

CONDITIONS OF SALE

- 1. Interpretation**
- 1.1 In these conditions:
- "the Company" means Joseph Ash Limited (Company No. 154773)
 - "Contract" means a contract for the sale or provision and purchase of the Supplies;
 - "Customer" includes any person, firm or company who agrees to purchase the Supplies from the Company;
 - "Delivery" has the meaning described in Condition 6;
 - "Delivery Address" means the address stated in a Quotation or such other address as may be agreed in Writing between the Customer and the Company.
 - "Indemnified Matters" includes all liability actions, proceedings, claims, demands, injury, loss (including consequential and indirect loss), damage, damages, costs and expenses;
 - "Intellectual Property Rights" means intellectual and industrial property rights of all kinds including know-how, patents, trademarks (whether registered or unregistered), registered and unregistered design right and copyright;
 - "Quotation" means a document setting out the quotation given by the Company to the Customer for the provision of the Supplies by the Company to the Customer;
 - "Specification" includes drawings, artwork, designs, plan, photographs, models, patterns, samples, data and technical information of every description whether written or oral or three dimensional;
 - "Supplies" means any goods, parts or components and/or services and work, which the Company supplies, to the Customer;
 - "Working Days" means Monday to Friday inclusive excluding statutory bank holidays and Christmas Day and Easter Good Friday.
- 1.2 Statutory and other references in these conditions are intended to refer to current statutes and rules as amended from time to time.
- 2. Basis of Contract**
- 2.1 The Company will sell and the Customer will purchase the Supplies in accordance with any quotation of the Company which is accepted by the Customer within a period of 30 days from the date of the Quotation (unless previously withdrawn by the Company) or if an order of the Customer is accepted by the Company and confirmed by the Company in Writing.
- 2.2 No variation to these conditions will be binding unless agreed in Writing by a director of the Company.
- 2.3 The Company's employees or agents are not authorised to make any representations about the Supplies unless confirmed by the Company in Writing. In entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim for breach of any unconfirmed representations.
- 3. Orders and Specifications**
- 3.1 The Customer will be responsible to the Company for the accuracy of the terms of any order (including all Specifications) it submits and for giving the Company any necessary information relating to the Supplies within sufficient time to enable the Company to perform the Contract in accordance with its terms.
- 3.2 Subject to the conditions the quantity, quality and description of and any Specification for the Supplies will be those set out in the Company's Quotation or as otherwise agreed or accepted by the Company in Writing.
- 3.3 All dimensions quoted are normal only. Whilst all reasonable care will be taken by the Company during any galvanizing of the Supplies distortion is liable to occur and the Company cannot accept any liability as a result of this.
- 3.4 If the Supplies are to be manufactured or any process is to be applied to the Supplies by the Company in accordance with the Customer's specification, the Customer will indemnify the Company against all loss, 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 intellectual Property Rights of any other person which results from the Company's use of the Customer's Specification.
- 3.5 The Company reserves the right without notice to make any changes in the Specification of the Supplies which are required to conform with any applicable safety or other statutory requirements or which do not materially affect their quality or performance.
- 3.6 No Specification or order may be amended varied or cancelled by the Customer except with the Company's agreement in Writing and the Customer will indemnify the Company in full against all loss, costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of such amendment variation or cancellation.
- 4. Customer Returns**
- 4.1 Returns of the Supplies will not be accepted without the prior written consent of a director of the Company. In no event will returns or cancellations be accepted on any Supplies made to the Customer's Specification.
- 4.2 The Customer will be responsible for the packing and carriage of any Supplies returned for any reason complete with all accessories manuals and all other documents. Supplies returned will remain at the risk of the Customer until certified as safely received by the Company.
- 5. Risk**
- 5.1 Risk respect of the Supplies will pass to the Customer upon Delivery, any event mentioned in condition 7 below happening or if at the Customer's request the Company defers Delivery whichever first occurs.
- 5.2 The Customer will assume the risk of loss or damage to their full invoice price in the joint names of the Company and the Customer from Delivery until payment in full has been made.
- 6. Deliveries**
- 6.1 Dates for Delivery are estimated only and not binding on the Company. On reasonable notice the Supplies may be delivered by the Company in advance of the quoted Delivery date.
- 6.2 The Company may make Delivery of the Supplies by instalments. The Customer may not refuse to take Delivery of any instalment or treat the Contract as repudiated on account of any alleged failure, shortage or defect in any instalment. If the Customer fails to take Delivery of any instalment the Company will not be bound to make up such instalment according to any informal or binding schedules.
