

# CONDITIONS OF PURCHASE

## 1. DEFINITIONS

- (i) The Buyer shall mean Kern-Liebbers Limited.
- (ii) The Seller shall mean the person firm or company to whom the Buyer's written purchase order is issued.
- (iii) The Goods shall mean those goods and/or services specified in the Buyer's written purchase order or such other goods and/or services as may be agreed by the Buyer and the Seller in writing as being the subject of the contract.
- (iv) Writing shall include Telex and Facsimile transmissions.

## 2. GENERAL

- (i) All Goods are ordered by the Buyer on the following terms and no person in the employment or acting otherwise as agent of the Buyer or purporting so to do has authority to order Goods or accept Goods or agree to accept Goods on any other terms or conditions or to vary add to replace or override these terms or be deemed in any circumstances whatsoever so to do.
- (ii) Any previous dealings between the Buyer and the Seller any earlier conditions of purchase of the Buyer or any terms or conditions stipulated incorporated or referred to by the Seller whether in the acceptance or in any negotiations or otherwise shall not vary add to replace or override these terms or any of them.
- (iii) The supply of Goods by the Seller to the Buyer shall be conclusive evidence before any Court or arbitrator that these terms alone apply to the supply by the Seller of the Goods.
- (iv) The Buyer and the Seller may agree to vary add to or replace these terms or any of them and any variation of addition to or replacement of these terms as agreed will become binding provided always that such variation addition or replacement shall not become binding upon the Buyer unless and until its agreement is confirmed in writing by a director of the Buyer.
- (v) A representative of the Buyer may visit the Seller's premises at any reasonable time to examine any work in hand for the Buyer and the materials proposed to be used in such work and the Seller will afford all reasonable facilities for such purpose.
- (vi) In the event of the Seller quoting or giving better terms to any person firm or company the Buyer shall have the option to purchase on the same terms and the benefit of such reduction is to be retrospective to the date of the lower quotation or the first supply at lower price whichever is the first.

## 3. FORMATION OF CONTRACT

- (i) The Buyer will not accept liability or responsibility for any Goods supplied by the Seller unless supplied according to the Buyer's written order.
- (ii) No contract shall be deemed to have been effected or entered into by the placing of a written order by the Buyer unless the Buyer has received written acceptance of its order by the Seller within ten days of the date of the written order provided always that no contract shall be deemed to have been effected or entered into unless the Seller's said written acceptance expressly states and specifies that the supply of Goods by the Seller to the Buyer is upon and subject to these terms without addition thereto or variation or replacement thereof.
- (iii) Notwithstanding clause 3(ii) above if the price of the Goods is not stated or specified in the Buyer's written order or the price and/or the details of the Goods specified in the Seller's written acceptance vary or differ from the price and/or details of the Goods stated or specified in the Buyer's written order no contract shall be deemed to have been effected or entered into until the written acceptance of the Seller has itself been confirmed by the Buyer in writing. Without prejudice to the generality of the foregoing the details of the Goods shall include quantity and type quality weight size or other measurements and/or any other details stated or specified in the Buyer's written order.

## 4. PRICE

- (i) Any price stated is fixed and may not be increased by the Seller and shall include carriage postage and packing and subject to clause 4(ii) hereunder VAT (where applicable) and all or any other taxes levies or duties and shall also include delivery to the address stated in the Buyer's written order.
- (ii) Value Added Tax where applicable and/or all or any other taxes levies or duties for the time being chargeable shall be shown separately on all invoices as a strictly net extra charge.

## 5. TERMS OF PAYMENT

- (i) Unless otherwise stated in the Buyer's written order and save as provided by clause 5(ii) below payment shall become due and will be made by the Buyer within thirty days of the receipt and agreement by the Buyer of the Seller's invoice.
- (ii) Notwithstanding clause 5(i) above unless otherwise agreed by the Buyer in writing payment will not be deemed to be due by the Buyer to the Seller until all goods the subject of this contract have been delivered to and accepted by the Buyer.

