

# TERMS & CONDITIONS OF SALE

## 1. Interpretation

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business; **Buyer:** the person, firm or company who purchases the Goods from the Company; **Company:** Arrow County Supplies;

**Contract:** any contract between the Company and the Buyer for the sale and purchase of the Goods; **Delivery Point:** the place where delivery of the Goods is to take place under condition 4; **Goods:** any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part(s) of them); **Limit of Indemnity:** currently the maximum amount of £5,000,000 for all occurrences during any one period of insurance; **VAT:** value added tax chargeable under English law for the time being and any similar additional tax.; Reference to a law is reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for

the time being in force made under it. Words in the singular include the plural and in the plural include the singular. Reference to one gender

includes reference to the other. Condition headings do not affect the interpretation of these conditions.

## 2. Application of Terms

2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract as a result of such document being referred to in the Contract.

2.3 These conditions apply to all the Company's sales and any variation to these conditions and representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of the Company. The Company's sales representatives have no authority to accept, vary or amend any of these conditions. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.4 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.

2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.

2.6 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

2.7 Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order to the Buyer. Any quotation is valid for the period set out on the quotation or, in the absence thereof for 30 days, provided that the Company has not previously withdrawn it.

## 3. Description

3.1 The quantity and description of the Goods shall be as set out in the Company's quotation or acknowledgement of order.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company 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 described in them. They shall not form part of the Contract and this is not a sale by sample.

## 4. Delivery

4.1 Unless otherwise agreed in writing, delivery of the Goods shall take place at the Buyer's usual place of business. The costs of delivery are included in the Price of the Goods. However, the Company reserves the right to make a reasonable charge associated with any additional costs of carriage where the Buyer's usual place of business or the agreed place of delivery is more than 50 miles from the Company's premises and an additional administration charge of £10 in respect of orders with a total value of less than £50.

4.2 Any dates specified by the Company for delivery of the Goods are an estimate and time for delivery shall not be made of the essence by notice. If no dates are specified, delivery shall be within a reasonable time.

4.3 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds three months.

4.4 If for any reason the Buyer fails to accept delivery of any of the Goods, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations: (a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence); and (b) the Goods shall be deemed to have been delivered; or (c) the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.5 The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading or unloading of the Goods.

4.6 The Company may cancel delivery if the Company believes it would be unsafe, unlawful, unnecessarily or difficult to deliver to the Delivery Point and delivery shall take place upon the return of the Goods to the Company's place of business.

4.8 The Company may deliver the Goods by separate instalments. Each separate instalment shall, subject to condition 4.9, be invoiced and paid for in accordance with the provisions of the Contract.

4.9 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

## 5. Non-Delivery

5.1 The quantity of any consignment of Goods as recorded on despatch from the Company's place of business shall be conclusive evidence of the quantity received on delivery unless the Buyer can provide conclusive evidence proving the contrary.

5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been delivered.

5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

## 6. Risk/Title

6.1 The Goods are at the risk of the Buyer from the time of delivery.

6.2 Where applicable, risk in transit shall remain with the Company until delivery at the Delivery Point provided that in the event of any damage to the Goods during transit the Company will replace any goods proved to the Company's satisfaction to have been damaged in transit subject to having received from the Buyer within 48 hours after delivery notification in writing of the occurrence of the damage and also, if and so far as practicable, of its nature and extent.

6.3 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of: (a) the Goods; and (b) all other sums which are or become due to the Company from the Buyer.

6.4 Until ownership of the Goods has passed to the Buyer, the Buyer shall: (a) hold the Goods on a fiduciary basis as the Company's bailee; (b) store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property; (c) not

destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and (d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.

6.5 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions: (a) any sale shall be effected in the ordinary course of the Buyer's business at full market value; and (b) shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

6.6 The Buyer's right to possession of the Goods shall terminate immediately if: (a) any of the matters set out in condition 11.1 (a) to (o) occur; or (b) the Buyer encumbers or in any way charges any of the Goods.

6.7 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

6.8 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.

6.9 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 shall 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.

6.10 On termination of the Contract the Company's (but not the Buyer's) rights in this condition 6 shall remain in effect.

## 7. Price

7.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Company's price list published on the date of delivery or deemed delivery.

7.2 The price for the Goods shall be exclusive of any VAT which the Buyer shall pay when it is due to pay for the Goods.

7.3 The Company reserves the right, by giving written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the reasonable control of the Company (including without limitation, any increase in packaging, insurance, transportation costs, costs of labour, materials or other costs of manufacture, taxes, tariffs or import duties (where applicable) or changes in legislation or regulations) or any changes in delivery dates, quantities or specifications for the Goods which are requested by the Buyer or any delay caused by failure of the Buyer to give the Company adequate information or instructions.

