

## **CONDITIONS OF SALE**

### **1 Interpretation**

In these Conditions:

“SUPPLIER” means Andrew Stark and his employees and agents

“CONDITIONS” means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes the relevant SUPPLIER job sheet for the work in question and any special terms and conditions agreed in writing between the Customer and SUPPLIER.

“CONTRACT” means the contract for the purchase and sale of the Goods and Services.

“CUSTOMER” means the person who accepts a quotation of SUPPLIER for their Services or for the sale of the Goods or whose order for the Goods is accepted by SUPPLIER.

“GOODS” means the goods (including any instalment of the goods or any parts for them) which SUPPLIER is to supply in accordance with these Conditions.

“SERVICES” means the services which SUPPLIER is to supply in accordance with these Conditions.

Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

The headings in these Conditions are for convenience only and shall not affect their interpretation.

### **2 Basis of the Sale**

SUPPLIER shall sell and the Customer shall purchase the Goods and the Services in accordance with SUPPLIER job sheet which is accepted by the Customer, or written order of the Customer which is accepted by SUPPLIER, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation accepted or purported to be accepted, or any such order is made or purported to be made, by the Customer.

No variation to these Conditions shall be binding unless agreed in writing between the Customer and SUPPLIER.

Any advice or recommendation given by SUPPLIER to the Customer as to the storage, application or use of the Goods which is not confirmed in writing by SUPPLIER is followed or acted upon entirely at the Customer's own risk, and accordingly SUPPLIER shall not be liable for any such advice or recommendation which is not so confirmed.

### **3 Orders and specifications**

No order submitted by the Customer shall be deemed to be accepted by SUPPLIER unless and until confirmed in writing by SUPPLIER.

The Customer shall be responsible to SUPPLIER for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer, and for giving SUPPLIER any necessary information within a sufficient time to enable SUPPLIER to perform the Contract in accordance with its terms.

The quantity, quality and description of and any specification for the Services and the Goods shall be those set out in SUPPLIER's job sheet.

SUPPLIER reserves the right to make any changes in the specification of the Services or the Goods which are required to conform with any applicable statutory or other applicable legislative requirements or, where the Goods are to be supplied to SUPPLIER's specification, which do not materially affect their quality or performance.

No order which has been accepted by SUPPLIER may be cancelled by the Customer except with the agreement in writing of SUPPLIER and on terms that the Customer shall indemnify SUPPLIER in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by SUPPLIER as a result of cancellation.

### **4 Price of the Services and Goods**

The price of the Services and Goods shall be SUPPLIER's quoted price or, where no price has been quoted (or quoted price is no longer valid), the price equivalent to SUPPLIER's labour rates and the cost of any materials and Goods supplied plus an appropriate mark up. All prices quoted are valid for 30 days only or until earlier acceptance by the Customer, after which time they may be altered by SUPPLIER without giving notice to the Customer.

SUPPLIER reserves the right, by giving notice to the Customer at any time before provision and/or delivery, to increase the price of the Services or Goods to reflect any increase in the cost to SUPPLIER which is due to any factor beyond the control of SUPPLIER (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Services or Goods which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give SUPPLIER adequate information or instructions.

The price is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to SUPPLIER.

## **5 Terms of Payment**

Subject to any special terms agreed in writing between the Customer and SUPPLIER, SUPPLIER shall be entitled to invoice the Customer for the price of the Goods on or at any time after provision of the Services and/or delivery of the Goods.

The Customer shall pay the price of the Services and/or Goods (less any discount to which the Customer is entitled, but without any other deduction) on the date of presentation to the Customer of SUPPLIER's invoice, and SUPPLIER shall be entitled to recover the price, notwithstanding that provision/delivery may not have taken place and the property in the Goods has not passed to the Customer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to SUPPLIER, SUPPLIER shall be entitled to:

cancel the contract or suspend any further provision of Services and/or deliveries of Goods to the Customer; and/or

appropriate any payment made by the Customer to such of the Goods and Services (or the goods supplied under any other contract between the Customer and SUPPLIER) as SUPPLIER may think fit (notwithstanding any purported appropriation by the Customer) ;and/or

charge the Customer interest (both before and after any judgment) on the amount unpaid, at the rate allowed by the Late Payment of Commercial Debts (Interest ) Act 1998 until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

5.5 If the Customer disputes one element of any invoice for the supply of Goods or Services, the undisputed part shall remain fully due and payable.

## **6 Delivery**

Delivery and installation of the Goods and provision of the Services shall be made by SUPPLIER at the Customer's premises or any other agreed location at any time when SUPPLIER has notified the Customer that SUPPLIER is able to do so. However time is not of the essence of the Contract in this respect.