## 6. DRAWINGS TECHNICAL AND DESCRIPTIVE DOCUMENTS AND MODELS

- (i) Any drawings technical documents specifications plans patterns designs models or property supplied by the Buyer to the Seller in connection with the contract whether supplied prior to or subsequent to the formation of the contract shall remain the property of the Buyer and any information derived therefrom or otherwise communicated to the Seller in connection with the contract shall be kept secret and shall not be used for any purpose other than that for which it was supplied or disclosed or in any way disclosed to any third party or utilised copied or reproduced by the Seller. Any such drawings technical documents specifications plans patterns designs or models must be returned to the Buyer on the determination of the contract or at the prior request of the Buyer.
- (ii) All drawings technical documents specifications plans patterns designs or models prepared or supplied by the Seller in connection with the Buyer's order or in connection with any enquiry made by the Buyer at any time (hereinafter called "the Seller's Drawings") and all rights therein shall remain the property of the Seller but this notwithstanding the Buyer shall be entitled without charge to reproduce and to use and authorise the reproduction and use of the Seller's Drawings and the Seller shall so choose and/or publish communicate transmit and in any other way disclose such of the Seller's drawings as the Buyer shall so choose to any third party or parties.

## 7. DELIVERIES

- (i) The date of delivery of the Goods shall be that specified in the Buyer's written order unless agreed otherwise between the Buyer and the Seller in writing in which case such agreed date will be the date of delivery and in either case time shall be of the essence.
- (ii) The Seller shall not be entitled to make instalment deliveries unless the Buyer otherwise agrees in writing.
- (iii) The Seller shall not be entitled to delay performance of the contract or any part thereof or withhold or delay any delivery or deliveries by reason of any dispute between the Seller and the Buyer in respect of this contract or any other contract.
- (iv) The Goods must be delivered to the address specified in the Buyer's written order. If Goods are incorrectly delivered the Seller will be liable for any additional expense incurred in delivering them to their correct destination.
- (v) The Seller will include with each delivery an Advice Note stating the order number and precise details and specification of the Goods the subject of the delivery.
- (vi) The Buyer will only be obliged to accept delivery between 8.30am and 4.30pm Monday to Friday.
- (vii) If the Seller fails or refuses or is unable to deliver the Goods or any part thereof on or before the delivery date specified in clause 7(i) above for any reason whatsoever (save if such failure or inability is due to circumstances wholly or substantially outside the Seller's control) the Buyer may (without prejudice to any of the Buyer's other rights):
  - (a) Agree to the suspension of such delivery for such period as it deems fit and thereafter cancel the delivery and/or cancel that part of the contract which remains to be performed by the Seller; or
  - (b) Forthwith cancel the delivery and/or that part of the contract which remains to be performed by the Seller; andand the Buyer may in any event charge to the Seller any additional or consequential losses or expenses arising directly or indirectly out of the Seller's failure refusal or inability to deliver as provided herein.

## 8. PASSING OF PROPERTY AND RISK

The property and risk in the Goods shall remain in the Seller until they are delivered to the address referred to in clause 7(i) herein and thereafter (without prejudice to the Buyer's rights of rejection and/or its other remedies as are hereinafter provided for) the risk and property in the Goods shall pass from the Seller to the Buyer.

## 9. LOSS OR DAMAGE IN TRANSIT

- (i) The Buyer shall advise the Seller and the carrier concerned (if any) in writing of any loss or damage to the Goods or short delivery thereof or other discrepancy in the quantity of Goods delivered within the following time limits:
  - (a) Loss or partial loss damage defects short delivery or other discrepancy in the quantity of Goods delivered within twenty eight days of the date of delivery of the Goods or any part thereof;
  - (b) Non-delivery of all the Goods or any separate instalment thereof within twenty eight days of the Buyer becoming aware of such non-delivery.
- (ii) The Seller shall be liable for all expenses incurred by the Buyer of whatsoever nature in relation to clause 9(i) above and the Seller shall also be liable to and shall as soon as reasonably possible thereafter make good free of charge to the Buyer any loss of or damage to or defect in or short delivery of or discrepancy in the quantity of Goods delivered where notice is given to the Seller by the Buyer in compliance with this clause.

## 10. ACCEPTANCE

- (i) In the case of Goods delivered by the Seller not conforming with the contract whether by reason of being of quality or in a quantity or measurement not stipulated or the Goods delivered failing to comply with any specification or specifications (including but without prejudice to the generality of the foregoing drawings technical documents specifications plans patterns designs or models) or being unfit for the purpose or purposes for which they are required the Buyer shall have the right to reject such Goods within a reasonable time of their delivery and to purchase elsewhere Goods as near as practicable to the same contract specifications and conditions as circumstances shall permit (without prejudice to any of the Buyer's other rights) such purchase or purchases to be at the cost and expense of the Seller to the extent that the Buyer incurs additional costs and expenses. Provided always that before exercising the said right to purchase elsewhere the Buyer shall give the Seller a reasonable opportunity to replace the rejected Goods with Goods which conform in all respects to the contract.
- (ii) The Buyer shall not be bound to return to the Seller any Goods so rejected but at his option or at the request of the Seller may do so provided that such Goods shall be returned at the risk and expense of the Seller.
- (iii) The Seller shall also indemnify the Buyer against any costs damages losses or expenses which it may suffer by reason of the Seller having supplied Goods which the Buyer is entitled to reject.

