

TERMS AND CONDITIONS OF PURCHASE

INTRODUCTION

These Conditions set out the entire terms and conditions upon which the Customer has agreed to purchase goods and/or services from the Supplier and shall apply to the exclusion of any other terms and conditions including any other terms and conditions which the Supplier may purport to apply whether through the use of any standard form documents or otherwise.

1 DEFINITIONS AND INTERPRETATION

1.1 In these Conditions the following words have the following meanings: **Conditions** means these terms and conditions; **Contract** means a contract between the Customer and the Supplier for the sale and purchase of Goods and/or Services (as applicable) made subject to these Conditions which has come into force following the acceptance of an Order in accordance with Clause 2.3; **Customer** means Kluman Balter Limited or the applicable company within the Customer group issuing an Order to the Supplier; **Delivery** means the date on which the Supplier completes the delivery of Goods or the performance of Services (as applicable) in accordance with these Conditions; **Goods** means the goods as detailed in any Order; **Order** means the Customer's order for any Goods or Services as may be set out in any purchase order issued by the Customer to the Supplier from time to time; in any written acceptance issued by the Customer to the Supplier of any quotation provided to it by the Supplier (but which excludes for the avoidance of doubt the acceptance of any terms and conditions which the Supplier may have purported to apply in any such quotation); or in any other written request for Goods or Services which is issued by the Customer to the Supplier from time to time; **Services** means the services as detailed in any Order; and **Specification** means any specification for Goods or Services issued by the Customer to the Supplier; agreed between the Customer and the Supplier in writing; and, to the extent not contradictory with any of the foregoing or these Conditions, any specifications provided or made available by the Supplier to the Customer.

1.2 In these Conditions and each Contract: headings are inserted for convenience only and shall not affect construction or interpretation; references to Clauses are to the Clauses of these Conditions; words denoting the singular shall include the plural and vice versa; words denoting any gender shall include all genders; any reference to any law, statute, statutory provision, statutory instrument, directive, subordinate legislation, code of practice or guideline shall be construed as a reference to the same as may be amended, consolidated, modified, extended, re-enacted or replaced from time to time; and use of words such as "include", "including" and "in particular" shall not limit the generality of any preceding or following words which are not intended to be exhaustive.

2 BASIS OF CONTRACT

2.1 These Conditions apply to each Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which otherwise are implied by trade, custom, practice or course of dealing.

2.2 Each Order constitutes an offer by the Customer to purchase the Goods or Services in question in accordance with these Conditions.

2.3 Each Order shall be deemed to be accepted on the earlier of: the Supplier issuing a written acceptance of the Order (which the Supplier must provide within five days of receipt of the applicable Order); and the Supplier doing any act consistent with fulfilling the Order, at which point a Contract shall come into existence.

3 GOODS AND SERVICES

3.1 As a condition of each Contract the Supplier shall ensure that the applicable Goods and/or Services shall: **(a)** correspond with their description and any Specification (and after the acceptance of an Order the Supplier shall not make any change to any Specification whatsoever without the written consent of the Customer); **(b)** be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement; **(c)** be manufactured and performed in accordance with any Customer quality systems, production systems or other Customer policies and procedures from time to time in force which are notified to the Supplier and in any event, using all reasonable skill, care and diligence; **(d)** be accompanied by a certificate of analysis and certificate detailing their country of origin; **(e)** be free from defects in design, material and workmanship and remain so for the entire shelf life of the Goods following Delivery; **(f)** ensure that the Goods have a minimum of 70% of their total shelf life remaining following Delivery; and **(g)** comply with all applicable statutory and regulatory requirements relating to the manufacture, performance, labelling, packaging, storage, handling and delivery of the Goods and/or the performance of the Services (as applicable).

3.2 At any-time prior to completion of the delivery/performance of any Goods or Services the Customer may by written notice make changes to its requirements (including to any Specification, time for delivery/performance or quantity) and the Supplier shall comply with such changes as if those were originally set out in the applicable Order. If any such changes would result in a material increase to the Supplier's direct costs or time required for performance then an equitable adjustment shall be made to the terms of the applicable Contract provided that the Supplier notifies the Customer of its requested adjustments prior to proceeding with the changes requested by the Customer and those adjustments are approved in writing by the Customer.

