

PALLETOWER (G.B.) LIMITED - TERMS AND CONDITIONS OF SALE

1. **DEFINITIONS** Target not found! **DEFINITIONS** 'U' 1
1.1 In these Conditions (unless the context otherwise requires):
1.2 "the Buyer" the person whom the Contract is made by the Company whether directly or indirectly through an agent or factor who is acting for or instructed or whose actions are ratified by such person, firm or company
1.3 "the Company" Palletower (G.B.) Limited (registered number, 00901880) and also (where the context so permits) its assigns and any sub-contractor for the said company
1.4 "the Contract" the contract between the Buyer and the Company for the sale and purchase of the Goods formed in accordance with Condition 3 and consisting of the Acknowledgement and the Order; and the Company's quotation for the sale or supply of the Goods and these Conditions and if there shall be any inconsistency between the documents comprising the Contract they shall have precedence in the order herein listed.
1.5 "Goods" the articles or things or any of them or any part of them (whether new or used) described in the Contract
1.6 "the Specification" the technical description (if any) of the Goods contained or referred to in the Contract
1.7 All headings are for ease of reference only and shall not affect the construction or interpretation of the Contract.
1.8 Unless the context otherwise requires:
1.9 words in singular shall include the plural and vice versa;
1.10 references to any gender shall include the others;
1.11 references to legal persons shall include natural persons and vice versa;
1.12 references to any statute or statutory provision shall include any subordinate legislation made under it and shall be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time; and any words following "includes" or "in particular" or any similar words or expressions shall be construed without limitation and accordingly shall not limit the meaning of the words preceding them.
2. **GENERAL** Target not found! **GENERAL** 'U' 1
2.1 These Conditions shall be deemed to be incorporated into the Contract to the exclusion of all other terms and conditions and all previous oral and written representations. In the case of any inconsistency with any order, letter or form of contract sent by the Buyer to the Company or any other communication between the Buyer and the Company or any other document, the provisions of these Conditions shall prevail unless expressly varied in writing and signed by a person duly authorised on behalf of the Company.
2.2 A copy of the Company's Safety Instructions in connection with the use of the Goods will be supplied with the Acknowledgement. The Company strongly recommends that the Buyer reads, and ensures that its appropriate employees have read and understood, those Safety Instructions in full before utilising the Goods. The Company will provide extra copies of the Safety Instructions or assist with telephone enquiries regarding safety, should the Buyer so wish.
3. **ORDERS** Target not found! **ORDERS** 'U' 1
3.1 Each order or acceptance of a quotation for Goods will be deemed to be made by the Buyer to purchase Goods under these Conditions. The Contract is formed when the order is accepted by the Company, by way of a written acknowledgement of order ("Acknowledgement"). No contract will come into existence until the Acknowledgement is issued by the Company.
3.2 Acceptance of delivery of the Goods will be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
3.3 All samples, drawings, descriptive matter, the Specification and advertising issued by the Company (or the manufacturer of the Goods) and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods represented by or described in them. They will not form part of the Contract and this is not a sale by sample.
3.4 The Company may make any changes to the Specification, design, materials or finishes of the Goods which:
3.4.1 are required to conform with any applicable safety or other statutory or regulatory requirements or
3.4.2 do not materially affect their quality or performance.
4. **PRICES** Target not found! **PRICES** 'U' 1
4.1 Unless otherwise agreed by the Company in writing:
4.1.1 the price payable for the Goods shall be the price specified in the Acknowledgement;
4.1.2 in the case of an order for delivery by instalments the cost payable for each instalment shall be the relevant proportion of the total cost of the Goods; and
4.1.3 the Company's prices are subject to variation to take account of:
4.1.3.1 variations in wages, materials and other costs since the date of the Acknowledgement;
4.1.3.2 any changes in the Specification made both at the request of the Buyer and agreed by the Company; and
4.1.3.3 extra expense incurred in conforming with any applicable safety or other statutory or regulatory requirements.