- 6.3 Delivery will be deemed to take place:-
- 6.3.1 when carriage is arranged by the Company at the moment when possession or control of the Supplies is offered or transferred to the Customer or its agents at a Delivery Address before off-loading or otherwise; or
 - 6.3.2 when the Customer collects the supplies or arranges his own carriage at the moment possession or control of the Supplies is offered or transferred to the Customer or its agent.
- 6.4 If the Company or its carrier is transporting the Supplies the Company will deliver them to the Delivery Address. The Customer will ensure that adequate means of access are available and will provide all necessary facilities at the Delivery Address for unloading the Supplies and will indemnify the Company from and against the indemnified Matters under or in respect of access and unloading operations.
- 6.5 When the Customer arranges carriage the Customer will procure that Delivery takes place as soon as possible after the Company has given notice that a consignment is ready and in any event within four days of such notice and that the transport is suitable in all respects to carry the Supplies. The Company may without liability withhold Delivery if in its opinion the transport is unsuitable.
- 6.6 A receipt or Delivery note signed by or on behalf of a Customer will be conclusive proof of the date and time of Delivery.
- 7. Failure to accept Delivery**
- 7.1 If the Customer fails to take Delivery of the Supplies or any instalment or if the Customer does not collect the Supplies as required by condition 6.5 above, the Company (and without prejudice to an rights against the Customer) may store the Supplies at the risk of the Customer and the Customer will pay upon demand the reasonable storage costs of the Company and all other expenses involved including insurance and the Supplies may be re-invoiced at the rates ruling at the date of actual despatch; deliver by itself or by its agents at the cost of the Customer and Supplies which the Customer has failed to collect as required by conditions 6.5; sell the Supplies at the best price readily obtainable and (after deducting all reasonable expenses) account to the Customer for the excess over the Contract price; or charge the Customer for any shortfall below the Contract price; and risk in the Supplies will pass to the Customer forthwith.
- 8. Prices**
- 8.1 Unless otherwise agreed in writing the price of the Supplies will be the Company's quoted prices or where no price has been quoted (or is no longer valid) the Contract price will be at the Company's rates ruling at the date of Delivery.
- 8.2 Unless otherwise agreed in Writing all Quotations and prices are on an ex works basis and the costs of transport, packing and insurance and all reasonable travel, accommodation and subsistence expenses will be borne by the Customer. The Company will package the Supplies at its discretion and as it considers appropriate for the Supplies and the method of transportation. Any special packaging will be at the Customer's expense and may delay Delivery.
- 8.3 Prices are subject to the addition of VAT and all other taxes and duties at the rates ruling at the date of Delivery. The Customer will pay or reimburse any tax, levy or charge of whatever nature imposed by the authorities in any foreign country.
- 9. Payment**
- 9.1 The Company may invoice the Customer on or at any time after Delivery of the Supplies.
- 9.2 Unless otherwise agreed in Writing the Customer will pay the price of the Supplies without any deduction within 30 days after the beginning of the month following the month of delivery or, if applicable the month in which the Customer should have accepted Delivery but failed to do so, notwithstanding that Delivery may not have taken place or that property in the Supplies has not passed to the Customer. The time of payment will be of the essence of the Contract. Payment will not be deemed to have been made until payment in cash or cleared funds has been received by the Company.
- 9.3 The Company may at any time require the Customer to provide security for payment or withdraw any credit facilities and/or the Customer to make payment in cash (and then will be legally due immediately).
- 9.4 If the Customer fails to make any payment by the due date then without prejudice to any other rights it may have the Company:-
- 9.4.1 will be entitled to suspend all deliveries or work under that or any other Contract with the Customer and the Customer will not in any respect be released from the Customer's obligations to the Company under any such Contract;
 - 9.4.2 will be entitled to treat the Contract and/or any other Contract with the Customer as having been unlawfully terminated by the Customer and to claim damages for breach of contract;
 - 9.4.3 may cancel any discount allowed and charge the full price;
 - 9.4.4 may charge interest (both before and after any judgement) at the rate of 4% above the Current base rate of Lloyds Bank Plc from the due payment date until the date of payment calculated on a daily basis on any payment overdue;
 - 9.4.5 may appropriate any payment made by the Customer (on any account) to any such Supplies under any contract (notwithstanding any purported appropriation by the Customer);
 - 9.4.6 may exercise a lien on any property of the Customer in the Company's possession for any indebtedness by the Customer to it.