3.3 The Supplier shall ensure that at all times it has and maintains all licences, permissions, authorisations, consents and permits that it needs to lawfully carry out its obligations under each Contract.

3.4 The Customer shall have the right to inspect and test Goods at any time before delivery. If following such inspection or testing the Customer considers that the Goods do not conform or are unlikely to comply with Clause 3 then the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance and the Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

3.5 Notwithstanding any inspection or testing pursuant to Clause 3.4, the Supplier shall remain fully responsible at all times for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under any Contract.

4 DELIVERY/PERFORMANCE

4.1 The Supplier shall ensure that: **(a)** Goods are packed and labelled in accordance with any requirements detailed in the Specification or Order and in any event as a minimum in accordance with all applicable legal requirements and in such manner so as to enable them to reach their destination in good condition; **(b)** each delivery of Goods is accompanied by a delivery note which shows the date of the Order, the purchase order number supplied by the Customer (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and **(c)** if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost and risk of the Supplier.

4.2 The Supplier shall deliver Goods and/or perform Services (as applicable): **(a)** on the date specified in the Order, or, if no such date is specified, within such reasonable time period as requested by the Customer (and time of delivery/performance shall be of the essence); **(b)** to or at the location as is set out in the Order, or otherwise as instructed by the Customer prior to delivery or performance; and **(c)** during the Customer's normal business hours, or otherwise as instructed by the Customer.

4.3 Delivery of Goods shall be completed upon completion by the Supplier of safe unloading of the Goods at the specified delivery location. Performance of any Services shall be completed once the Supplier has successfully completed all activities which make up the Services in question.

4.4 The Supplier shall not deliver any Goods nor perform any Services in instalments other than with the prior written consent of the Customer. Where it is agreed that any Goods or Services are to be delivered or performed in instalments then those must be invoiced and will be paid for separately. However, failure by the Supplier to deliver or perform any one instalment on time or otherwise in accordance with the applicable Contract shall entitle the Customer to the remedies set out or referred to in Clause 5.

5 REMEDIES

- 5.1** If Goods are not delivered or Services not performed on the due date or do not otherwise comply with all requirements of the applicable Contract then, without limiting any of its other rights or remedies, the Customer shall have the right to any one or more of the following remedies, whether or not it has accepted the Goods or Services in question: **(a)** to terminate the applicable Contract and (at the Customer's discretion) any other outstanding Contracts; **(b)** to reject the Goods or Services (in whole or in part) and in the case of Goods to return those to the Supplier at the Supplier's own risk and expense or require the Supplier to collect those in which case, the Supplier shall collect at its own expense within 5 days; **(c)** to require the Supplier to repair, replace or re-perform (as applicable) the rejected Goods or Services (and these Conditions shall apply to any repaired or replacement Goods or re-performed Services) or to provide a full refund of the price of the rejected Goods or Services; **(d)** to refuse to accept any subsequent delivery of the Goods or Services (including delivery of any outstanding instalments) which the Supplier attempts to make; **(e)** to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods or services from a third party; and/or **(f)** to claim damages for any other costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.
- 5.2** The Supplier shall keep the Customer indemnified in full on demand against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with: **(a)** any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights or other rights arising out of, or in connection with, the supply or use of the Goods or Services; and/or **(b)** any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Goods or performance of the Services to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of any Contract by the Supplier, its employees, agents or subcontractors.
- 5.3** The Customer's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.
- 5.4** This Clause 5 shall survive expiry or termination for whatever reason of any Contract.

6 TITLE AND RISK

- 6.1** Title and risk in any Goods shall pass to the Customer on completion of delivery unless the Customer has paid for any Goods in advance of delivery in which case, title (but not risk) shall pass to the Customer on payment for the Goods in question.

