

**KEM EDWARDS LIMITED
TERMS AND CONDITIONS**

1. INTERPRETATION

1.1 In these Conditions the following words have the following meanings:

Word Meaning

“the Buyer” the person(s), firm or company who purchases the Goods from the Company;

“the Company” Kem Edwards Limited

“Contract” any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these Conditions;

“Delivery Point” the place where delivery of the Goods is to take place under clause 3

“Goods” any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

1.2 In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.3 In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

1.4 In these Conditions headings will not affect the construction of these Conditions.

2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3 the Contract will be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed upon, delivered with or contained in the Buyer’s purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These Conditions apply to all the Company’s sales and any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a Director of the Company. No employee of the Seller has authority to make any statement or representation about the Goods supplied under this contract.

2.4 Each order for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions.

2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.

2.6 The Buyer must ensure that the terms of its order (including quantity, quality and delivery details) are complete and accurate.

3. DELIVERY

3.1 Delivery of the Goods shall take place at the Delivery Point notified to the Company by the Buyer when the Order is placed.

3.2 Where the Delivery Point is located in Great Britain and the Goods which are the subject of the Order are held in stock by the Company, the Company will use all reasonable endeavours to arrange for delivery on the business day next following receipt of the Order.

3.3 If the Delivery Point is outside Great Britain and/or the Goods are not in stock the Company shall provide the Buyer with an anticipated delivery date at the time the order is placed.

3.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice.

3.4 Subject to the other provisions of these Conditions the Company will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company’s negligence), nor will any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 30 days.

3.5 If the Company delivers to the Buyer a quantity of Goods of up to 5% more or less than the quantity ordered by the Buyer the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the *pro rata* Contract rate.

4. NON-DELIVERY

4.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company’s place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

4.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company’s negligence) unless written notice is given to the Company within 3 working days of the date when the Goods would in the ordinary course of events have been received.

4.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the *pro rata* Contract rate against any invoice raised for such Goods.

5. RISK/TITLE

5.1 The Goods are at the risk of the Buyer from the time of delivery.

5.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of the Goods and all other sums which are or which become due to the Company from the Buyer on any account.

5.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall hold the Goods on a fiduciary basis as the Company’s bailee and shall store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company’s property.

5.5 Provided the Goods have not been resold or consumed the Company may at any time require the Buyer to deliver up the Goods and if the Buyer fails to do so forthwith, enter any premises of the Buyer and repossess the Goods.

5.6 The Buyer’s right to possession of the Goods shall terminate immediately if:

5.6.1 the Buyer 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

5.6.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

5.6.3 the Buyer ceases, or threatens to cease, to carry on business.

5.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

6. PRICE

6.1 Unless otherwise agreed by the Company the price for the Goods shall be the price agreed between the Company and the Buyer at the time the Order is placed.

6.2 Where the Delivery Point is in Great Britain and the Buyer does not request same-day or other form of special delivery, the Price shall be inclusive of delivery charges, but the Company otherwise reserves the right to make an additional charge for delivery.

6.3 The price for the Goods shall be exclusive of any value added tax.

7. PAYMENT

7.1 Where the Company has agreed a credit account relationship with the Buyer, payment of the price for the Goods is due on the last working day of the month following the month in which the Goods are delivered or deemed to be delivered.

7.2 Where the Buyer has no credit account relationship the Company reserves the right to require that an irrevocable letter of credit be opened in its favour or that payment of all or part of the price be made when the Order is placed.

7.3 Time for payment shall be of the essence.

7.4 No payment shall be deemed to have been received until the Company has received cleared funds.

7.5 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

7.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract the Buyer will be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 2% above the base lending rate from time to time of Lloyds TSB plc, accruing on a daily basis until payment is made, whether before or after any judgment.

8. QUALITY

8.1 The Company is not the manufacturer of the Goods and in providing the warranty below the Company is relying on such warranty or guarantee as to the quality of the Goods as is provided to it by the relevant manufacturer.

8.2 The Company warrants that (subject to the other provisions of these Conditions) upon delivery, the Goods will be of satisfactory quality within the meaning of the Sale of Goods Act 1994 or, where appropriate, will meet the ISO 9002 standard.

8.3 The Company shall not be liable for a breach of the warranty in condition 8.2 unless:

8.3.1 the Buyer gives written notice of the defect to the Company, and (if the defect is as a result of damage in transit) to the carrier, within 3 working days of the time when the Buyer discovers or ought to have discovered the defect; and

8.3.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods.

8.4 The Company shall not be liable for a breach of the warranty in condition 8.2 if:

8.4.1 the defect arises from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the instructions of the relevant manufacturer (whether oral or in writing), misuse or alteration of the Goods;

8.4.2 the defect arises because the Buyer failed to follow good trade practice;

8.4.3 the defect arises from any drawing, design or specification supplied by the Buyer

8.5 Subject to conditions 8.3 and 8.4, if any of the Goods do not conform with the warranty in condition 8.2 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the *pro rata* Contract rate provided that, if the Company so requests, the Buyer shall, at the Buyer's expense, return the Goods or the part of such Goods which is defective to the Company.

8.6 If the Company complies with condition 8.5 it shall have no further liability for a breach of the warranty in condition 8.2 in respect of such Goods.

9. LIMITATION OF LIABILITY

9.1 Subject to condition 8, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

9.1.1 any breach of these Conditions; and

9.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

9.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

9.3 Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.

THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION 9.4

9.4 Subject to conditions 9.2 and 9.3:

9.4.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the Contract price; and

9.4.2 the Company shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

10. ASSIGNMENT

10.1 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

10.2 The Company may assign the Contract or any part of it to any person, firm or company.

11. FORCE MAJEURE

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials Provided that, if the event in question continues for a continuous period in excess of 60 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

12. GENERAL

- 12.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 12.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 12.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 2.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 12.5 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.

13. COMMUNICATION

- 13.1 All communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission:
 - 13.1.1 (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or
 - 13.1.2 (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of this Contract or such other address as shall be notified to the Company by the Buyer.
- 13.2 Communications shall be deemed to have been received:
 - 13.2.1 if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);
 - 13.2.2 if delivered by hand, on the day of delivery;
 - 13.2.3 if sent by facsimile transmission on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
- 13.3 Communications addressed to the Company shall be marked for the attention of the Operations Director.