## 11. VARIATIONS AND BUYER'S OPTION TO TERMINATE

- (i) The Seller shall not alter or vary the Goods or the specifications thereof except as directed in writing by the Buyer but the Buyer shall have the right from time to time by notice in writing to direct the Seller to add to or omit or to otherwise vary the Goods or the quantity of such Goods ordered or the specifications thereof or the place or method of delivery and the Seller shall carry out such variations and be bound by the same terms so far as applicable as though the said variations were stated in the original contract.
- (ii) Where the Seller receives any such direction from the Buyer which would occasion any amendment to the contract price the Seller shall as soon as is reasonably possible and in any event not later than twenty one days from the date giving such direction by the Buyer give notice to the Buyer in writing to that effect stating the amount and details of any such amendment ascertained and determined at the same level of pricing as that contained in the Buyer's written order and/or the Seller's acceptance whichever is applicable provided always that any variation of quantity ordered by the Buyer shall be charged on a pro rata basis.
- (iii) Upon receipt of such notice the Buyer may at its option confirm or revoke any direction or directions given in accordance with clause 11(i).
- (iv) If any such direction is likely to prevent the Seller from fulfilling any of its obligations under the contract he shall as soon as is reasonably possible give notice to the Buyer in writing to that effect and upon receipt of such notice the Buyer may at its option confirm or revoke any directions given in accordance with 11(i) in writing until or unless the Buyer so confirms his instructions they shall be deemed not to have been given.

- (v) Performance of work required pursuant to the Buyer's Order may be terminated by the Buyer at its option in whole or in part at any time by written notice to the Seller and immediately upon receipt of such a notice of termination the Seller shall unless otherwise directed by the Buyer:
  - (a) immediately terminate all work required pursuant to the Buyer's Order and all the Seller's Orders and sub-contracts in connection therewith;
  - (b) settle all claims arising out of such termination of the Seller's Orders and sub-contracts;
  - (c) deliver to the Buyer all the Seller's stock (but not in excess of amounts authorised by the Buyer) produced or acquired in the course of performance of the work terminated which are of a type and quantity suitable for producing supplies which conform to the requirements of the Buyer and which cannot reasonably be used by the Seller in producing goods for itself or for its customers;
  - (d) take all action necessary to protect the property in the Seller's possession in which the Buyer has or may acquire an interest;
  - (e) submit to the Buyer within fifty six days from the date of termination its termination claim provided that in the event of the Seller failing to submit its termination claim within said period the Buyer may determine notwithstanding the provisions of clause 11(vi) hereunder on the basis of information available to it the amount if any due to the Seller with regard to the termination such determination to be final.
- (vi) In the event of the Seller submitting a termination claim to the Buyer in accordance with clause 11(v)(e) above the Buyer shall have the right to check such claim at any reasonable time or times by inspecting and auditing the records facilities work or materials of the Seller relating to the Order.
- (vii) In the event of termination by the Buyer in accordance with clauses 11(v) and 11(vi) above the Buyer will pay to the Seller (without duplication) the Order price for finished work accepted by the Buyer and the cost to the Seller of work in progress and raw material relating to work incomplete based on any audit the Buyer may conduct and generally accepted accounting principles less the value or cost (whichever is the higher) of any items used or sold by the Seller and the cost of any defective damaged or destroyed goods work or material.
- (viii) Notwithstanding clause 11(vii) above the Buyer shall not be required in any circumstances to make payment to the Seller unless such payment would exceed the aggregate price of all supplies ordered pursuant to this Order or contract less any amount already paid pursuant hereto and the termination of this Agreement pursuant to this clause shall not give rise to any liability on the part of the Buyer except the liability to pay the amount specified in this clause.
- (ix) The provisions contained in this clause shall not apply to any cancellation by the Buyer for default by the Seller or for any other cause whatsoever.