The Company accordingly reserves the right to adjust the invoice price by the amount of any increase in costs resulting from all or any of the circumstances set out in Condition 4.1.3 after the date of the Acknowledgement and the invoice so adjusted shall be payable as if it were the original contract price.
All prices are exclusive of value added tax and other applicable taxes and shall be charged at the appropriate rate.
5. **PALLETS FOR DESPATCH** Target not found! **PALLETS FOR DESPATCH** 'U' 1
5.1 The cost of any pallets and packaging or containers will be paid for by the Buyer (together with VAT) in addition to the price for the Goods when it is due to pay for the Goods.
6. **ADDITIONAL COSTS** Target not found! **ADDITIONAL COSTS** 'U' 1
6.1 The Buyer agrees to pay any last or extra costs incurred by the Company through the Buyer's instructions or lack of instructions or through failure or delay in taking delivery or through any default on the part of the Buyer, its agents or employees.
6.2 The Buyer shall indemnify the Company against all costs, claims, losses, expenses and damages incurred by the Company or for which it may be liable due to or arising out of any infringement or alleged infringement of patents, trade marks, copyright, design right or other intellectual property right occasioned by the manufacture or sale of the Goods if made to the specification or special requirements of the Buyer.
7. **TERMS OF PAYMENT** Target not found! **TERMS OF PAYMENT** 'U' 1
7.1 Unless otherwise agreed by the Company in writing payment for the Goods shall be made by the Buyer in pounds sterling no later than the tenth day of the month immediately following the date on which the Goods were delivered or deemed to have been delivered in accordance with Condition 8.9 save that payment shall become due in any event immediately upon the Company being entitled to terminate the Contract in accordance with Condition 16.
7.2 If the Goods are delivered in instalments the Company shall be entitled to invoice each instalment as and when delivery thereof has been made and payment shall be due in respect of each instalment where delivery has been made in accordance with Condition 7.1 notwithstanding non-delivery of other instalments or other default on the part of the Buyer. For the avoidance of doubt, such invoice shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment will entitle the Buyer to repudiate or cancel any other Contract or instalment.
7.3 If the Company has agreed in writing that the price shall be payable by instalments or if the Buyer has agreed to take specified quantities of the Goods at specified times a default by the Buyer in the payment of any due instalment or the failure to give instructions in respect of any quantity of Goods outstanding shall cause the whole of the price to become due. For the avoidance of doubt, the Buyer shall be deemed to have agreed to such instalments.
7.4 The price of the Goods shall be in full in the Contract in accordance with the terms of the Contract without any set-off, restriction or condition and without any deduction for or on account of any counterclaim, unless the Buyer is required by law to make any such deduction or withholding.
7.5 The time of payment shall be of the essence of the Contract.
7.6 Without prejudice to any other right it may have the Company is entitled to charge interest at 8% above the Bank of England base rate on overdue payments of the price of the Goods or the price of any instalments thereof from the due date for payment until the outstanding amount has been received in cleared funds by the Company from the Buyer, as well as after being judgment.
7.7 The Company shall be entitled (at its absolute discretion) to withhold supply or delivery of any or all of the Goods until all payments under any contract between the Company and the Buyer have been delivered by the Company in full and unconditionally.
8. **DELIVERY** Target not found! **DELIVERY** 'U' 1
8.1 Unless agreed otherwise and specified in the Acknowledgement, delivery of the Goods will be made ex-works as defined in INCOTERMS 2000.
8.2 The Buyer to take delivery of the Goods during either the period stated in the Contract or (if no such period is stated) the period otherwise notified by the Company to the Buyer whether orally or in writing.
