

# KMD COMPANY LIMITED

## TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

1. (a) In these conditions "the Company" means KMD Company Limited and the "Client" means the individual, firm, company or other party with whom the Company contracts. "Goods" means the goods (including any instalment of or part of them) which the Company is to supply to the Client in accordance with these conditions. "Supply" includes (but is not limited to) any supply under a contract of sale. "Services" includes (but is not limited to) the preparation of designs and prototypes.
- (b) No order in pursuance of any quotation or otherwise shall be binding on the Company unless and until such order is accepted by the Company. Any contract made between the Company and the Client for the design and/or manufacture of the goods (herein called "the Contract") shall be subject to these conditions and save as after mentioned no representative or agent of the Company has authority to agree any terms or make any representations inconsistent with them or to enter into any contract except on the basis of them; any such term representation or contract will bind the Company only if in writing and signed by a director.
- (c) Unless otherwise agreed in writing by the Company these conditions shall override any terms and conditions stipulated or referred to by the Client in his order or pre-contract negotiations.
- (d) Any description contained in the Company's catalogues, samples, price lists or other advertising material is intended merely to present a general picture of the Company's products or Services and shall not form a representation or be part of the Contract.
- (e) In the event that the Company has not given a written acknowledgment of the Client's order, these conditions, provided the Client shall have had prior notice of them, shall nonetheless apply to the Contract.
- (f) The Company shall, unless otherwise agreed in writing, be entitled to deliver Goods within ten per cent either way of the quantity specified in the Contract and the Client shall pay pro rata for the actual quantity delivered.
2. Where the Goods are made to the Client's specification, instructions or design, the Client undertakes full responsibility for the suitability and accuracy of the specification, instructions or design and undertakes to indemnify the Company against any infringement of any patent, design right, registered design, trade mark, service mark, trade name or copyright or any other intellectual property right and any loss, damage or expense which it may incur by reason of such infringement in any country and the Client undertakes further to indemnify the Company for any loss damage or expense in respect of any liability arising under or by reason of the provisions of the Consumer Protection Act 1987 in relation to such Goods.
3. (a) Subject to any agreement to the contrary the Company's quotations are valid for 30 days from the date thereof (subject to the provisions of Clause 1 (b)).
- (b) All information disclosed by either the Client or the Company in connection with the preparation of the quotation is confidential and shall not be disclosed to third parties unless such disclosure is strictly necessary for the proper performance of the Contract.
- (c) The Company shall be entitled to increase its prices at any time to take account of any increase in the cost to the Company of purchasing any goods or materials or manufacturing working on or supplying any Goods or Service (including any such increases arising from any error or inadequacy in any specification, instructions or design provided by the Client or any modification carried out by the Company at the Client's request) and such increased prices shall be substituted for the previous Contract price. All prices quoted are ex-works and are exclusive of VAT and the Client shall pay any and all taxes, duties and other government charges payable in respect of the Goods or Services.
- (d) In the event that the work which the Company is required to undertake is (with consent of the Company) increased or varied by the Client the Company shall be entitled to increase its prices by such amount as may be reasonable and such increased prices shall be substituted for the previous contract price.
- (e) The Company reserves the right to make a reasonable charge in respect of any presentation given to the Client prior to a contract for the supply of Goods or Services by the Company.
4. (a) Unless otherwise agreed in writing by the Company:
  - (i) The Client shall take delivery of the goods or any instalments thereof at the Company's premises within 7 days after receiving notification from the Company that such goods are or will be ready for collection and
  - (ii) Where the Company agrees to deliver Goods to the nominated delivery point of the Client the Client shall when required by the Company forthwith give to the Company all necessary instructions; the Company shall be entitled to add to the contract price a reasonable enlarge for packaging and delivery; off-loading shall be at the Client's risk and expense
- (b) The Company shall be entitled to deliver Goods by instalments
- (c) Subject to any agreement in writing with the Company, the risk in Goods which the Company agrees to supply shall pass to the Client when (i) the Client takes delivery of the Goods at the Company's premises or (ii) the Company delivers the Goods to the Client's nominated delivery point or (iii) the Client postpones, refuses or for any reason fails to take delivery whichever shall first occur. All other Goods shall be at the Client's sole risk at all times and the Company shall not be liable for any loss of or damage sustained by any goods left with the Company howsoever caused and whether or not attributable to negligence on the part of the Company or negligence or wilful default on the part of any servant or agent of the Company.
- (d) Should the Company be delayed in or prevented from making delivery of Goods or carrying out the Services due to war, governmental or parliamentary restrictions, strike, lock-outs, fire, floods, explosions, labour disturbances, trade disputes, damage to or destruction of the Goods, breakdown of machinery, shortages of labour or of raw materials or Act of God or due to any other cause whatsoever beyond the reasonable control of the Company the Company shall be at liberty to cancel or suspend the order placed by the Client without incurring any liability for any loss or damage arising therefrom.
