

## **T.P. FAY (KIRKBY) LIMITED – TERMS & CONDITIONS OF SALE & SUPPLY**

1.0 The following are the only terms and conditions upon which T.P. Fay (Kirkby) Limited will undertake all and any service and or supply of goods. No variation or alteration to any term or condition as herein contained will be permitted without the express written consent of a director of T.P. Fay (Kirkby) Limited.

### 2.0 DEFINITIONS

2.1 (a) The buyer Means the person who places an order for the goods and or services of the seller which is acceptable to the seller.

(b) The seller Means T.P. Fay (Kirkby) Limited.

(c) Goods Means the items which the seller provides in accordance with this agreement.

(d) Services Means the services which the seller provides in accordance with this agreement.

(e) Conditions Means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by a director of T.P. Fay (Kirkby) Limited.

(f) Delivery date Means the day on which the goods are to be delivered to the buyer or collected by the buyer.

(g) Contract Means the contract for the purchase and sale of the goods.

(h) Price Means the price for goods excluding carriage, packing, insurance and VAT.

(i) Writing Includes telex, cable and facsimile transmission but does not include

transmissions made by computer network including the electronic mail system or network whether the same be transmitted on the "Internet" network or otherwise.

2.2 The definitions in these conditions are for assistance and convenience only and form no part of this agreement or these conditions and shall not effect their interpretation.

### 3.0 Formation of agreement

3.1 Any order sent by the buyer shall be accepted entirely at the discretion of the seller and shall be accepted upon these conditions.

3.2 These conditions shall apply to all contracts for the sale of goods or the provision of services by the seller to the buyer and shall override any contrary, different or additional terms and conditions including any terms or conditions contained in or referred to in any order form, purchase order confirmation or any other document or correspondence from the buyer.

3.3 No variation to these conditions shall be binding unless agreed in writing by the authorised representatives of the buyer and the seller.

3.4 No order which has been accepted by the seller may be cancelled by the buyer except with the agreement in writing of the authorised representative of the seller and in terms that the buyer shall indemnify the seller in full against all loss (including loss of profits), costs, damages, charges and other expenses incurred by the seller as a result of the cancellation.

### 4.0 Specification

4.1 Any specification, sample, description, representation (whether made orally or otherwise) or any correspondence, statement, promotional or sales literature is given for general information only and shall not form part of this contract or be binding upon the seller unless agreed in writing by the authorised representatives of the buyer and the seller.

### 5.0 Price and payment

5.1 The price of the goods shall be at the seller's quoted price. All prices quoted are valid for 14 days from the time of the quotation after which time they may be altered by the seller without giving notice to the buyer.

5.2 The seller reserves the right to increase the price of the goods at any time to reflect any increase in the costs to the seller due to any factor beyond the control of the seller (including though not limited to any increase in the costs of labour, materials or other costs of manufacture or increases in price by those who supply the seller with materials or labour) or due to any change in delivery dates, quantities or specification of the goods which is requested by the buyer or any delay caused by any instruction of the buyer or the failure of the buyer to give the seller adequate information or instruction.

5.3 The costs of pallets and returnable containers will be charged to the buyer in addition to the price of the goods but full credit will be given to the buyer provided that they are returned undamaged to the seller before the due payment date.

5.4 Payment of the price shall be due within 30 days of the date on the seller's invoice and the seller shall be entitled to recover the price notwithstanding that delivery may not have taken place and the property in the goods has not passed to the buyer. Time for payment shall be of the essence of the contract. Title to the goods shall not pass until paid for in full and the buyer shall remain a bailee only until such time.

5.5 If the buyer fails to make any payment on the due date then without prejudice to any other right or remedy available to the seller the seller shall be entitled to:

5.5.1 Cancel the contract or suspend any further deliveries to the buyer.

5.5.2 Appropriate any payment made by the buyer to such of the goods (or the goods supplied under any contract between the buyer and the seller) as the seller may think fit notwithstanding any purported appropriation by the buyer.

5.5.3 Charge to the buyer interest (both before and after any judgement) on the amount unpaid at the rate of 8%, per annum above The Bank of England base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purposes of calculating interest).

5.5.4 The buyer shall not be entitled to set off any claim against the purchase price of the goods.

5.6 A charge of £12.50 will be made to cover bank charges and administration costs in the event that any cheque submitted by the buyer fails to clear on first presentation or is subsequently returned dishonoured.

5.7 A 15% handling charge will be levied on all goods accepted for credit.

5.8 There is a minimum invoice value of £10.00 which will be invoiced for any transaction to cover administration and handling charges.

5.9 Any account outstanding beyond our credit terms will be subject to a surcharge of 10%, plus any other costs incurred by the seller in using third party agents to obtain settlement of the account.

