

# **AIRWARE INTERNATIONAL LIMITED**

## **Business to Business Conditions of Sale, 2014.**

### **1. Definitions.**

- 1.1 "Seller" means Airware International Limited or any trading name or internet site owned and operated by Airware International Ltd that results in an invoice issued in the name Airware International Ltd and carries the authorised UK company registration number 2822965 and UK VAT number 623588131.
- 1.2 "Invoice" means a document generated and electronically transmitted file and transmitted to the Buyer by e-mail unless the Buyer specifically requests a posted copy of the invoice.
- 1.3 "Buyer" means the person (which shall include an individual a partnership company or any other legal entity) who orders or otherwise contracts with the seller for any goods or services and who by accepting an invoice in the name of Airware International Ltd accepts that they are purchasing both goods or services on a 'Business to Business' basis and not as a domestic consumer.
- 1.4 "Goods" means any products or materials that the seller contracts to supply.
- 1.5 "Services" means any work undertaken advice given or other service which the seller contracts to supply.
- 1.6 "Insolvency Event" means any one or more of the following that means to say - any distress or execution being levied on the goods of the buyer; the buyer entering into composition or arrangement with its creditors; the buyer committing an act of bankruptcy or having a bankruptcy petition presented against it; the presentation of a petition to wind up the buyer; the buyer having a receiver or manager appointed over the whole or any part of its business or assets or the presentation of a petition for an administration order relating to the buyer.
- 1.7 "Group Company" means where the Buyer is a 51% or more subsidiary as defined by section 838 of the Taxes Act 1988 and which is an associated company of the Buyer as defined by section 13(4) and 416 of the Taxes Act 1988.

### **2. Interpretation.**

Masculine shall include the feminine and the singular the plural and vice versa and where the Buyer comprises more than one person or is owned by a group or holding company then their liability shall be joint and several and that any ultimate holding company or organisation is jointly and severally liable for the debts of the subsidiary.

### **3. Application.**

These conditions shall apply to all contracts entered into by the Buyer for the supply of Goods or Services and no variation in the terms of these conditions shall be effective unless in writing and signed by a person duly authorised on behalf of the Seller. The Seller shall not be bound by any conditions of purchase or other contractual terms put forward by the Buyer. Receipt of goods or the Seller's invoice is confirmation that the Buyer accepts the Sellers conditions in full.

### **4. Quotations.**

A quotation provided by the Seller is not to constitute an offer but only an invitation to treat.

### **5. Prices.**

- 5.1 Unless otherwise stated in writing by the Seller the prices to be paid for Goods or Services are as referred to in the Sellers quotation or invitation to purchase and are exclusive of UK Value Added Tax which will be added to the Sellers invoice and is on an Incoterms 2010 EXW basis.
- 5.2 The Seller is entitled to adjust without prior notice the price stated to correct errors and omissions in the contract and to take into account of any alteration before the date of delivery in the cost to the Buyer of labour materials sub-contracted services or transport which directly affects the cost to the Seller of manufacturing or supplying the goods or services.
- 5.3 The Seller is entitled to increase the contract price where extra expense is incurred by reason of any delay in delivery by the Buyer giving instructions to the Seller to delay shipment.

### **6. Payment.**

- 6.1 Unless otherwise agreed in writing payment shall be due in full for the Goods or Services prior to shipment or supply unless specifically agreed in writing otherwise.
- 6.2 The Buyer accept that it has no right of set off against the price payable to the Seller in respect of any claim of the Buyer against the Seller.
- 6.3 If the Buyer fails to make a payment on time, commits a breach of these condition, or if an Insolvency Event occurs the Seller may without prejudice to any other right which it may have suspend or terminate all future deliveries or supplies to the Buyer under any contract written or verbally agreed between the Seller and the Buyer or between the Seller and any Group Company of the Buyer and demand immediate payment of all sums owed by the Buyer or its Group Company to the Seller whether or not payment at that time is due and charge interest at a rate of 0.1% per day from the date payment became due until actual payment is deemed to be cleared funds in the Sellers nominated bank account whether before or after any judgement. In addition Airware International Ltd costs of £100.00 will be invoiced to the buyer and becomes payable as if it were an invoice dated on the date of the earliest due invoice and will be included in any court costs incurred by the Seller in the event of court proceedings.