7 PRICE AND PAYMENT

- 7.1** The price of Goods and Services shall be the price set out in the Order, or, if no price is set out, the price set out in the Supplier's published price list in force as at the date the Customer's Order was accepted in accordance with Clause 2.3 or if lower, the Supplier's published list price at the time delivery of the Goods or performance of the Services was completed. Prices are stated Delivery Duty Paid in accordance with Incoterms 2000.
- 7.2** Prices are stated exclusive of VAT but inclusive of all other costs which may be incurred by the Supplier in connection with the supply of Goods or performance of Services and otherwise in complying with its obligations under the Contract including the cost of packaging, insurance and carriage of Goods.
- 7.3** The Supplier may invoice the Customer for Goods and Services on or at any time after the completion in accordance with Clause 4.3 of delivery/performance and shall ensure that each invoice details any purchase order numbers provided to it by the Customer. The Customer shall pay correctly submitted invoices within 60 days of receipt together with VAT thereon (subject to the Supplier's invoice being valid for VAT purposes). Payment shall be made by bank transfer to a single bank account as nominated in writing by the Supplier which must be located in the United Kingdom.
- 7.4** If the Customer fails to make any payment to the Supplier by the due date then at the written request of the Supplier the Customer shall pay interest on the overdue amount at the rate of 2% per annum above the Bank of England base rate from time to time. Subject to the other provisions of this Clause 7.4 such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. Interest shall not though apply to any payment which the Customer disputes in good faith.
- 7.5** The Customer may, without limiting any other rights or remedies available to it, set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier under any Contract.

8 CUSTOMER PROPERTY

- 8.1** The Supplier acknowledges that all materials, moulds, equipment and tools, drawings, Specifications, and data supplied by the Customer to the Supplier and all rights in and to such are and shall remain the exclusive property of the Customer. The Supplier shall keep any such materials which are provided to it in safe custody at its own risk; maintain them in good condition until returned to the Customer; and shall not use the same other than for the proper performance of any Contract and otherwise in accordance with the Customer's written instructions and authorisations. Further, the Supplier shall not sell, dispose of or in any way charge or encumber any such Customer property (nor purport to do so) and shall ensure that all such Customer property is kept separate by the Supplier from any other property and clearly identified as belonging to the Customer.

9 INSURANCE

- 9.1** The Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover such heads of liability as may arise under or in connection with any Contract and shall at the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

10 CONFIDENTIALITY

- 10.1** The Supplier shall keep in strict confidence all technical or commercial know-how, Specifications, inventions, processes or initiatives which are disclosed to the receiving party by the Customer, any of its group companies, their employees, agents or subcontractors and any other confidential information concerning the business, products and services of the Customer group which the Supplier may obtain. The Supplier shall only use and disclose such confidential information to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging its obligations under any Contract and shall ensure that such employees, agents or subcontractors shall keep such information confidential.

11 TERMINATION

- 11.1** The Customer may terminate any Contract in whole or in part at any time before completion of delivery or performance with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on that Contract or the affected part (in the case of partial termination). In such circumstances as the Supplier's sole and exclusive remedy the Customer shall pay the Supplier fair and reasonable compensation for work-in-progress at the time of termination (in any event not to exceed the price of the Goods or Services in question), but such compensation shall not include loss of anticipated profits or any consequential loss and the Supplier hereby waives any claim which it might otherwise have against the Customer in respect of such losses.
- 11.2** Without prejudice to any other rights or remedies available to it, the Customer may terminate at its discretion any or all Contracts in whole or in part at any-time by giving written notice to the Supplier if the Supplier: **(a)** commits any breach of any Contract; **(b)** becomes bankrupt or goes into liquidation (whether voluntary or compulsory), becomes insolvent, is dissolved, compounds with its creditors or has a receiver, administrative receiver or administrator appointed over the whole or any part of its assets or a petition is presented, or a meeting is convened for the purpose of considering a resolution, for the making of an administrative order, the winding-up, bankruptcy or dissolution of the Supplier or the Supplier suffers any similar process in any jurisdiction outside of England and Wales; **(c)** the

Supplier ceases or threatens to cease carrying on its business, operations or activities; and/or **(d)** the Customer anticipates that any of the events as referred to in this Clause 11.1 are likely to occur.

11.3 Termination or expiry of any Contract on whatever basis shall be without prejudice to any rights or obligations of either party which have accrued prior to the date of termination and shall not affect the continuing in or coming into force of any provision of that Contract or these Conditions which, whether expressly or by implication, is to continue in or come into force following expiry or termination.