- 10. Property**
- 10.1 While any money remains owing by the Customer to the Company on any account (whether due for payment or not):
- 10.1.1 property in all the Supplies (under any Contract) will remain vested in the Company notwithstanding Delivery or passing if risk;
 - 10.1.2 the Company may recover and re-sell any Supplies and the Customer will deliver any Supplies to the Company upon demand and the Customer grants the Company an irrevocable licence to enter at any time any property owned or occupied by the Customer or any third party to repossess or to remove the Supplies whether or not they have been affixed to any property and/or examine any Supplies. The Customer will indemnify the Company against liability in respect of any damage it was not reasonably practicable to avoid caused to any such property in such repossession or removal.
- 10.2 The Customer will hold all the Supplies in a fiduciary capacity for the Company, stored separately, property protected and insured and clearly identified as the Company's property; the Customer's authority to use or resell the Supplies is not implied and any authority given by the Company may be revoked at any time and its automatically revoked and the Customer's right to possession of the Supplies will cease when any money owing to the Company becomes overdue for payment or on the occurrence of any event specified in Condition 20.
- 10.3 The Customer may not pledge or in any way charge by way of security for any indebtedness any Supplies which remain the property of the Company but if the Customer does not so all monies owing by the Customer to the Company will (without prejudice to any other right of remedy of the Company) forthwith become due and payable.
- 10.4 Nothing contained in this condition will confer any right on the Customer to return the Supplies or to refuse or delay payment.
- 11. Acceptance**
- The Customer will be deemed to have received and accepted the Supplies as satisfactory unless notice in writing of any alleged non-delivery, shortage or defects is given to the Company:-
- 11.1 in case of alleged non-delivery forthwith when the Customer becomes aware or ought reasonably to be aware that Delivery is overdue;
 - 11.2 in the case of alleged under-delivery, shortages or damaged Supplies within 3 Working Days from Delivery; and
 - 11.3 in the case of alleged defect forthwith upon the same becoming apparent and in any event within 3 Working Days from Delivery or (if the defect is covered by warranties set out in condition 13 below) within the periods specified in those Warranties.
- 12. Complaints**
- 12.1 The Company will be given every facility to examine at the Delivery Address any Supplies the subject of complaint and to return them to the Company's premises. The Customer must retain such Supplies until the Company has inspected them.
- 12.2 At the Company's request the Customer (at the Customer's risk) will return to the Company the Supplies complained about. The Company will be under no obligation in respect of any Supplies which have deteriorated or been damaged during return transit.
- 12.3 The Company may replace, make up or repair Supplies which are incomplete, damaged or defective. Alternatively it may refund the price or give credit and the Company will be under no further liability to the Customer.
- 12.4 Any Supplies replaced will become the property and at the disposal of the Company.
- 13. Warranties**
- 13.1 Subject to these conditions the Company warrants that the Supplies will correspond in all material respects with their Specification at the time of Delivery and will be free from substantial defects in materials and workmanship for a period of twelve months from Delivery. In case of services and work provided or carried out the Supplies will be provided or carried out with reasonable care and skill.
- 13.2 Subject as expressly provided in these conditions and except where the Supplies are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all conditions, warranties, terms and liability whether express or implied arising by statute, custom or at common law excluded to the fullest permitted by law.
- 13.3 The Company shall, notwithstanding any other provisions of these conditions, not under any circumstances be liable in contract, tort, statute or otherwise for any indirect or consequential loss or damage of any kind or for any increased costs or expenses or loss of business profit. If the Customer wishes the Company to undertake liability for indirect or consequential loss and notifies the Company of this in Writing the Company is willing to do so provided that it is able to arrange insurance to cover such loss (and then only to the limit of cover so arranged) provided that the price of the Supplies is increased to reflect the additional cost incurred by the Company in arranging such additional cover.
- 13.4 In order to ensure that it is able to discharge claims made against it by the Customer for any liability undertaken by it under the Contract the Company has effected insurance to an indemnity limit including all costs and expenses of £1,000,000 (one million pounds). In no event will the Company's liability exceed the sum of £1,000,000 (one million pounds). The Company is willing to arrange for additional insurance cover to enable it to take an additional liability to the Customer provided that the price of the Supplies is increased to reflect the additional cost incurred by the Company in arranging such additional cover.
- 13.5 If the Company fails to deliver the Supplies in circumstances that the Company is liable to the Customer the Company's liability will be limited at the Company's option:-
- 13.5.1 to the excess (if any) of the costs to the Customer (in the cheapest available market) of similar Supplies to replace those not delivered; or
 - 13.5.2 to replacing the Supplies within a reasonable time; or
 - 13.5.3 to the amount of any insurance monies received by the Company in respect of the loss or non-Delivery of the Supplies; or
 - 13.5.4 to assigning to the Customer any claim the Company may have against the Carrier.
