# Sale of goods agreement

## Meanings

1. These words and phrases have defined meanings:

|  |  |
| --- | --- |
| Agreement | this document and the Contracts, including any amendments; |
| Consumer | an individual acting for purposes which are wholly or mainly outside his or her trade, business, craft or profession; |
| Contract | each binding agreement between the Customer and the Supplier for the sale and purchase of Goods; |
| Delivery Location | the Supplier's premises or other location where the Goods are to be supplied, as set out in the Order; |
| Effective Date | the date of signature of this Agreement; |
| Goods | any goods and any services that the Supplier supplies to the Customer, of the number, description and specification set out in the Schedule to this Agreement; |
| Insolvency Event | any event referred to in sub-clauses (b) to (f) under Duration and Termination; |
| Order | the Customer's order for the Goods from the Supplier which shall be on the terms of this Agreement; |
| Working Day | any day other than a Saturday, Sunday or public holiday in England and Wales; |

1. Unless the context requires a different interpretation:
	1. all singular words include plural ones and vice versa;
	2. all references to sub-paragraphs, paragraphs, schedules or appendices are to the ones in this Agreement;
	3. all references to a person includes firms, companies, government entities, trusts and partnerships;
	4. the term 'including' does not exclude anything not listed;
	5. all references to statutory provisions include any changes to those provisions;
	6. no headings or subheadings form part of this Agreement.

## Application

1. This Agreement shall apply to all supplies of Goods by the Supplier to the Customer. Any quotation of the Supplier does not constitute an offer to sell. If the Buyer wishes to purchase the Goods the subject of a quotation, it must place an order. No order of the Customer for Goods shall be binding and no Contract shall arise until the Customer's order is accepted by the Supplier expressly or by the Supplier dispatching any of the Goods. Each Contract shall comprise this Agreement, the Supplier's quotation and any additional terms that are agreed in writing as applicable. All other terms which the Customer seeks to apply will not apply.
2. If any Contract contains provisions which conflict with this Agreement, those provisions of the Contract will prevail to that extent, except nothing shall prevail over the exclusions and limitations of the Supplier's liability in this Agreement unless the provision expressly refers to those exclusions and limitations and states that it prevails over them.

## Goods

1. The description of the Goods is as set out in the Schedule to this Agreement.
2. In the case of Goods made to the Customer's special requirements, it is the Customer's responsibility to ensure that any information provided by it is accurate.

## Basis of Sale

1. When an Order has been made, the Supplier can reject it for any reason.
2. Any quotation is valid for a maximum period of 30 days from its date, unless expressly withdrawn by the Supplier at an earlier time.
3. No variation of the Contract, whether about description of the Goods, price or otherwise, can be made after it has been entered into unless the variation is agreed by the Customer and the Supplier in writing and signed by each party or someone authorised to sign on their behalf.

## Price and Payment

1. The price of the Goods is that set out in the Supplier's price list current at the date of the Contract or such other price as may be agreed in writing by the Supplier and the Customer.
2. Prices exclude VAT and other sales taxes and duties.
3. Payment for Goods must be made without and set off, withholding, deduction, abatement or counter-claim at least 7 days in advance of delivery despite ownership of the Goods not having passed to the customer.
4. The Supplier can attribute money received from the Customer as being payment for whichever Goods as the Supplier chooses, regardless of the circumstances.
5. Where the Supplier has undertaken to arrange for carriage it shall do so as agent for the Customer and can charge for delivery and any transit insurance.
6. If the Customer fails to make any payment when due, without affecting any other rights which it may have, the Supplier shall be entitled to exercise all or any of the following rights:
	1. suspend production and/or deliveries of Goods and/or performance of Services until paid;
	2. charge interest on the overdue amount at a rate of 2% per annum above the official Bank of England Rate from time to time which shall accrue from day to day (both before and after any judgment) from the due date until payment in full is received by the Supplier or, if higher, equal to compensation and interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended).