12 CUSTOMER GROUP COMPANIES

12.1 The Supplier acknowledges that: **(a)** each Contract is entered into between it and the Customer group company as named in the applicable Order. Accordingly, no Customer group company other than that named in an Order shall have any liability to the Supplier in connection with that Order whether under the Contract, these Conditions or otherwise; and **(b)** Goods or Services procured by one Customer group company may be used by other Customer group companies. Accordingly, any such other Customer group companies shall be entitled to the benefit of any applicable Contract and to enforce its terms and, in addition to any loss or damage suffered by the contracting Customer company itself as a result of any breach of these Conditions by the Supplier, that contracting Customer company shall also be entitled to recover from the Supplier under the applicable Contract any such loss or damage which is suffered by any other Customer group company.

12.2 Save only as provided for otherwise under Clause 12, a person who is not a party to a Contract shall have no right to enforce any term of that Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

13 ANTI-BRIBERY AND CORRUPTION

13.1 The Supplier shall (both in connection with its activities under the Contract and the conduct and operation of its business and activities generally): **(a)** comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption (including the Bribery Act 2010) and the prevention of modern slavery (including the Modern Slavery Act 2015) and shall not engage in any activity, practice or conduct which would constitute any breach of or any offence under any such law, statute, regulation or code; and **(b)** without prejudice to the generality of foregoing, have and shall maintain in place adequate procedures to prevent within its business the commission of bribery or corruption and the prevention of modern slavery and provide details of the same to the Customer on request.

13.2 The Supplier shall promptly on request from the Customer permit the Customer to audit the Supplier's compliance with the foregoing and/or promptly provide such information as the Customer may request concerning the measures which the Supplier has in place to ensure compliance with the foregoing.

13.3 Any breach by the Supplier of any of the foregoing requirements shall be deemed to be a material breach of the Contract which is not capable of remedy.

14 GENERAL

14.1 Any notices to be served on either party by the other shall be in writing and sent by pre-paid registered post to the registered office address of the other party or such other address as is notified in writing by that party from time to time. Such notice shall be deemed to have been received by the addressee 72 hours after posting provided applicable evidence of posting is retained and produced on request.

14.2 Whilst the parties may make operational communications via email, formal notice may not be served via email.

14.3 The parties are with respect to each other independent contractors and nothing in these Conditions or any Contract and no actions taken by the parties under these Conditions or any Contract shall be deemed to constitute any agency, partnership, association, joint venture or other co-operative enterprise between the parties.

14.4 Neither party seeks to limit or exclude in any way its liability for death or personal injury caused by negligence; for fraud or fraudulent misrepresentation; in respect of any breach of any condition implied under section 12 of the Sale of Goods Act 1979; and/or for any other matter or liability which cannot be lawfully limited or excluded. Each provision of these Conditions and of each Contract shall be read as subject to this Clause 14.4 and no such provision is intended to nor shall be interpreted as seeking to limit or exclude any of the foregoing types of liability.

14.5 Each Contract represents the entire agreement between the parties relating to the supply of the Goods or Services in question and supersedes all previous presentations made and/or agreements, negotiations and discussions between the parties relating to the same.

14.6 Save only to the extent as may be specifically provided for otherwise under these Conditions, no variation or amendment of any Contract shall be binding unless made in writing and signed by or on the behalf of each of the parties.

14.7 The Supplier may not assign or transfer any of its rights and/or obligations under any Contract without the prior written consent of the Customer. The Customer may assign or transfer any or all of its rights and/or obligations under any Contract on notice to the Supplier.

14.8 The Supplier may not sub-contract the performance of any of its obligations under any Contract without the prior written consent of the Customer and in any event shall at all times remain primarily liable to the Customer for the acts and omissions of any of its sub-contractors as if those were the acts or omissions of the Supplier itself.

14.9 If any provision of these Conditions or of any Contract is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, the remaining provisions shall remain in full force and effect.

14.10 The failure to exercise or delay in exercising any right or remedy under these Conditions or any Contract shall not be regarded as a waiver of such right or remedy, or a waiver of other rights or remedies. No single or partial exercise of any right or remedy under these Conditions or any Contract shall prevent any further exercise of the right or remedy or any other right or remedy.

14.11 These Conditions and each Contract shall be governed by English law and, save in respect of the enforcement of any judgment, the parties agree to submit to the exclusive jurisdiction of the English courts.

Revised May 2018