

Bischof+Klein (UK) Ltd

Conditions of Sale – Version 2.0, Adopted 08/2021

1. DEFINITIONS

In these Conditions "the Company" means Bischof & Klein (UK) Ltd, "the Buyer" means any company, firm or individual or agent thereof, to whom the company's quotation or acknowledgement of order is addressed, "the Goods" means the products, materials and/or services to be supplied by the company, "the Conditions" means the conditions of sale.

2. VALIDITY

- 2.1 These Conditions shall apply to all contracts for the supply of Goods by the Company and exclude any conditions and warranties referred to by the Buyer even if contained in any of the Buyer's documents which purport to provide that the Buyer's own terms shall prevail. In the event of conflict between these Conditions and any conditions of purchase of the Buyer, these Conditions prevail.
- 2.2 The terms of the contract consist only of those contained in these Conditions and where appropriate in the Company's written acceptance of the Buyer's order. The Buyer shall not be entitled to rely on any other representations, statements or warranties whatsoever unless specifically confirmed by the Company in writing.
- 2.3 The Buyer's quotation is an invitation to treat and no contract shall arise between the Company and the Buyer unless and until the Company has confirmed the Buyer's order placed on the Company's quotation, either in writing or otherwise.

3. PRICES

- 3.1 The price quoted by the Company in a quotation is based on the cost of materials, labour services, normal packaging (where appropriate), carriage, delivery and insurance and the levels of any applicable taxes, customs or other duties ruling at the date of the quotation (other than VAT). If between the date of quotation and the date of the delivery of the Goods there is an increase costs or levels, including a rise by devaluation or revaluation of any currency, the prices should be adjusted by adding the amount of increase in such cost and levels whether or not these should have been foreseen by the Company.
- 3.2 Unless otherwise stated, prices do not include VAT, which will be chargeable at the date of dispatch or relevant tax point.

4. DELIVERY

- 4.1 Delivery will be effected to the address specified by the Buyer and the risk of loss or damage of any kind in the Goods shall pass to the Buyer on delivery and the Buyer shall be insured accordingly.
- 4.2 Notwithstanding the method of delivery, the Buyer shall carefully examine the Goods on receipt of the same and any quality claims must be made in writing immediately after the Buyer learns of the defect and in any event in accordance with clause 11.2 of these Conditions.
- 4.3 The Company will use reasonable commercial endeavours to deliver the Goods in accordance with any time stated in the contract, but any delivery dates are estimates only and time of delivery shall not be of essence to the contract and the Company shall not be liable for any loss or damage suffered as a result of any delay, whether due to negligence by the Company, its servants or agents, or otherwise howsoever.
- 4.4 The Company reserves the right to make deliveries by instalments and render a separate invoice in respect of each such instalment.
- 4.5 If the company exercises its right to make deliveries in accordance with sub-paragraph (4.4) above, then any delay in the provision of such deliveries, or failure to deliver any further instalment or instalments, shall not entitle the Buyer to reject the contract or the delivery of any other instalment or to withhold payment in respect of any instalment previously delivered.

5. PAYMENT

- 5.1 Unless expressly agreed in writing, payment for orders should be made in sterling, in full, by the due date, being the 30th day following the date of the invoice. Where full payment is not received by the due date, interest may accrue on the sum outstanding at the rate of 4% above HSBC Bank plc base rate, for the time being in force, per month, calculated on a daily basis without prejudice to the Company's right to receive payment on the due date.
- 5.2 Time for payment shall be of the essence, and in the event of delay or default in any payment, the Company shall be entitled to suspend deliveries and/or require payment in advance for further deliveries and be indemnified by the Buyer for any loss thereby incurred.

6. PROPERTY IN GOODS

- 6.1 Notwithstanding any agreed terms of payment, the Goods are sold or delivered on the condition precedent that the ownership of the Goods shall remain with the Company and no property in the Goods, whether legal or equitable, shall pass from the Company and on condition that the Goods will be held by the Buyer as bailee and will be stored separately in such manner that they can be readily identified as the property of the Company until payment of the full price has been received of:
 - (i) all goods the subject of this contract, and without prejudice to the specific contract relating to the Goods the subject thereof.
 - (ii) all other goods the subject of any other contract between the Company and the Buyer.
- 6.2 Notwithstanding the provisions of 6.1 above, all Goods after delivery are at the Buyer's risk and must be paid for notwithstanding the destruction thereof or any damage thereto however caused.
- 6.3 If the Buyer fails to pay for the Goods by the due date (or fails to pay any instalment, in which case the whole outstanding balance shall immediately become due) or if the Buyer goes into receivership or is declared bankrupt (or any equivalent thereof), or enters into a composition with its creditors or if the Buyer, being a company, goes into liquidation or into receivership or is otherwise declared insolvent or prohibited from trading or in the opinion of the Company one of the afore mentioned events is imminent, then the Buyer shall immediately notify the Company thereof and shall, upon demand made orally or in writing by or on behalf of the Company, deliver the Goods or cause the Goods to be delivered up to the Company or to the Company's order.
- 6.4 In the event of the determination or repudiation of the contract (howsoever occurring), the Company is hereby irrevocably authorised to enter onto the premises of the Buyer and repossess the Goods.
- 6.5 The Buyer will keep the Goods free from and will indemnify the Company against any charge, lien or other encumbrance thereon.

7. DESCRIPTIVE MATTER ETC

All technical details and descriptive matter given by or on behalf of the Company in respect of the Goods, including the detailed technical conditions and specifications set out in the Company's published Technical Criteria (copies of which are available from the Company on request), are intended by the Company to be as accurate as possible but no warranty or undertaking of any kind is given by the Company that the Goods shall be in conformity therewith.