7.4 The Buyer agrees and acknowledges that the price for the Goods is based upon the limitations of liability set out in conditions 3 and 10 and upon the limited warranties given in condition 9.

## 8. Payment

8.1 Subject to condition 8.4 and unless otherwise agreed by the Company in writing, payment of the price for the Goods is due in pounds sterling 28 days from the day on which the Goods are delivered or deemed to be delivered.

8.2 Time for payment shall be of the essence.

8.3 No payment shall be deemed to have been received until the Company has received cleared funds.

8.4 All payments payable to the Company under the Contract shall become due immediately on its termination.

8.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer. The Buyer shall not be entitled to

withhold any payments due under the Contract because of a disputed claim of any nature.

8.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract:

8.6.1 the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of the Royal Bank of Scotland, accruing on a daily basis until payment, before or after any judgment but the Company reserves the right to interest under the Late Payment of Commercial Debts (Interest) Act 1998; and

8.6.2 the Company shall be entitled to suspend or cancel all future deliveries of Goods to the Buyer.

8.7 In the event that any variation is agreed between the Company and the Buyer regarding payment terms, which results in credit terms being extended to the Buyer, any such variation will cease and the amount of any debt owed will be payable forthwith on the occurrence of any of the matters set out in condition 11.1 (a) to (o).

8.8 Without prejudice to any other right or remedy of the Company any payment by the Buyer, which results in a cheque being referred to the drawer for whatever reason, will incur a charge of £50.00 plus VAT per cheque payable by the Buyer.

8.9 The Company may apply all or any part of any sum owing by the Company its subsidiaries or associates to the Buyer in relation to any matter in or towards payment of any sum owing to the Company. For this purpose references to the Company or the Buyer include any company which is a holding company, subsidiary or associate of the Company or the Buyer respectively.

8.10 The Company may appropriate any payment made by the Buyer to the Company against amounts that are owed by the Buyer to the Company for the longest period not withstanding any prior appropriation of that payment by the Buyer.

## 9. Quality

9.1 The Company warrants that (subject to the other provisions of these conditions) on delivery the Goods shall:

(a) be of satisfactory quality within the meaning of the Sale of Goods Act 1979; (b) be reasonably fit for any particular purpose for which the Goods are being bought if the Buyer had made known that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Buyer to rely on the skill and judgement of the Company. For the avoidance of doubt, the warranties given in this condition 10.1 are given in lieu and exclude the operation of the implied terms as to satisfactory quality and fitness for purpose in the Sale of Goods Act 1979, to the fullest extent permitted by law.

9.2 The Company shall not be liable for a breach of any of the warranties in condition 9.1 unless:

(a) the Buyer gives written notice of the defect to the Company within 14 days of the time when the Buyer discovers or ought to have discovered the defect, whichever is the earlier; and (b) the Company is given a reasonable opportunity after receiving the notice of the defect from the Buyer of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business for the examination to take place there.

9.3 The Company shall not be liable for a breach of any of the warranties in condition 9.1 if: (a) the Buyer makes any further use of such Goods after giving such notice; or (b) the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or (c) the Buyer carries out, repairs itself or brings about changes in the nature, composition or packaging of the Goods delivered, or has these carried out or brought about by third parties, or if the Goods delivered are used improperly or for any purpose other than that for which they are meant or are marinated and/or stored improperly or contrary to any agreed or legal regulations or if the defect of the Goods can be ascribed to the other party in any way.

9.4 Subject to condition 9.2 and 9.3, if any of the Goods do not conform with any warranties in condition 9.1 the Company shall at its option replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if requested, the Buyer shall return the Goods or the part of such Goods which is defective to the Company.

9.5 If the Company complies with condition 9.4 it shall have no further liability for a breach of any of the warranties in condition 9.1 in respect of such Goods and any Goods replaced shall belong to the Company.

## 10. Limitation of Liability

10.1 Subject to conditions 4, 5 and 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

(a) any breach of these conditions; (b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979 or section 2(3) of the Supply of Goods and Services Act 1982, whichever Act applies to the Contract) are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these conditions excludes or limits the liability of the Company:

(a) for death or personal injury caused by the Company's negligence; or (b) under section 2(3) Consumer Protection Act 1987; or (c) for any matter which it would be illegal to attempt to exclude its liability; or (d) for fraud or fraudulent misrepresentation.

10.4 Subject to condition 10.2 and condition 10.3 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price plus 100% or the sum of £50,000 (whichever is the greater).