5.10 Goods will not be accepted for credit after 10 days from the date of invoice.

5.11 Credit will not be given unless the original invoice number is quoted.

5.12 Exchange units will be charged in full pending return of the original unit.

6.0 Delivery of the goods

6.1 Any dates or time given for delivery of the goods by the seller is given in good faith but is an estimate only and the seller shall not be liable for any delay in delivery of the goods howsoever caused.

6.2 Delivery shall take place when the goods are delivered to the buyer's business address or such other place as has been agreed in writing by an authorised representative of the seller. Unloading of the goods from the delivery vehicle is the responsibility of the buyer who is also responsible for the supply of all equipment and labour needed to unload the said vehicle.

6.3 The delivery vehicle shall only proceed to the end of the hard road nearest to the agreed delivery address. 6.4 When the buyer collects the goods from the seller's premises, delivery shall take place when the buyer collects those goods.

6.5 The seller shall be entitled to deliver the goods in instalments. Each delivery shall constitute a separate contract, any failure by the seller to deliver any one or more of the instalments in accordance with this contract or any claim by the buyer in respect of any one or more of the instalments shall not entitle the buyer to treat the contract as a whole as repudiated.

6.6 If the buyer fails to take delivery of the goods or fails to give the seller adequate delivery instructions at the time stated for delivery then, without prejudice to any other right or remedy available to the seller, the seller may:

6.6.1 Store the goods until actual delivery and charge the buyer for the reasonable costs (including insurance) of storage; or  
6.6.2 Sell the goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the buyer for the excess over the price under the contract or charge the buyer for any shortfall below the price under the contract.

6.7 No item(s) will be accepted for credit without the express agreement of the seller. In any event, no item(s) will be accepted for credit if the item(s) are custom built, built to the buyers specification or ordered in from any other manufacturer.

### 7.0 Acceptance of the goods

7.1 The buyer shall be deemed to have accepted the goods upon delivery/collection. Claims in respect of damage to goods, wrong delivery or defects shall be made immediately and in any event within 24 hours from the date of delivery and in writing.

7.2 Save as is hereinafter provided, after acceptance, the buyer shall not be entitled to reject goods which are not in accordance with the contract.

7.3 Where goods are not delivered the buyer shall within 24 hours of the time of delivery notify the seller in writing.

### 8.0 Warranties and liabilities

8.1 Subject to the conditions set out below the seller warrants that the goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of twelve months from the date of delivery.

8.2 The above warranty is given by the seller subject to the following conditions:

8.2.1 The seller shall be under no liability in respect of any defect in the goods arising from any drawing, design or specification supplied by the buyer.

8.2.2 The seller shall be under no liability in respect of any defect in the goods arising from fair wear and tear, wilful damage, negligence, ingress of moisture (whether atmospheric or otherwise), abnormal working conditions, failure to follow the sellers instructions (whether oral or in writing), failure to install the machinery appropriately, misuse or alteration or repair of the goods without the sellers approval.

8.2.3 The above warranty does not extend to parts, materials or equipment not manufactured by the seller, in respect of which the buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the seller.

8.3 Subject as expressly provided in these conditions, and except where the goods are sold to a person dealing as a consumer (within the meaning of the unfair contract terms act 1977) all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.4 Any claim by the buyer which is based on any defect in the quality or condition of the goods or their failure to correspond with specification shall (whether or not delivery is refused by the buyer) be notified to the seller within 24 hours from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within 7 days after the discovery of failure or defect. If delivery is not refused and the buyer does not notify the seller accordingly, the buyer shall not be entitled to reject the goods and the seller shall have no liability for such defect or failure.

8.5 Where any valid claim in respect of any of the goods which is based on any defect in the quality or condition of the goods or their failure to meet specification is notified to the seller in accordance with these conditions, the seller shall be entitled to replace goods (or the part in question) free of charge or, at the seller's sole discretion, refund to the buyer the price of the goods (or any proportionate part of the price), but the seller shall have no further liability to the buyer.

8.6 Except in respect of death or personal injury caused by the seller's negligence, the seller shall not be liable to the buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the contract, for any indirect special, or consequential loss of damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by negligence of the seller, its employees or agents otherwise) which arise out of or in connection with the supply of the goods or their use or resale by the buyer, and the entire liability of the seller under or in connection with the contract shall not exceed the price of the goods.

### 9.0 Force majeure

9.1 The seller shall not be liable to the buyer or deemed to be in breach of the contract by reason of any delay in performing or any failure to perform any of the seller's obligations in relation to the goods, if the delay or failure was due to any cause beyond the seller's reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as beyond the seller's reasonable control:

9.1.1 Act of God, explosion, flood, tempest, fire or accident;

9.1.2 War or threat of war, sabotage, insurance, civil disturbance or requisition;

9.1.3 Acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any government parliamentary or local authority;

9.1.4 Import or export regulations or embargo;

9.1.5 Strikes, lockouts or other industrial action or trade disputes (whether involving employees of the seller or any third party);

9.1.6 Difficulties in obtaining raw materials, labour, fuel, parts or machinery;

9.1.7 Power failure or breakdown in machinery.

### 10.0 Risk and damage

10.1 Risk of damage to or loss of the goods shall pass to the buyer:-

10.1.1 In the case of goods to be delivered at the seller's premises, at the time when the seller notified the buyer that the goods are available for collection; or

10.1.2 In the case of goods to be delivered otherwise than at the seller's premises, at the time of delivery or, if the buyer wrongfully fails to take delivery of the goods, at the time when the seller has tendered delivery of the goods.