- (e) Dates of delivery and periods for completion of Services are approximate only. Time of delivery or performance of Services shall not be of the essence and the Company will not be liable for any failure to deliver or complete by such a date or within such a period
- (f) The Company shall be entitled to defer delivery or completion until any monies due from the Client have been received.
5. (a) The Company shall be entitled at any time to invoice the Client and receive payment on account of any Goods and/or Services supplied or to be supplied in connection with the Contract and shall be entitled to request and to receive payment by instalments.
- (b) Unless otherwise specified in writing by the Company payment for the Goods or Services or any instalments thereof shall be made by the Client cash against invoice, notwithstanding that Property in the Goods may not have passed to the Client. Time for payment shall be of the essence of the Contract. Without prejudice to any other right of the Company interest will be payable on all overdue accounts at National Westminster Bank plc base rate plus four per cent and for the purposes of paragraphs 6 and 8 hereof the full purchase price shall include any interest payable hereunder.
- (c) Goods remaining on the Company's premises after the period of time stated in clause 4 (a) (i) hereof shall be regarded as having been delivered to and accepted by the Client and the Company shall forthwith be entitled to invoice the Client in respect thereof.
6. (a) If the Client shall fail to make any payment when it becomes due or shall enter into any composition or any arrangement with his creditors or if being an incorporated Company shall have an administrative receiver or administrator appointed or shall pass a resolution for winding up or a Court shall make an order to that effect or if there shall be any breach by the Client of any of the terms and conditions hereof the Company may defer or cancel any further deliveries or Services and treat the Contract as determined but without prejudice to its right to the full purchase price for Goods and Services and damages for any loss suffered in consequence of such determination.
- (b) Cancellation by the Client will only be accepted at the discretion of the Company and acceptance of such cancellation will only be binding if confirmed by the Company in writing
- (c) A charge will be made for any costs incurred by the Company due to suspension or deferment or delay of any order by the Client or in the event that the Client defaults in collecting any Goods or giving instructions for the delivery of any Goods or the performance of any Service including (without prejudice to the generality of the foregoing) storage costs, interest charges and palleting. The Company further reserves the right to remove such Goods to an alternative public or private storage area and any costs or charges incurred in so doing will be chargeable to and payable by the Client.
7. (a) No claim for damage in transit, shortage of delivery or loss of Goods will be entertained unless the client shall have given to the Company written notice of such damage, shortage or loss with reasonable particulars thereof within 5 working days of receipt of the Goods or (in the case of total loss) receipt of the invoice or other notification of despatch. The Company's liability, if any, shall be limited to replacing or (in its discretion) repairing such Goods and it shall be a condition precedent to any such liability that the Client shall if so requested have returned damaged Goods to the Company within 10 working days of such request. The Client shall not be entitled to make any claim against the Company for consequential loss arising out of such damage, shortage or loss as aforesaid.
- (b) (i) Save as otherwise provided in these conditions the Company's liability in respect of any defect in or failure of Goods supplied or default in Services provided or in work done (which expression shall, without prejudice to its generality, include all work done in or in connection with the design, manufacture, treatment, testing, erection, installation, repair or servicing of any Goods) is limited to replacing or (in its discretion) repairing or paying for the repair or replacement of Goods which within 3 months of delivery to the Client are found to be defective by reason of faulty or incorrect parts or materials or default in work done and carrying out again any Services which the Company has failed properly to perform in accordance with the Contract.
- (ii) Upon approval by the Client of any designs, sketches, layouts, specifications or prototypes, the Company shall have no further liability for the same, whether or not the same contain any errors or omissions.
- (iii) In the event of any error in any weight, dimension, capacity, performance or other description or in any information or advice which has formed a representation or is given in performance of the Contract the Company's liability in respect of any direct loss or damage sustained by the Client as a result of such error shall not exceed the price of the Goods or Service in respect of which the description information or advice is incorrect.
- (iv) Conditions precedent to the Company's liability hereunder shall be (1) that as soon as reasonably practicable the Client shall have given to the Company reasonable notice of the defect, failure, default or error and shall have provided authority for the Company's servants or agents to inspect the Goods and (2) that the goods have been used only for a purpose for which they are designed and in a manner approved or authorised by the Company.
- (v) The Company shall have no other or further liability in respect of any direct or consequential loss or damage sustained by the Customer arising from or in connection with any such defect, failure, default or error as aforesaid.
- (c) Where the Company agrees to repair or replace Goods or carry out again any Service in accordance with the foregoing provisions of this paragraph any time specified for the supply of any Goods or Service under the Contract shall be extended for such period as the Company may reasonably require
- (d) Save for such terms as may be implied in the Contract by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982, all conditions, warranties and other terms express or implied, statutory or otherwise, are expressly excluded, save insofar as contained herein or as otherwise expressly agreed by the Company in writing provided that if and insofar as any legislation or any order made thereunder shall make or have made it unlawful to exclude or purport to exclude from the Contract any term or shall have made unenforceable any attempt to exclude any such term, the foregoing provisions of this paragraph will not apply to any such term.