8.3 The Company will use reasonable endeavours to deliver each of the Buyer's orders for the Goods within the time period referred to in Condition 8.2 above and, if no time is agreed, then within a reasonable time, but the time of delivery will not be of the essence. If, despite those endeavours, the Company is unable for any reason to fulfill any delivery during the specified period, the Company will be deemed not to be in breach of this Contract, nor (for the avoidance of doubt) will the Company have any liability for delay, non-delivery or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) however caused (including as a result of negligence) by any delay or failure in delivery. Any delay in delivery will not entitle the Buyer to cancel the order.
8.4 Where the Goods are handed to a carrier for carriage to the Buyer or to a United Kingdom port for export any such carrier shall be deemed to be an agent of the Company and not of the Buyer for the purposes of sections 44, 45, and 46 of the Sale of Goods Act 1979.
8.5 The Buyer agrees that sections 22(1)-(3) of the Goods Act 1979 shall apply to Goods sent by the Company.
8.6 Subject to Condition 8.3, the Company is not liable for non-delivery or loss of or damage to the Goods occurring prior to delivery or for any claim that the Goods are not in accordance with the Contract unless the Buyer notifies its claim in writing to the Company (and in the case of claims for non-delivery, loss or damage where the Goods are not delivered ex works, with a copy to the carrier if the Company's own vehicles have not been used to deliver the Goods):
8.6.1 within seven days of the date of actual delivery or collection for loss, damage or non-compliance with the Contract; or
8.6.2 within seven days of the expiry of the period specified in Condition 8.2 in respect of non-delivery.
8.7 In the event of a valid claim for non-delivery, loss, damage or non-compliance with the Contract the Company undertakes at its option either to reprocess or replace the Goods at its expense but shall not be under any further or other liability to any person in connection with such non-delivery, loss, damage or non-compliance, except as set out in Condition 17.2.
8.8 If the Buyer shall fail to give notice in accordance with Condition 8.6 above the Goods shall be deemed to be in all respects in accordance with the Contract and without prejudice to any other provision of these Conditions, the Buyer shall be deemed to have accepted the Goods.
8.9 If the Buyer fails to collect any of the Goods (where the Goods are being delivered ex works) or (where the Goods are not being delivered ex works) to take delivery of any of the Goods or to provide any instructions, documents, licences or authorisations required to enable the Goods to be delivered on time (except solely on account of the Company's default) the Goods will be deemed to have been delivered on the due date, being the last date falling within the time period specified in Condition 8.2, and (without prejudice to its other rights) the Company may:
8.9.1 store or reprocess or resell the Goods or sell or re-sell in accordance with Condition 8.9.2 and charge the Buyer for all related costs and expenses (including, without limitation, storage and insurance); and/or
8.9.2 following written notice to the Buyer, sell any of the Goods at the best price reasonably obtainable in the circumstances and charge the Buyer for any shortfall below the price under the Contract having taken into account any charges related to the sale.
8.10 The Company shall have the right to make delivery by instalments of such quantities and at such intervals as it may decide, and any express provision as to instalments in the Contract shall be in addition to and not in derogation of this right.
8.11 Without prejudice to any other provisions of these Conditions the Buyer shall not have the right to reject any items of the Goods if:
8.11.1 it asks the Company to repair the same or consents to the Company so doing; or
8.11.2 it resells such item; or
8.11.3 it accepts any other item of the Goods.
9. **RETURNS** Target not found! **RETURNS** 'U' 1
9.1 Goods supplied in accordance with the Contract cannot be returned without the Company's prior written authorisation. Duty authorised returns (accompanied by a comprehensive delivery note which must include the Company's works order number) shall be sent to such address in the United Kingdom as the Company may specify, at the Buyer's expense.
10. **CARRIAGE** Target not found! **CARRIAGE** 'U' 1
10.1 Where the Goods are not being delivered ex works then unless otherwise agreed by the Company in writing or unless the Company is requested to and does quote a price expressly for the same, the price of the Goods is exclusive of carriage, packing and insurance to the Buyer's premises and accordingly unless the Buyer requests in writing that it or its carrier be allowed to collect the Goods (in which event the Company shall notify to the Buyer the location from which the Goods can be collected), the Company shall arrange for delivery of the Goods to the Buyer's premises and shall charge the Buyer for delivery in accordance with the Company's usual practice.