8. TECHNICAL REPRESENTATIONS AND ADVICE

Recommendations and advice given by the Company or its representatives to the mode of storing or using of the Goods, including any relevant Health and Safety Regulations are given without liability.

9. PERFORMANCE PREVENTED OR HINDERED

The Company shall not be liable for any delay or failure in carrying out its obligations which is caused wholly or partly by reason of a force majeure including inability to obtain raw materials, manufacturing facilities or any other cause beyond the Company's control or that of its servants or agents. The Company shall also be entitled in any such circumstances as aforesaid to reduce the original delivery quantity.

10. LIEN

The Company shall in its discretion be entitled to retain possession of the Goods or any part thereof until payment for the Goods or parts thereof has been received in full and the Company shall be entitled to exercise a general lien or right of retention on all Goods or any parts thereof in the Company's possession which are or are intended to become the Buyer's property in regard to all debts, damages or other sums due to the Company under any contract whatsoever between the Company and the Buyer.

11. QUALITY, CONDITION AND DESCRIPTION OF GOODS

11.1 The Company warrants that the products and Goods manufactured by it will be of good materials and workmanship and fit for the purpose specified by the Buyer but not further or otherwise. If the Buyer finds that the Goods do not meet these contract terms it shall give notice in writing to the Company. The Company will investigate the complaint and at its discretion replace the Goods or issue a credit note. The exercise by the Company of any of the above options shall be deemed to be accepted by the Buyer in full settlement of the liability of the Company. Save as aforesaid, all other conditions, guarantees or warranties whether express or implied are hereby excluded.

11.2 The above warranty shall apply in respect in matters whereof:

- (i) the Buyer has given written notice to the Company within 10 days of delivery of the Goods, or
- (ii) in the case of a hidden defect within 10 days of the defect becoming apparent but within 3 months of the delivery of the Goods,

after which any claim shall be absolutely barred.

12. FAULTY DISPATCH

Any claim for error in dispatch or invoicing of the Goods must be made in writing to the Company within 10 days of the Buyer being notified of the relevant dispatch or within 10 days of receipt by the Buyer of the relevant invoice whichever is the later, after which any claim shall be absolutely barred.

13. INDEMNITY

The Buyer shall indemnify the Company, in respect of all damage or injury occurring to any person, company or property and against all actions, claims, demands or expenses in connection therewith for which the Company may become liable in respect of the Goods including but without prejudice to the generality of the foregoing claims against the Company under Part 1 of the Consumer Protection Act 1987 in respect of an alleged defect in the Goods.

14. LIMITATION

The Company shall in no circumstances be liable:

- 14.1 for any consequential loss or damage or claim by the Buyer including without limitation, delay, detention, loss of production, loss of profit, loss of time, charges or liability to third parties, save where prevented by statute,
- 14.2 for any loss or damage in excess of the contract price.

The limitations will apply even in the case of a fundamental term or repudiation by the Company and even if further performance of the contract is frustrated.

15. DETERMINATION

If the Buyer shall make default in or commit a breach of the contract or of any of its obligations to the Company, or if any distress or execution shall be levied upon the Buyer's property or assets, or if the Buyer shall make or offer to make any arrangement or composition with creditors or commit any act of bankruptcy, or if any petition or receiving order in bankruptcy shall be presented or made against the Buyer, or if the Buyer is a limited company and any resolution or petition to wind up such company's business (other than for the purpose of amalgamation or reconstruction) shall be passed or presented, or if a receiver of such company's undertaking, property or assets or any part thereof shall be appointed, the Company shall have the right forthwith to determine any contract then subsisting and upon written notice of such determination being given to the Buyer any subsisting contracts shall be deemed to have been determined and the Company shall be entitled to recover from the Buyer all losses thereby arising, including but not limited to those under paragraph 16 of these conditions or otherwise.

16. PARTIAL COMPLETION

In the case of partial completion of an order by reason of any of the events referred to in paragraphs 9 or 15 of these Conditions, the Company shall be entitled to a quantum meruit in respect of all work done by it without prejudice to its rights, should non-completion be occasioned by the Buyer.

17. CANCELLATION OF ORDERS

Orders which have been acknowledged cannot be cancelled and Goods dispatched are not returnable without the Company's consent who may make an apportion charge.

18. NOTICES

Unless otherwise provided in writing, any written communication or notice under the contract shall be made or given by sending the same by ordinary prepaid letter post in the case of the Company to its current address and in the case of the Buyer to its last known address, and if so sent shall be deemed to be made or given two days after the date when posted.

19. LAW AND INTERPRETATION

The contract shall be governed by English Law and the Buyer shall submit to the non exclusive jurisdiction of the English Courts.

20. ARBITRATION

If at any time any question, dispute or difference whatsoever shall arise between the Buyer and the Company in connection with or arising out of the contract, either party may give to the other notice in writing of its existence with short particulars of the point in issue and of its intention (if necessary) to submit the dispute to arbitration. Such question, dispute or difference shall then be referred to the decision of an arbitrator in England to be agreed on by the Buyer and the Company, or failing agreement within 14 days of either party having given to the other the name of a suggested arbitrator, to be appointed on the request of either party by the President for the time being of the Law Society.

21. In the event of any one or more of the provisions of these Conditions shall be found to be illegal or unenforceable, then notwithstanding this, these Conditions shall remain in full force and effect and such term or provision shall be deemed severed.