## Delivery

1. Times for delivery or performance by the Supplier are estimates only and, except by operation of law or as otherwise agreed, time shall not be of the essence.
2. If delivery of any Goods has not been made 30 days after the agreed time, the Customer shall be entitled to rescind the Contract in respect of those Goods and return them, and the liability of the Supplier shall be limited to a cancellation of the price due for those which have not been accepted by the Customer.
3. The Customer shall be deemed to have accepted Goods 1 day after their delivery. After acceptance, the Customer shall not be entitled to reject Goods which are not in accordance with the Contract.
4. The Supplier will deliver the Goods:
	1. to the Delivery Location by the time or within the period, agreed in the Contract, or failing any agreement, without undue delay
	2. in instalments if the Supplier suffers a shortage of stock or other genuine reason, subject to the above provisions and provided the Customer is not liable for extra charges.
5. If the Customer or its nominee fails, through no fault of the Supplier, to take delivery of the Goods at the Delivery Location, the Supplier can charge the reasonable costs of storing and redelivering them.
6. Any claim that Goods have not been delivered must be notified in writing to the Supplier no later than 1 Working Day after the agreed date for delivery.
7. The Customer must inspect the Goods immediately on delivery and must no later than 1 Working Day after delivery notify the Supplier in writing of any shortage in delivery, damage or any other non-conformity with the Contract that ought reasonably to have been apparent on a reasonable inspection of the Goods.

## Risk and Title

1. Risk of loss of or damage to the Goods shall pass to the Customer at the time of delivery of the Goods.
2. The Supplier will still own the Goods, regardless of delivery, until the Customer has paid the Supplier in full for those Goods and VAT thereon, and all other sums due from the Customer to the Supplier at that time, provided that the property in the Goods can pass from the Supplier upon such property passing to the Customer's buyer in the manner permitted below.
3. While the Supplier still owns any of the Goods, the Customer:
	1. will hold those Goods on a fiduciary basis as the Supplier's property and on the Supplier's behalf as bailee and depository for the Supplier and the Supplier must ensure that they are clearly identifiable as belonging to the Supplier;
	2. can use or resell those Goods on its own account in its ordinary course of trade to its usual type of customers only, but (in addition to the Supplier's other rights) this right will terminate immediately if any step occurs towards an Insolvency Event;
	3. must not otherwise deal with, pledge, encumber (except by floating charge), sell or dispose of those Goods.
4. If any step is taken towards any Insolvency Event or if the Customer is overdue in any payment due, all sums shall become immediately due and payable and the Supplier can choose, by immediate notice to the Customer, to end the Customer's right, if still continuing, to use or resell the Goods still owned by the Supplier, enter any place to recover those Goods, and suspend or cancel any deliveries, and the Supplier shall be entitled upon demand to the immediate recovery of all those Goods. The Customer irrevocably gives the Supplier authority to enter any place to recover those Goods. Such recovery shall not cancel the Customer's obligation to pay the price for those Goods, provided that the Supplier must make a fair allowance for the value of any Goods which the Supplier has recovered.

## Warranty

1. If the Goods do not conform to any applicable statutory warranties or other terms, the Supplier will, at its option, repair or replace the relevant item of Goods (or any defective part) or offer a refund of all or a fair and reasonable part of the price paid for the relevant item (against return of the such item at the cost of the Customer. If the Supplier complies with this obligation it shall have no further liability in respect of, or arising from the relevant Goods.
2. Where the Customer enters into the Contract as a Consumer, the Customer's statutory rights are not reduced or affected by this Agreement.

## Circumstances beyond reasonable control

1. In the event of any failure by the Supplier because of something beyond its reasonable control, including industrial disputes (whether or not involving employees of the Supplier) or failure or delays by the Supplier's suppliers:
	1. it will advise the Customer as soon as reasonably practicable; and
	2. the Supplier's time to fulfil obligations will be extended so far as is reasonable, provided that it will act reasonably, and it will not be liable for any failure which it could not reasonably avoid.

## Excluding liability

1. The Supplier shall have no liability however arising for:
	1. a claim, or series of claims arising out of the same circumstances, arising out of the Supplier's negligently causing damage or loss to physical property other than the Goods, in excess of £5,000,000; and
	2. all other claims in total, in excess of a sum equal to 100% of the price paid and payable (exclusive of VAT and other taxes and duties) by the Customer for the Goods under the Contract giving rise to the claims.
2. Despite any other provision of the Contract, but subject to the first clause under Excluding liability, the Supplier shall have no liability however arising out of or in connection with the Contract and/or the supply of the Goods for any:
	1. direct or indirect loss of or damage to:
* profit;
* revenue;
* business;
* anticipated savings;
* data;
* goodwill;
* use.
	1. indirect or consequential loss or damage;

 except to the extent (subject to the Supplier's public and product liability cap in the first sub-clause under Excluding liability) that such loss or damage is a consequence of the Supplier's negligently causing damage or loss to physical property of the Customer other than the Goods and is recovered by the Supplier under its then subsisting insurance.