10.5 In the event that the limitation on liability set out in condition 10.4 is found by any court, tribunal or administrative body of competent jurisdiction to be illegal, invalid, void, voidable, unenforceable or unreasonable then subject to condition 10.2 and condition 10.3 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Limit of Indemnity remaining from time to time in accordance with the Company's public/products liability insurance (policy number 005273243 or such other limit of indemnity as may apply to any replacement or amended public/products liability insurance effected by the Company from time to time, in either case a copy of which shall be provided to the Buyer on request).

10.6 Subject to condition 10.2 and 10.3 the Company shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## 11. Termination

11.1 The Company may terminate the Contract without liability to the Buyer immediately (or following such period as it sees fit) by giving notice to the Buyer if: (a) the Buyer fails to pay any amount due under the Contract on the date for payment and remains in default for more than 7

days; or (b) the Buyer commits a breach of any term of the Contract and (if remediable) fails to remedy that breach in 14 days; or (c) the Buyer repeatedly breaches any of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with having the intention or ability to give effect to the terms of the Contract; or (d) the Buyer suspends or threatens to suspend payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed either unable to pay its debts (being a company within the meaning of section 123 of the Insolvency Act 1986) or as having no reasonable prospect of so doing within the meaning of section 268 of the Insolvency Act 1986 or in the case of a partnership has any partner to whom foregoing applies; or (e) the Buyer commences negotiations with any of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Buyer; or (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Buyer; or (h) a floating charge holder over the assets of the Buyer has become entitled to appoint or has appointed an

administrative receiver; or (i) a person becomes entitled to appoint a receiver over the assets of the Buyer or a receiver is appointed over the assets of the Buyer; or (j) the Buyer, being an individual, is the subject of a bankruptcy petition or order; or (k) a creditor or encumbrancer of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or (l) any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 11.1(d) to condition 11.1(k) (inclusive); or (m) the Buyer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or (n) the Buyer, being an individual, dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or (o) there is a change of control of the Buyer.

11.2 In the event of termination in accordance with condition 11.1 or of any order being cancelled by the Buyer, the Buyer shall indemnify the Company against all loss (including profits) costs (including labour and overheads) and all other expenses and damages reasonably and properly incurred by the Company in connection with the Contract and its termination.

## 12. Assignment

12.1 The Company may assign the Contract or any part of it to any person, firm or company.

12.2 The Buyer shall not be entitled to assign the Contract without the prior written consent of the Company. The Company shall not be deemed to have accepted an assignment of the Contract due to any circumstance or pursuant to any act or omission of the Company including, without limitation, the acceptance of payments or obligations under the Contract from a third party.

## 13. Force Majeure

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is materially prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental or regulatory actions (including orders preventing the movement of Goods), changes in legislation or codes of practice, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), failure of sub-contractors or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of six months, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

## 14. Returns Policy

14.1 Without prejudice to clauses 4, 5, 9 and 10, or the statutory rights of the Buyer:

(a) any Goods returned which are not included in the Company's catalogue and have been obtained by the Company at the request of the Buyer will only be refunded in the absolute discretion of the Company; (b) in respect of any Goods returned where Orders are placed via mail, phone, fax or the internet, which have been cancelled within seven days of receiving the Goods, the Company will refund the price of the Goods in full; (c) where an Order has been cancelled within 28 days of receiving the Goods, the Company will examine the returned Goods within a reasonable time. Where Goods are found to be defective, the price of the Goods will be refunded in full (d) where Goods returned in accordance with clause 14.1(c) are found not to be defective, the Company reserves the right to deduct a re-stocking charge of 20% of the Price of the Goods from any refund to the Buyer.

14.2 All Goods must be returned unused, in their original packaging and in a re-saleable condition (to be determined in the Company's absolute discretion) and that the Buyer will be responsible for the costs of returning the Goods to the Company. Costs of delivery to the Buyer (if any) will not be refunded.

## 15. General

15.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company.

15.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable,

unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

15.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

15.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

15.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

15.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

## **16. Communications**

16.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax: (a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or (b) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.

16.2 Communications shall be deemed to have been received: (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and holidays) after posting (exclusive of the day of posting); or (b) if delivered by hand, on the day of delivery; or (c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission, otherwise the next working day.

16.3 Communications addressed to the Company shall be marked for the attention of a director or the directors of the Company.

## **17. Confidentiality**

The Buyer shall each keep confidential and shall not without the prior consent in writing of the other disclose to any third-party any technical or commercial information which it has acquired from the other as a result of discussions, negotiations and other communications between them relating to the Goods and the Contract



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