

# FOWLE & CO LTD

## TERMS & CONDITIONS OF SALE

### The Seller [Fowle & Co Ltd]

### The Buyer [As Invoiced]

- 1.1 These Conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order, confirmation of order or similar document.
- 1.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.
- 1.3 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 1.4 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.
- 2.1 The Price of the Goods shall be the Seller's quoted price however given which shall be binding on the Seller. The Seller may by giving notice to the Buyer at any time up to 3 days before delivery increase the Price of the Goods to reflect any increase in the cost to the Seller which is due to factors occurring after the making of the contract of sale which are beyond the reasonable control of the Seller (including, without limitation, foreign exchange fluctuations, taxes and duties and the cost of labour, materials and other manufacturing costs). Provided that the Buyer may cancel this contract within 3 days of any such notice from the Seller. The Price is exclusive of VAT which shall be due at the rate ruling on the date of VAT invoice.
- 2.2 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 2% above National Westminster Bank plc's base rate from time to time in force and shall accrue at such a rate after as well as before any judgement.
- 3.1 The Goods shall be supplied in accordance with the description contained in the Seller's specification and manufactured in accordance with all applicable European Standards which relate specifically to the Goods.
- 3.2 The Seller may from time to time make changes in the specification of the Goods which are required to comply with any applicable safety or statutory requirements or which do not materially affect the quality or fitness for purpose of the Goods.
- 4.1 Where goods are sold at a price by reference to their weight the Buyer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that
  - 4.1.1 such discrepancy in quantity shall not exceed 10 %
  - 4.1.2 the Price shall be adjusted pro rata to the discrepancy according to the actual weight delivered
- 5.1 The Buyer shall inspect the Goods on delivery and shall within 3 days of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with description or sample. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery and before any use is made of them. If the Buyer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the contract and free from any defect or damage which would be apparent on a reasonable examination of the Goods and the Buyer shall be deemed to have accepted the Goods.

- 5.2 The Buyer shall notify the Seller of any non-delivery of a whole consignment within 3 days of the date of dispatch (as stated on the invoice). Notwithstanding the receipt by the Seller of any such notice a clear signature on a carrier's delivery advice sheet shall be deemed to signify receipt of the quantity of items indicated on the advice sheet.
- 5.3 If the Goods are not in accordance with the contract for any reason the Buyer's sole remedy shall be limited to the Seller making good any shortage by replacing such Goods or, if the Seller shall elect, by refunding a proportionate part of the Price.
- 6.1 The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of this contract.
- 6.2 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods. All warranties and conditions whether implied by statute or otherwise are excluded from this contract Provided that nothing in this contract shall restrict or exclude liability for death or personal injury caused by the negligence of the Seller or affect the statutory rights of a buyer dealing as consumer.
- 6.3 The Seller shall not be under any liability to the buyer:
- 6.3.1 once the goods have been worked on or processed or
  - 6.3.2 for any defect or loss arising out of any error in the buyers order or specification
- 7.1 In spite of delivery having been made, property in the Goods shall not pass from the Seller until:
- 7.1.1 the Buyer shall have paid the Price plus VAT in full; and
  - 7.1.2 no other sums whatever shall be due from the Buyer to the Seller.
- 7.2 Until property in the Goods passes to the Buyer in accordance with sub clause 1 the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the Goods (at no cost to the Seller) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Seller's property.
- 7.3 Notwithstanding that the Goods (or any of them) remain the property of the Seller the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until property in the Goods passes from the Seller the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Seller's money.
- 7.4 The Seller shall be entitled to recover the Price (plus VAT) notwithstanding that property in any of the Goods has not passed from the Seller.
- 7.5 Until such time as property in the Goods passes from the Seller the Buyer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold to the Seller. If the Buyer fails to do so the Seller may enter upon any premises owned occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of such request the rights of the Buyer under sub clause 3 shall cease.
- 7.6 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so all sums owing by the Buyer to the Seller shall forthwith become due and payable.
- 7.7 The Buyer shall insure and keep insured the Goods to the full Price against 'all risks' to the reasonable satisfaction of the Seller until the date that property in the Goods passes from the Seller, and shall whenever requested by the Seller produce a copy of the policy of insurance. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

- 7.8 The Buyer shall promptly deliver the prescribed particulars of this contract to the Registrar in accordance with the Companies Act 1985 Part XII as amended. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 7.9 The Goods shall be at the Buyer's risk as from delivery.
- 8.1 Delivery of the Goods shall be made on the delivery date to the address agreed by the seller when accepting the Buyer's order. The Buyer shall make all arrangements necessary to take safe delivery of the Goods whenever they are tendered for delivery.
- 8.2 The Seller shall arrange for carriage of the Goods to the Buyer's address. The costs of carriage and any insurance which the Buyer reasonably directs the Seller to incur shall be reimbursed by the Buyer [without any set-off or other withholding whatever] and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Buyer's agent.
- 8.3.1 The Seller may deliver the Goods by separate installments [in accordance with the agreed delivery schedule]. Each separate installment shall be invoiced and paid for in accordance with the provisions in this contract of sale.
- 8.3.2 The failure of the Seller to deliver or the failure of the Buyer to pay for any one or more of the said installments of the Goods on the due dates shall not entitle either party to treat this contract as repudiated.
- 8.4 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.
- 8.5 Notwithstanding that the Seller may have delayed or failed to deliver the Goods (or any of them) promptly the buyer shall be bound to accept delivery and to pay for the Goods in full provided that delivery shall be tendered at any time within 1 month either way of the Delivery Date. Neither party shall be liable for any default due to any act of God, war, strike, lockout, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 9.1 This contract is subject to the law of England and Wales.
- 9.2 The parties submit to the [exclusive] jurisdiction of the courts of England and Wales and irrevocably agree that proceedings issued out of the said courts may without prejudice to the rules of service of such courts be served on them by delivering such proceedings in an envelope addressed to the party to be served at the address for such party set out in this contract.]  
The Seller may license or sub-contract all or any part of its rights and obligations under this contract without the Buyer's consent.
- 10 If the Buyer fails to make payment for the Goods in accordance with this contract of sale or commits any other breach of this contract of sale or if any distress or execution shall be levied upon any of the Buyer's goods or if the Buyer offers to make any arrangement with its creditors or if any petition in bankruptcy is presented against the Buyer or the Buyer is unable to pay its debts as they fall due or if being a limited company any resolution or petition to wind up the Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver, administrative receiver or manager shall be appointed over the whole or any part of the Buyer's business or assets or if any petition for the appointment of an administrator is presented against the Buyer or if the Buyer shall suffer any analogous proceedings under foreign law all sums outstanding in respect of the Goods shall become payable immediately the Seller may in its absolute discretion and without prejudice to any rights which it may have:
- 10.1 suspend all future deliveries of Goods to the Buyer and/or terminate the contract without liability upon its part; and/or
- 10.2 exercise any of its rights pursuant to clause 7.
11. The Seller may cancel this contract at any time before the Goods are delivered by giving written notice. On giving such notice the Seller shall promptly repay to the Buyer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.