goods, which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.
- 4.3 All prices quoted are exclusive of any Value Added Tax, sales or use tax, which, if applicable, will be added to the invoice at the then current rate.

5. TERMS OF PAYMENT

- 5.1 If the Goods are to be collected by the Customer or the Customer wrongfully fails to take delivery of the Goods, the Company shall be entitled to invoice the Customer for the price at any time after the Company has notified the Customer that the Goods are ready for collection or the Company has tendered delivery of the Goods.
- 5.2 Unless otherwise agree in writing, all invoices are payable not later than 30 days from the date of invoice and the Company may recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Customer. Without prejudice to any other rights of the Company if payment is not made in accordance with these terms the Company reserves the right to:
 - (a) charge interest on any outstanding balance at rate of 2% per annum above the base rate of Barclays Bank Plc from time to time until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest); or
 - (b) suspend any work under this or any other Contract.
- 5.3 Times for payment, for giving delivery instructions and for taking of delivery shall be of the essence of the Contract and the Company may treat any default therein as a repudiation by the Customer either of the whole or any part of the Contract as remains to be performed at the date of default.

6. DELIVERY

- 6.1 Delivery of the Goods shall be made by the Customer collecting the Goods at the Company's premises at any time after the Company has notified the Customer that the Goods are ready for collection or, if some other place for delivery is agreed by the Company, by the Company delivering the Goods to that place.
- 6.2 Any dates quoted for delivery of the Goods are approximate only and the Company shall not be liable for any delay of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Company in writing. The Goods may be delivered by the Company in advance of the quoted delivery date on giving reasonable notice to the Customer.
- 6.3 If the Customer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (then, without limiting any other right or remedy available to the Company), the Company may:
 - (a) store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or

- (b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price of the Contract.
- 6.4 Where packaging such as pallets belonging to or in the possession of the Company is required to be returned to the Company the Customer must make such packaging available for collection by the Company within one month of receipt or as soon as practicable, empty undamaged and in good condition. The Company reserves the right to invoice the Customer for the value of any such packaging where the Customer is in default of this obligation.
- 7. **PASSING OF RISK AND PROPERTY**
 - 7.1 Risk of damage to or loss of the Goods shall pass to the Customer:
 - (a) in the case of Goods to be delivered at the Company's premises, at the time when the Company notifies the Customer that the Goods are available for collection; or
 - (b) in the case of Goods delivered otherwise than at the Company's premises, at the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods.
 - 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these terms, the property in the Goods shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Company to the Customer for which payment is then due.
 - 7.3 Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Company's property, but the Customer may resell or use the Goods in the ordinary course of its business.
 - 7.4 Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold), the Company may at any time require the Customer to deliver up the Goods to the Company and, if the Customer fails to do so forthwith, enter on any premises of the Customer or any third party where the Goods are stored and repossess the Goods.
- 8. **WARRANTY AND ACCEPTANCE**
 - 8.1 Subject to the following provisions, the Company warrants that the Goods will correspond with their specification set out in the Quotation/Order Acknowledgement at the time of delivery and will be free from material manufacturing defects or errors of workmanship for a period of 60 days from delivery date provided that the Customer notifies the Company of such defect within 7 days of its discovery.
 - 8.2 The above warranty is given by the Company subject to the following conditions:
 - (a) the Company shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Customer, use otherwise than as recommended by the Company, failure to follow the Company's instructions, or any alteration or repair carried out without the Company's approval or if the total price for the Goods has not been paid by the due date for payment; and
 - (b) the Customer shall duly pay all sums due under the Contract irrespective of any complaint.
 - 8.3 The above warranty does not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.
 - 8.4 If delivery is not refused and the Customer does not notify the Company of any such defects, the Customer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
 - 8.5 In the event that a valid claim in respect of any of the Goods is notified to the Company in accordance with these terms the Company may, at its sole discretion, i) either at the Company's expense and within a reasonable time rectify the defect or ii) refund to the Customer the price of the Goods (or a proportionate part of the price), in which case the Company shall have no further liability.
 - 9. **LIMITATION OF LIABILITY**

EXCEPT IN RESPECT OF DEATH OR PERSONAL INJURY CAUSED BY THE COMPANY'S NEGLIGENCE, OR LIABILITY FOR DEFECTIVE PRODUCTS UNDER THE CONSUMER PROTECTION ACT 1987, THE COMPANY SHALL NOT BE LIABLE TO THE CUSTOMER BY REASON OF ANY REPRESENTATION (UNLESS FRAUDULENT), OR ANY IMPLIED WARRANTY, CONDITION OR OTHER TERM, OR ANY DUTY AT COMMON LAW, OR UNDER THE EXPRESS TERMS OF THE CONTRACT, FOR LOSS OF PROFIT OR FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE, COSTS, EXPENSES OR OTHER CLAIMS FOR COMPENSATION WHATSOEVER (WHETHER CAUSED BY THE NEGLIGENCE OF THE COMPANY, ITS EMPLOYEES OR AGENTS OR OTHERWISE) WHICH ARISE OUT OF OR IN CONNECTION WITH THE SUPPLY OF THE GOODS (INCLUDING ANY DELAY IN SUPPLYING OR ANY FAILURE TO SUPPLY THE GOODS IN ACCORDANCE WITH THE CONTRACT OR AT ALL) OR THEIR USE OR RESALE BY THE CUSTOMER AND THE ENTIRE LIABILITY OF THE COMPANY UNDER OR IN CONNECTION WITH THE CONTRACT SHALL NOT EXCEED THE PRICE OF THE GOODS, EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS.
 - 10. **INDEMNITY**

THE CUSTOMER SHALL INDEMNIFY THE COMPANY IN RESPECT OF ANY DAMAGES, COSTS, AND LIABILITY INCURRED IN THE EVENT OF ANY CLAIM BEING MADE AGAINST THE COMPANY BY ANY THIRD PARTY WHERE THAT CLAIM ARISES OUT OF THE NEGLIGENCE, ERROR, OMISSIONS OR WRONGFUL ACTS OF THE CUSTOMER, ITS EMPLOYEES OR AGENTS.
 - 11. **INSOLVENCY OF THE CUSTOMER**
 - 11.1 This clause 11 applies if:
 - (a) The Customer makes a voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
 - (b) an encumbrancer takes possession, or a receiver is appointed, of any of the Customer's property or assets; or
 - (c) the Customer ceases, or threatens to cease, to carry on business; or
 - (d) the Company reasonably believes that any of the events mentioned above is about to occur.
 - 11.2 If this clause applies then, without limiting any other right or remedy available to the Company, the Company may cancel the Contract and any other contracts or orders placed by the Customer; suspend any further deliveries due to the Customer without any liability to the Customer. If the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
 - 12. **FORCE MAJEURE**

Neither party shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including but not limited to fires, strikes (of its own or other employees), insurrection or riots, embargoes, container shortages, wrecks or delays in transportation, inability to obtain supplies and raw materials requirements or regulations of any civil or military authority (an event of Force majeure)
 - 13. **ASSIGNMENT**

The Customer shall not assign in whole or in part this Contract nor any interest herein without the prior written consent of the Company.
 - 14. **GOVERNING LAW AND JURISDICTION**

This Contract shall for all purposes be governed and construed in accordance with the Laws of England, and subject to the sole jurisdiction of the English courts.