## 12. WARRANTY

- (i) The following shall be conditions of the contract:
  - (a) The Seller shall supply sound Goods which are fit for their purpose and shall furnish the highest grade of suitable materials and render first class workmanship throughout. The Seller shall not supply any Goods or parts which have been produced by reclaiming or reworking in any way without the Buyer's express written agreement.
  - (b) The Seller shall as soon as reasonably practicable repair or replace all Goods which are or which become defective during the period of twelve months from their being put into service or eighteen months from delivery (whichever shall be the shorter) where such defects occur under proper usage and due to faulty design (except where the Goods have been made and used with the latest specification and/or with the Buyer's detailed drawings) and/or through faulty or defective materials or workmanship or through failure to comply with the instructions and/or conditions detailed in the Buyer's written order or through the Seller's erroneous instructions as to use or erroneous use of data or any other breach of the Seller's warranty.
  - (c) Repairs and replacements shall themselves be subject to the foregoing obligations for a period of twelve months from the date of delivery after repair or replacement.
  - (d) The Goods shall be delivered in accordance with the Buyer's Order and with the latest specification and/or drawings technical documents specifications plans patterns designs or models or other description furnished or specified or approved by the Buyer.
  - (e) The Seller warrants that he has the right to sell the Goods and that the sale of them by the Seller and the use and re-sale of them by the Buyer and all persons to whom the Goods are at any time re-sold would not constitute an infringement of any right of any third party.
  - (f) Any property of whatsoever nature belonging to the Buyer made available to the Seller for whatever reason shall be returned to the Buyer on demand and the Seller shall indemnify the Buyer against loss of or damage to the Buyer's property while it is in the possession custody or control of the Seller or the Seller's Agents or the Seller's sub-contractors and during such time the Seller shall adequately insure the Buyer's property in respect of such loss or damage and shall produce on demand by the Buyer the policy of such insurance and the premium receipts relating thereto.
  - (g) Further to sub-clause 12(i)(f) above the Seller shall keep separate account of all the property belonging to the Buyer and will furnish statements on request giving detailed description and location thereof as well as any other information regarding the same and the Seller shall promptly pay the Buyer on demand the full value of any property owned by the Buyer which is not returned on demand or is not satisfactorily accounted for.
  - (h) The Seller will not without obtaining the prior consent in writing of the Buyer in any way whatsoever advertise or publish the fact that the Seller has contracted to supply to the Buyer the Goods nor shall the Seller use the Buyer's property while it is in the possession custody or control of the Seller or be used by any third party or parties for any reason whatsoever unless such use is expressly authorised beforehand in writing by the Buyer.
  - (ii) The obligations of the Seller under this condition shall be in no way affected by whether or not the Goods are brought by description or specification or by a patent or trade name and whether or not the Buyer has examined the Goods or a sample thereof or whether the defect or defects would have been apparent if the Buyer had so examined them.
  - (iii) In the event of the Seller failing refusing or being unable to repair or replace all Goods which are or become defective as provided aforesaid within a period of ten days from the receipt of notification of the said defects by the Buyer the Seller shall be obliged to purchase elsewhere as near as practicable to the same contract specifications and conditions as the circumstances shall permit replacement Goods at the costs and expense of the Seller to the extent that the Buyer incurs additional cost and expense.

## 13. INSOLVENCY

- (i) If at any time the Seller not being a company:
    - (a) suffers any execution of or restraint upon his goods or other property; or
    - (b) has a receiver appointed in respect of his property or any of it; or
    - (c) has a Statutory Demand served upon him within the meaning of Section 268 of the Insolvency Act 1986; or
    - (d) presents a petition or has a petition presented against him to the court for a Bankruptcy Order under Section 264 of the Insolvency Act 1986; or
    - (e) makes an application to the court under Section 253 of the Insolvency Act 1986 for an interim order within the meaning of Section 252 of the said Act; or
    - (f) makes a proposal for a voluntary arrangement under Part VIII of the Insolvency Act 1986; or
  - (ii) If the Seller being a company:
    - (a) suffers any execution of or restraint upon its goods or other property; or
    - (b) has a receiver or manager (including an administrative receiver) appointed in respect of its property or any of it; or
    - (c) resolves to wind up (other than for the purposes of reconstruction or amalgamation); or
    - (d) has a demand served upon it under Section 123(1) of the Insolvency Act 1986; or
    - (e) presents a petition or has a petition presented against it to the court for its winding up; or
    - (f) presents a petition or has a petition presented against it to the court under Section 9 of the Insolvency Act 1986 for an administration order; or
    - (g) has a proposal made by its directors for a voluntary arrangement under Part I of the Insolvency Act 1986;
- the Buyer may (without prejudice to any of the Buyer's other rights) terminate the contract forthwith by notice to the Seller or to any person in whom the contract may have become vested.