Where the Services or Goods are to be provided or delivered in instalments, each delivery shall constitute a separate contract and failure by SUPPLIER to deliver any one or more of the instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.

If SUPPLIER fails to deliver Goods (or any instalment) or supply any Services for any reason other than any cause beyond SUPPLIER's reasonable control or the Customer's fault, and SUPPLIER is accordingly liable to the Customer, SUPPLIER's liability shall be limited to the sum payable by the Customer in relation to the Goods and/or Services.

If the Customer fails to provide access to any premises necessary to provide the Services or install the Goods or fails to give SUPPLIER adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of SUPPLIER's fault) then, without prejudice to any other right or remedy available to SUPPLIER, SUPPLIER may:

store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; and/or  
sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract and/or  
charge the Customer for reasonable costs incurred by SUPPLIER.

## **7 Risk and property**

Risk of damage to or loss of the Goods shall pass to the Customer at the time of delivery/installation or, if the Customer wrongfully fails to take delivery of the Goods, the time when SUPPLIER has tendered delivery of the Goods.

Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Customer until SUPPLIER 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 SUPPLIER to the Customer for which payment is then due.

Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as SUPPLIER's fiduciary agent and bailee.

Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold), SUPPLIER shall be entitled at any time to require the Customer to deliver up the Goods to SUPPLIER and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of SUPPLIER, but if the Customer does so all moneys owing by the Customer to SUPPLIER shall (without prejudice to any other right or remedy of SUPPLIER) forthwith become due and payable.

## **8 Warranties and liability**

- 8.1 Subject to the conditions set out below SUPPLIER 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 [ 3 ] months from delivery or installation, whichever is the first to expire and that the Services shall be carried out with reasonable skill and care.
- 8.2 The above warranty is given by SUPPLIER subject to the following conditions:
- 8.2.1 SUPPLIER shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Customer;
- 8.2.2 SUPPLIER shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow SUPPLIER's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without SUPPLIER's approval;
- 8.2.3 SUPPLIER shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
- 8.2.4 the above warranty does not extend to parts, materials or equipment not manufactured by SUPPLIER, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to SUPPLIER.
- 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 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1076) the statutory rights of the Customer are not affected by these Conditions.
- 8.5 Any claim by the Customer 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 Customer) be notified to SUPPLIER within 7 days from the date of delivery or installation or the Services having been carried out or (where the defect or failure was not apparent on reasonable inspection) within a reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Customer does not notify SUPPLIER accordingly, the Customer shall not be entitled to reject the Goods and SUPPLIER shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.6 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 SUPPLIER in accordance with these Conditions, SUPPLIER shall be entitled to replace the Goods (or the part in question) free of charge or, at SUPPLIER's sole discretion, refund to the Customer the price of the Goods (or a proportionate part of the price) and/or remedy defective

work carried out as part of the Services, but SUPPLIER shall have no further liability to the Customer.

- 8.7 Except in respect of death or personal injury cause by SUPPLIER's negligence, SUPPLIER shall not be liable to the Customer by reason of any representation (unless fraudulent), 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 or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of SUPPLIER, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or Services or the use or resale by the Customer, and the entire liability of SUPPLIER under or in connection with the Contract shall not exceed the price of the Goods and/or Services, except as expressly provided in these Conditions.
- 8.8 SUPPLIER shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of SUPPLIER's obligations in relation to the Goods or Services, if the delay or failure was due to any cause beyond SUPPLIER's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond SUPPLIER's reasonable control:
- 8.8.1 Act of God, explosion, flood, tempest, fire or accident;
  - 8.8.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
  - 8.8.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
  - 8.8.4 import or export regulations or embargoes;
  - 8.8.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of SUPPLIER or a third party);
  - 8.8.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
  - 8.8.7 power failure or breakdown in machinery.

## **9 Insolvency of customer**

- 9.1 This clause applies if:
- 9.1.1 the Customer makes any 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
  - 9.1.2 an encumbrance takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
  - 9.1.3 the Customer ceases, or threatens to cease, to carry on business; or
  - 9.1.4 SUPPLIER reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 9.2 If this clause applies then, without prejudice to any other right or remedy available to SUPPLIER shall be entitled to cancel the Contract or suspend any

further deliveries or provision of Services under the Contract without any liability to the Customer, and if the Goods have been delivered or Services provided but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## **10 General**

- 10.1 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.
- 10.2 The Contract shall be governed by the laws of England, and the Customer agrees to submit to the non-exclusive jurisdiction of the English courts.