- 13.6 In no event will the Company be liable:-
- 13.6.1 for defects in any paint finish applied to the Supplies or which occur as a result of negligent handling, improper use, unsuitable fuels or power supply, unsuitable lubricants and coolants, faulty installation or construction work, unsuitable premises, chemical, electromagnetic or electrical influences not specified as present in the Contract placed by the Customer;
 - 13.6.2 for Supplies which have been damaged, modified, altered or repaired in any manner after Delivery;
 - 13.6.3 for fair wear and tear;
 - 13.6.4 for any defect in the Supplies arising from any Specification supplied or instruction given by the Customer;
 - 13.6.5 for any Supplies not manufactured by the Company but the Company at the request of the Customer will use its reasonable endeavours to pass to the Customer the benefit of any warranty or guarantee given by the manufacturer;
 - 13.6.6 for any Supplies which have been used after discovery of defect.
- 14. Specification and Information**
- 14.1 The property in all Specifications (including all Intellectual Property Rights) prepared, manufactured or supplied by the Company in performing or any failure to perform any of the Company's obligations if the delay or failure was due to any cause beyond the Customer's reasonable control. If any delay persists for longer than 6 months after the due Delivery Date, the Customer shall be entitled to cancel the Contract.
- 14.2 The Customer will keep all property of the Company which is in its possession or under its control safe, properly stored, in good condition and insured in its full value in the name of the Company and will not disclose, copy or transfer the same to any third party.
- 14.3 The Customer will indemnify the Company against the indemnified Matters in respect of the Company's tangible property which is at any time in its possession or control.
- 14.4 The Customer will maintain and procure strict confidentiality regarding the Contract and all matters concerning the company and its business and affairs and will not disclose the same to any third party or use the same except as may be necessary for the performance of the Contract.
- 15. Indemnity**
- To the fullest extent permitted by law the Customer will indemnify the Company from and against all indemnified Matters arising from any failure by the Customer to comply with the conditions or otherwise under or in connection with the Contract from any cause other than negligence or breach of contract by the Company.
- 16. Force majeure**
- 16.1 The company will not be liable to the Customer or be in breach of the Contract by reason of any delay in delivery or any delay in performing or any failure to perform any of the Company's obligations if the delay or failure was due to any cause beyond the Customer's reasonable control. If any delay persists for longer than 6 months after the due Delivery Date, the Customer shall be entitled to cancel the Contract.
- 17. Termination**
- 17.1 Without prejudice to any of its other rights or remedies the Company may without liability cancel the Contract or suspend further deliveries or work if:
- 17.1.1 the Customer commits any breach of the Contract or any other contract with the Company;
 - 17.1.2 a meeting of the shareholders of the Customer is convened for the purpose of considering a resolution for the winding up of the Customer or a meeting of the creditors of the Customer is convened or there is a winding up petition or its circumstances exist in which the Customer may be wound up by the Court;
 - 17.1.3 the Customer becomes insolvent or unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or permits any judgement against it to remain unsatisfied for 14 days;
 - 17.1.4 the Customer ceases or threatens to cease to carry on business;
 - 17.1.5 if any event occurs in relation to the Customer under the laws of any other jurisdiction which is similar to or analogous with any events described above; or
 - 17.1.6 the Company reasonably considers that any of the events mentioned above is about to occur and notifies the Customer accordingly.
- 17.2 If this condition or condition 16.1 above applies then, without prejudice to any other right or remedy available to the Company the Company will be entitled to cancel the Contract or suspend or require payment in advance of any further deliveries under the Contract without any liability to the Customer, and if the Supplies have been delivered but not paid for the price will become immediately due and payable notwithstanding any previous agreement to the contrary.
- 18. General**
- 18.1 Any notice required or permitted to be given by either party to the other under these conditions will be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been pursuant to this provision to the party giving the notice. A notice by first class post will be deemed served on the next Working Day after posting. A notice by telex or facsimile will be deemed served at the time of sending.
- 18.2 No waiver by the Company of any breach of contract by the Customer will operate as a waiver of any other subsequent breach.
- 18.3 If any provision of these conditions is found to be invalid or unenforceable in whole or in part the validity of the other provisions then these conditions and the remainder of the provision in question will not be affected.
- 18.4 The Contract between the Company and the Customer will be governed in all respects by English law. The Customer will submit to the jurisdiction of the English courts provided that the Company at its option may bring any legal proceedings against the Customer in the courts of any other country.
- 18.5 The Company may sub-contract all or part of the contract. However, the Contract is personal to the Customer which may not assign the Contract or any rights or benefits under it.