11. **PASSING OF TITLE AND RISK** Target not found! **PASSING OF TITLE AND RISK** 'U' 1
11.1 From the time of actual collection of the Goods by the Buyer in accordance with Condition 8.2 (where the Goods are being delivered ex works) or (where the Goods are not being delivered ex works) actual delivery, or deemed delivery in accordance with Condition 8.9 the Goods shall be at the Buyer's risk (including, without limitation, for loss or damage caused by the Company's negligence) and the Buyer shall be solely responsible for their satisfactory custody and maintenance but, unless otherwise expressly agreed in writing, ownership of the Goods will not pass to the Buyer until the Company has received in full (cash or cleared funds) and unconditionally all sums due to it under the Contract and any other contract between the Company and the Buyer. Whilst the Company's ownership continues the Buyer shall keep the Goods (if not to the Company) separate and identifiable from all other goods in its possession as bailee for the Company.
11.2 The Buyer may resell the Goods before ownership has passed to it provided that:
11.2.1 any sale will be effected in the ordinary course of the Buyer's business at full market value and the Buyer will account to the Company accordingly; and
11.2.2 any such sale will be a sale of the Company's property on the Buyer's own behalf and the Buyer will deal as principal when making such a sale.
11.3 In the event of failure to resell the Goods in accordance with the Contract the Company shall have power to re-sell the Goods, such power being additional to (and not in substitution for) any other power of sale arising by operation of law or implication or otherwise.
11.4 Pending payment of the full purchase price of the Goods the Buyer shall at all times keep the Goods in satisfactory condition and comprehensively insured on the Company's behalf against loss or damage by accident, fire, theft and other risks usually covered by insurance in the type of business carried on by the Buyer in an amount at least equal to their full price. The policy shall bear an endorsement recording the Company's interest, and the Buyer will whenever requested by the Company produce a copy of the policy of insurance.
11.5 The Buyer's right to possession of the Goods will terminate immediately if any of the circumstances set out in Condition 16.1 or 16.2 occur in circumstances when ownership of the Goods has not passed to the Buyer.
11.6 The Company will be entitled to recover payment for the Goods notwithstanding that title in any of the Goods has not passed from the Company.
11.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
11.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer will be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.
11.9 On termination of the Contract, however caused, the Company's (but not the Buyer's) rights contained in this Condition 11 will remain in effect.
12. **DEFECTIVE GOODS** Target not found! **DEFECTIVE GOODS** 'U' 1
12.1 In substitution for all other rights but which the Buyer would or might have but for these Conditions the Company undertakes that if within 12 months of delivery of any item of the Goods a serious defect in materials or workmanship appears therein the Company will at its option either credit to the Buyer in full the price paid by the Buyer to the Company for such item or repair it or supply a replacement thereof free of charge at the same place of delivery as for the original Goods provided that in any case such Goods have been accepted and paid for. This obligation will not apply where:
12.1.1 the Goods have been improperly altered in any way whatsoever, or have been subject to misuse or unauthorised repair;
12.1.2 the Goods have been improperly used or installed;
12.1.3 any maintenance requirements relating to the Goods have not been complied with;
12.1.4 any instructions as to storage of the Goods or safety instructions in respect of use of the Goods have not been complied with in all respects; or
12.1.5 the Buyer has failed to notify the Company of any defect or suspected defect within 7 days of the delivery (where the defect should be apparent on reasonable inspection), or within 7 days of the defect coming to the knowledge of the Buyer (where the defect is not one which should be apparent on reasonable inspection).
12.2 In order to exercise its right under this Condition 12 the Buyer shall at the Company's written request return the defective Goods carriage paid to the Dane Road Premises (as defined in Condition 19.2.1 below) or such other address as may be advised by the Company.