8. The following provisions shall apply to all Goods which under the Contract the Company agrees to supply to the Client. No failure by the Company to enforce strict compliance by the Client with such provisions shall constitute a waiver thereof and no termination of the Contract shall prejudice limit or extinguish the Company's rights under this paragraph
  - (i) Upon delivery of the Goods the Client shall hold the Goods solely as bailee for the Company and the goods shall remain the property of the Company until such time as the Client shall have paid to the Company the full purchase price thereof and until such time the Company shall be entitled to recover the Goods or any part thereof and for the purpose of exercising such rights the Company, its employees and agents with appropriate transport may enter upon the Client's premises and any other location where the Goods are situated.
  - (ii) The Client is hereby granted a licence by the Company to incorporate the Goods in any other products.
  - (iii) The Client is hereby licensed to sell on the Goods and any product incorporating any of them. The Client shall, immediately upon receipt of the proceeds of sale and whether or not payment has become due under Clause 5 hereof remit to the Company the full purchase price of the Goods sold on less any part thereof which has already been paid and until such amount has been so remitted shall hold such amount as trustee and agent for the Company.
  - (iv) The Client shall maintain all appropriate insurance in respect of the Goods from the date or dates on which the risk therein passes to him. In the event of any loss or damage occurring while the Goods remain the property of the Company the Client shall, immediately on receipt of the insurance monies, remit to the Company the full purchase price of the Goods lost or damaged less any part thereof which has already been paid and until such amount has been so remitted shall hold such amount as trustee and agent for the Company.
  - (v) The licences granted under sub-paragraphs (ii) and (iii) above shall be terminable forthwith at any time upon notice by the Company to the Client
9. (a) If under the Contract the erection, installation, testing or servicing of any Goods is to be carried out by or under the supervision of the Company, the Client warrants that he will make all necessary preparations to the site by such date as may be specified in the Contract or reasonably required by the Company and further warrants that he will provide suitable access to and possession of the site, suitable protection of the goods from the time of delivery and all facilities required to enable the Company to perform its obligations.
- (b) The Company will indemnify the Client in respect of any direct damage to property caused in the course of erection, installation, testing, servicing or repair by the negligence of the Company or the negligence or wilful default of its servants or agents provided that the Company's liability hereunder shall not exceed the price payable under the Contract.
- (c) The Company reserves the right to sub-contract the manufacture or installation of the Goods or the performance of any other Services required under the Contract.
- (d) All Goods shall be deemed fit for commercial use notwithstanding any minor omissions or defects provided that such omissions or defects do not materially affect their use
10. All copyright and any rights to apply for registered design and such other intellectual property rights as may be vested in the Company in all drawings, designs, prototypes or goods supplied to the Client shall remain the property of the Company and the Client acknowledges that it shall not acquire any title to the same unless otherwise agreed in writing.
11. (a) Unless otherwise agreed in writing, provided that the Client has paid the full contract price to the Company, where a drawing, design or prototype has been supplied by the Company for a particular project as specified in the Contract, the Company acknowledges that the Client shall have a non-exclusive licence to use the same for that particular project only and for no other purpose.
- (b) Without prejudice to subclause 11 (a) the Client shall not use or cause to be used by any third party any design provided by or produced by the Company without the Company's written permission and where such permission is given, only within the terms and conditions specified therein.
- (c) If the Company so requires, any use of a design produced by or on behalf of the Company shall bear a credit to the Company displayed in such a position and in such terms as agreed with the Client. Where the Company has no control over the production of items produced by the Client from any such design the Client shall indemnify and keep indemnified the Company against all costs, claims, loss, damage or expense incurred by the Company as a result of the Client's use of any such design.
12. Without prejudice to its ownership of copyright or other intellectual property rights in prototypes or designs the Company shall use reasonable endeavours to notify the Client in advance of any use for the promotional purposes of the Company of any prototypes or designs supplied to the Client.
13. The Client acknowledges that any prototype prepared by the Company is not designed to be fully functional.
14. The Company shall be entitled to claim authorship or any design for which it has been responsible and any published work or goods shall bear a credit to the Company.
15. Save as hereinbefore provided and subject to the provisions of Section 2 (1) of the Unfair Contract Terms Act 1977 the Company shall not be liable to the Client for any damage or for any direct or consequential loss incurred by the Client in consequence of any negligence on the part of the Company or negligence or wilful default on the part of its servants or agents in or in connection with supply of any Goods or in the carrying out of any Services or any work (which expression shall without prejudice to its generality, include all work done in or in connection with the design, manufacture, treatment, testing, erection, installation, repair or servicing of any Goods) or in the preparation or provision of any information or advice.
16. Any charges made to the Client for tools, dies, moulds, patterns or other equipment cover part cost only and such tools, dies, moulds, patterns or other equipment shall be and remain the property of the Company
17. The proper law of all contracts with the Company shall be English law which shall govern in all respects the construction and effect of such contracts and of these Conditions. The Client agrees that in the event of any dispute arising out of the Contract or the performance thereof he will submit to the jurisdiction of the English Courts.