1. The Supplier shall not be liable to the Customer for any claim unless made with reasonable details in writing to the Supplier without unreasonable delay and in any event no later than (i) 3 months, or such longer period as may be reasonable in the circumstances, after the date the claimable event first came (or ought reasonably to have come) to the Customer's notice, and (ii) no later than 12 months after the delivery of the relevant Goods.
2. The term "however arising" when used or referred to in this clause covers all causes and actions giving rise to the liability of the Supplier arising out of or in connection with the Contract and/or the Goods including whether arising by reason of any (i) misrepresentation, negligence, breach of statutory duty, other tort, repudiation, renunciation or other breach of contract, restitution or otherwise; or (ii) total or partial failure or delay in supply or defective Goods.
3. The exclusions and limitations of liability contained in this Agreement and in the Contract shall apply regardless of whether the loss or damage was foreseeable or whether the Customer notifies the Supplier of the possibility of any greater loss or damage, but shall not apply to the extent not permitted by law and, in particular, nothing in this Agreement shall affect liability for death or personal injury caused by negligence or for fraudulent misrepresentation or other fraud.
4. Where the Contract is entered into with a Consumer, the statutory rights of the Customer are not affected by this Agreement.
5. The Customer should consider taking out its own insurance, and the Customer acknowledges that it had the opportunity to negotiate variations to the exclusions and limitations, upon the agreement of a higher price.

## Duration and Termination

1. This Agreement commences on the Effective Date and either party can end this Agreement and each Contract which has not already ended by giving 14 days written notice to the other party.
2. Either party can end this Agreement and each Contract which has not already ended by giving immediate written notice to the other if the other party commits a material breach of this Agreement and fails to remedy it within 7 days after being given written notice giving full particulars of the breach and requiring it to be remedied.
3. Either party can end this Agreement and each Contract which has not already then ended by immediate written notice to the other if:
	1. that other party commits a material breach of this Agreement which is not capable of remedy;
	2. that other party is dissolved, wound up or becomes unable to pay its debts as they fall due;
	3. a receiver is appointed, of any of the property or assets of that other party;
	4. that other party makes any voluntary arrangement with its creditors or becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
	5. that other party has a bankruptcy order made against it or goes into liquidation;
	6. that other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business (any of the events in sub-clauses (b) to (f) under this clause being an "Insolvency Event")
	7. that other party, being an individual, dies or as a result of illness or incapacity becomes incapable of managing his or her own affairs; or
	8. there is a change of control of that other party (within the meaning of section 1124 of the Corporation Tax Act 2010).

## Consequences of Termination

1. This Agreement's termination will not affect either party's accrued rights.
2. Other than as set out in this Agreement, neither party will have any further obligation to the other under this Agreement after its termination.

## General

1. The Contracts (Rights of Third Parties) Act 1999 does not apply to this Agreement and no third party will have any right to enforce or rely on any provision of this Agreement.
2. Unless otherwise agreed, no delay, act or omission by a party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.
3. Provisions which by their intent or terms are meant to survive the end of this Agreement, will do so.
4. Any notice (other than in legal proceedings) to be delivered under this Agreement must be in writing and delivered by pre-paid first class post to or left by hand delivery at the registered address or place of business of the notified party, sent by fax to its fax number or by email to its business email address.
5. Notices:
	1. sent by post will be deemed to have been received, where posted from and to addresses in the United Kingdom, on the second Working Day and where posted from or to addresses outside the United Kingdom, on the tenth Working Day after the date of posting;
	2. delivered by hand will be deemed to have been received at the time the notice is left at the proper address;
	3. sent by fax will be deemed to have been received on the next Working Day after transmission;
	4. sent by email will be deemed to have been received immediately after transmission.
6. The Supplier can assign, or deal in any other manner with any of its rights under this Agreement or sub-contract all or any of its obligations under it. The Customer cannot assign or otherwise deal with any of its rights or obligations under this Agreement, or subcontract any of its obligations under it.

## Entire Agreement

1. The Customer acknowledges that it does not rely on, and shall have no remedy in respect of, any representation, whether negligent or not, of any person which is not expressly set out in this Agreement, and the only remedy available to it for breach of any representation that is expressly set out in this Agreement shall be for breach of contract.

## Governing law and jurisdiction

1. This Agreement is governed and interpreted by the law of England and Wales. All disputes arising under this Agreement will be subject to the exclusive jurisdiction of the English and Welsh courts.

## THE SCHEDULE - SPECIFICATION OF SERVICES