### **7. Delivery**

- 7.1 Unless the contract otherwise provide the Buyer shall arrange the collection of any Goods purchased from the Sellers premises. Goods will be invoiced when the seller notifies the Buyer that the goods are ready for collection.
- 7.2 Where the Seller is to arrange delivery to the Buyers premises or some other place notified by the Buyer then the Buyer shall ensure that the Goods can be conveniently delivered and unloaded at the time and place agreed. The Buyer shall be responsible for all risks in the transport of the goods and the unloading of the Goods when delivered.
- 7.3 Whilst the Seller will use all reasonable endeavours to keep any despatch or delivery date the Seller accepts no liability whatsoever for any loss or damage resulting from delay howsoever the same shall have been caused.
- 7.4 The Buyer shall notify the Seller in writing within seven days of any of delivery or collection of any Goods in the event of there being any shortages or damage and the Buyer undertakes not to utilise part or to otherwise dispose of all or any of the Goods or the packaging without affording the Seller a reasonable opportunity to inspect the Goods.
- 7.5 The Buyer shall have no claim against the Seller in respect of any shortage damage or defect unless the requirements of the foregoing clause have been complied with.

### **8. Risk.**

- 8.1 The risk of any loss of or damage to the Goods shall be with the Buyer from the time the same are collected from the Sellers premises or if to be delivered by the Seller from the time the same leave the Sellers premises and in the event of any loss of or damage to Goods after the risk in the same has passed to the Buyer and shall not excuse the Buyer from liability to pay all monies due to the Seller in respect of the Goods.
- 8.2 The obligation to insure the Goods from the time the risk passes to the Buyer shall be with the Buyer unless otherwise agreed in writing.

### **9. Title to Goods.**

- 9.1 The Seller and the Buyer expressly agree that until the Seller has been paid in full for the Goods supplied:
  - (A) The Goods remain the property of the Seller although the risk therein passes to the Buyer at the point where collection from the Seller is made.
  - (B) The Seller may recover those Goods at any time from the Buyer in his possession if the Seller judges that the amount outstanding from the Buyer on the general statement of account between the Seller and the Buyer or any Group Company of the Buyer is in excess of the credit limit that the Seller is willing to accord the Buyer and for that purpose the Sellers servants and agents may enter upon any land or building on which the Goods are situated.
  - (C) If the buyer incorporates such Goods into other products with the addition of his goods or those of others or uses such Goods as materials for other products with or without such addition then the property in those other Goods is upon such incorporation 'ipso facto' transferred to the Seller and the Buyer as bailee of them for the Seller will store the same for the Seller in a proper manner without charge to the Seller.
  - (D) The Buyer has the right to dispose of the Goods or such other products in the course of his business for the account of the Seller and to pass good title to the Goods his customer being a 'bona fide' purchaser for value without notice of the Sellers rights.
  - (E) In the event of such disposal the Buyer has the fiduciary duty to the Seller to account to the Seller for the proceeds but may retain therefrom an excess of such proceeds over the amount outstanding and due to the Seller and the Seller has the additional right to recover the Buyers price from the Buyers customer to the extent unpaid so that if the Seller avails itself of this right it will account to the buyer for any excess less any expenses incurred by effecting recovery.