10.2 Notwithstanding delivery and the passing of risk in the goods, or any other provision of these conditions, the property and the goods shall not pass to the buyer until the seller 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 seller to the buyer for which payment is then due.

10.3 Until such time as the property in the goods passes to the buyer, the buyer shall hold the goods as the seller's fiduciary agent and bailee and shall keep the goods separate from those of the buyer and third parties and properly stored, protected and insured and identified as the seller's property, but shall be entitled to resell or use the goods in the ordinary course of business.

10.4 If the buyer sells the goods in such manner as to pass to a third party a valid title to the goods the buyer shall hold the proceeds of sale on trust for the seller.

10.5 Where the goods are processed and/or incorporated into other goods the seller's title in those goods shall transfer to the products in which the goods have been incorporated and the seller shall become legally and beneficially entitled to those goods.

10.6 Until such time as the property in the goods passes to the buyer the seller shall be entitled at any time to require the buyer to deliver up the goods to the seller and, if the buyer fails to do so forthwith, to enter upon any premises of the buyer or any third party where the goods are sold and repossess the goods.

10.7 The buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods that remain the property of the seller, but if the buyer does so all monies owing to the buyer to the seller shall (without prejudice to any other right or remedy by the seller) forthwith become due and payable.

10.8 Nothing herein shall constitute the buyer the agent of the seller for the purpose of any sub-sale of the goods.

10.9 Notwithstanding the preceding provisions of this clause, the seller may, at his sole option and at any time by notice in writing to the buyer transfer the property and the goods to him.

### 11.0 Intellectual property rights

11.1 If any claim is made against the buyer that the goods infringe, or that their use or resale infringes, the patent, copyright, design, trademark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of any drawing design or specification supplied by the buyer, the seller shall indemnify the buyer against all loss, damages, costs and expenses awarded against or incurred by the buyer in connection with the claim, or paid or agreed to be paid by the buyer in settlement of the claim provided that:

11.1.1 The buyer shall give the seller the earliest possible notice in writing of any such claim being made or action threatened or brought against it.

11.1.2 The buyer shall make no admission of liability or take any other action in connection therewith.

11.1.3 The seller is given full control of any proceedings or negotiations in connection with any such claim.

11.1.4 The buyer shall give to the seller all reasonable assistance for the purpose of any such proceedings or negotiations.

11.1.5 Except pursuant to a final award, the buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the seller.

11.1.6 The buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the buyer recovers any sums under such policy or cover (which the buyer shall use his best endeavours to do).

11.1.7 The seller shall be entitled to the benefit of and the buyer shall accordingly account to the seller for, all damages and costs (if any) awarded in favour of the buyer which are payable by, or agreed with consent of the buyer (which consent shall not be unreasonably withheld) be paid for by any other party in respect of any such claim; and

11.1.8 Without prejudice to any duty of the buyer at common law the seller shall be entitled to require the buyer to take such steps as the seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses which the seller is liable to indemnify the buyer under this clause.

### 12.0 Insolvency of buyer

12.1 This clause applies if:

12.1.1 The buyer makes any voluntary arrangement with his 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

12.1.2 An encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the buyer; or

12.1.3 The buyer ceases, or threatens to cease to carry on business; or

12.1.4 The seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the buyer and notifies the buyer accordingly.

12.2 If this clause applies then, without prejudice to any other right or remedy available to the seller, the seller shall be entitled to cancel the contract or suspend any further deliveries under the contract without any liability to the buyer and if the goods have been delivered but not paid for the price shall immediately become due and payable notwithstanding any previous agreement or arrangement to the contrary.

12.3 If this clause applies the seller by its employees or agents shall be entitled to enter on or into any landbuildings or vehicles where the goods or part of them are situated to retake possession of the same (and the buyer shall for such purposes notify the seller of the whereabouts of the goods).

12.4 If this clause shall apply then the buyer shall notify the seller forthwith.

### 13.0 General

13.1 Any notice required or permitted to be given by either party to the other under these conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

13.2 No waiver by the seller of any breach of contract by the buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

13.3 If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions and the remainder of the provision in question shall not be affected.

13.4 Any dispute arising under or in connection with these conditions or the sale of the goods shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the president for the time being of in accordance with the rules of.

13.5 This contract shall be governed by the laws of England and Wales and the buyer agrees to submit to the jurisdiction of the English courts.