## 14. GROUNDS OF DISCHARGE OF LIABILITY

- (i) Without prejudice to and without limiting in any way any other provisions contained in these conditions if a delivery by the Seller or the acceptance by the Buyer of a delivery is delayed or prevented and/or the Buyer and/or the Seller in any way failed to comply with the terms of the contract through reasons wholly or substantially beyond the control of the Buyer and/or the Seller including but without limiting the generality of the foregoing acts of God or other natural calamities or hostilities insurrection rebellion or civil disturbance or statutes acts directions orders rules regulations or requisitions of any Government Government Department Council or other duly constituted authorities or like civil or military authority or national emergency strike lock out go slow work to rule lay offs or other labour disturbance or breakdown of plant sabotage power failure energy shortage disease epidemic or quarantine fire ice frost fog wind flood storm landslide earthquake explosion accident catastrophe or natural disaster neither party shall be deemed to be in breach of the contract or will be liable for any failure to comply with the terms of the contract.
- (ii) Any delivery or deliveries remaining outstanding shall be suspended and if it or they cannot be made within a reasonable time after the delivery or deliveries may be cancelled by notice by either party given to the other party in writing. Any delivery or deliveries not cancelled as above will be resumed as soon as the circumstances causing the delay cease but except where both parties otherwise agree the period during which the deliveries are to be made will not be extended.

## 15. SUB-CONTRACTING

The Seller may not sub-contract the performance of the contract nor assign the contract nor sub-let it as a whole or any part thereof without the Buyer's agreement in writing.

## 16. TOOLING

- (i) All tools jigs dies fixtures moulds patterns plans and/or equipment (hereinafter called "the tools") which are supplied or paid for by the Buyer or for which the Buyer is liable shall be marked by the Seller "Property of Kern-Liebbers Limited".
- (ii) The Seller shall at all times at the Seller's expense maintain all the tools in first class condition and immediately replace any tools which are lost or destroyed or become worn out and the Seller shall be required to insure the tools and sub-clauses 12(i)(f) and 12(i)(g) shall apply accordingly.
- (iii) The tools shall not be used by the Seller in the production manufacture or design of any goods or materials otherwise than those the subject of this contract.

## 17. INDEMNITY

The Seller will be liable for and will indemnify the Buyer against any claim for loss or injury suffered by any person firm or company either to its property or person by reason of any defect or defects in the Goods supplied or as a result of any negligence or the Seller or if appropriate its sub-contractors.

## 18. THIRD PARTY RIGHTS

The Seller will be liable to indemnify the Buyer against any claim for infringement of Letters Patent Registered Design Trade Mark or copyright or other intellectual property rights by the use for sale of any article or material supplied by the Seller to the Buyer and against all costs and damages which the Buyer may incur in any action for such infringement or to which the Buyer may become liable in any such action. The Buyer will give the Seller notice of any such claim or action threatened or brought against the Buyer and the Buyer may at the Seller's own expense permit the Seller to conduct any litigation that may ensue and all negotiations for a settlement of the claim.

## 19. WAIVER

The Buyer's rights or any of them shall not be affected or restricted in any way by any indulgence or forbearance granted to the Seller and no waiver by the Buyer of any breach shall operate as a waiver of any later breach.

## 20. LEGAL CONSTRUCTION AND JURISDICTION

- (i) Each of the aforesaid clauses and sub-clauses are and shall be construed and treated as separate and severable contractual terms and if any provision of these conditions is held by any Court or other competent authority to be void or unenforceable in whole or in part these conditions shall continue to be valid as to the other provisions hereof and the remainder of the affected provisions.
- (ii) These conditions of purchase and the contract shall be subject to and construed in accordance with English Law.
- (iii) The English Courts shall have exclusive jurisdiction over any dispute which may arise out of or in connection with these conditions of purchase or the contract save that if the Seller carries on business in a Country other than England the Buyer may choose to bring proceedings in the Country where the Seller carries on business.

## 21. LANGUAGE

The text of these conditions of purchase herein written in English language is the authentic text and any difficulties or uncertainties in interpretation shall be resolved solely by reference to this text.