### **10. Other Liabilities.**

- 10.1 Any Goods or materials included in this contract which are not manufactured by the Seller are sold with the benefit of such warranties as the Seller's supplier or manufacturer gives the Seller and which the Seller can enforce without incurring legal expenses but the Seller does not in any way guarantee such materials or Goods.
- 10.2 The Seller warrants that all goods supplied which are manufactured by the Seller are free from defects in materials and workmanship for a period of six months from the date of the Sellers invoice but unless expressly stated in writing the Sellers liability under the warranty shall be limited to making good without charge or repair or at the Sellers discretion replacement. Defective Goods must be returned to the Seller carriage paid together with a written report within 30 days of such defect becoming apparent. If in the opinion of the Seller the Goods are defective in materials or workmanship then the Seller will refund the Buyer the carriage.
- 10.3 The warranty contained in paragraph(s) above of this contract of conditions of sale is given in lieu of and shall be deemed to exclude all other warranties of conditions whether express or implied and whether arising by common law statute or otherwise.
- 10.4 The Seller shall not be liable for any loss injury or damage of any nature whatsoever whether direct of consequential arising out of or in connection with any Goods supplied.
- 10.5 Notwithstanding the provision of this clause where the Buyer deals as a consumer as defined in section 12 of the Unfair Contract Terms Act 1977 none of the statutory rights of the Buyer shall be excluded by the terms of these conditions.
- 10.6 The Seller shall not be liable for any economic or consequential loss or damage suffered by the Buyer howsoever caused and whether foreseeable or not and without prejudice to the generality of the sub-clause the Seller shall have no liability for any loss of profits revenue goodwill or overhead expenses suffered by the Buyer.
- 10.7 Items purchased through the Sellers Internet Sales Sites may be returned for full purchase price credit including shipping costs charged though the Internet site excluding the Buyers return shipping costs provided the goods arrive with the Seller within 30 days of the original shipment date and are received in perfect re-sellable condition unless accepted by the Seller as substandard or defective.

- 11 **Use of Goods by the Buyer.** Where the Goods are supplied by the Seller with instructions for their installation and use or where the installation and use of the Goods is subject to national or local legislation the Buyer agrees that the Goods will only be installed and used in accordance with those instructions and in conformance with such legislation and then only by suitably trained personnel.

### **12. Patents and Intellectual Property.**

- 12.1 The Buyer warrants to the Seller that any instructions plans designs or other intellectual property provided to the Seller shall not constitute an infringement of any patent copyright registered design or trademark of any other person and undertakes to indemnify the Seller against all claims costs charges and liability incurred by the Seller as a result of any breach by the Buyer of this clause.
- 12.2 The intellectual property rights in any Goods drawings specifications or designs prepared by the Seller shall at all times remain vested in the Seller and the Buyer shall not be entitled to reproduce or utilise the same except as expressly authorised by the Seller.

### **13. Catalogues and Exhibitions.**

- 13.1 The Seller reserves the right without prior notice to the Buyer to change all specifications illustrations performance data prices and other information contained in any catalogues advertisements drawings or other documents supplied by the Seller.
- 13.2 Prior consent of the Seller in writing is required by the Buyer to exhibit the Goods or allow them to be exhibited either directly or indirectly at any public exhibition.

### **14. Force Majeure.**

The Seller shall not be liable for any loss or damage caused to or sustained by the Buyer arising out of any non performance or delay in performance by the Seller of its obligations under any contract with the Buyer to the extent that the same is occasioned by any cause whatever which is beyond the reasonable control of the Seller including without prejudice to the generality of the foregoing any act of God war civil commotion strikes lock outs trade disputes shortages of materials breakdown of machinery fire accident or explosion and in the event of any such occurrence the Seller shall be entitled to cancel or suspend performance of this contract.

- 15 Each of the clauses and each of the sub-clauses of each of the clauses contained in these conditions shall so far as the context allows be read and construed independently of all other clauses and sub clauses so that if one or more of the clauses or sub-clauses contained in these conditions shall be held to be invalid this shall not affect the validity of and enforceability of the remaining clauses and sub-clauses.

### **16. Law.**

These conditions shall be governed by English law and the parties submit themselves to the exclusive jurisdiction of the English courts. Errors & omissions excepted, 2014