

BOOKMART LIMITED TERMS AND CONDITIONS OF SUPPLY

1. DEFINITIONS AND INTERPRETATION

- 1.1 In these conditions (unless the context otherwise requires), the following words and phrases shall have the following meanings:
 - 1.1.1 "Company" means Bookmart Limited a company registered in England and Wales under number 2372865.
 - 1.1.2 "Conditions" means these terms and conditions of supply.
 - 1.1.3 "Contract" means a contract for the sale of Goods made by or on behalf of the Company with a Customer.
 - 1.1.4 "Customer" means a person to whom the Supplier supplies or is to supply Goods pursuant to a Contract.
 - 1.1.5 "Goods" means the goods which the Supplier supplies pursuant to a Contract.
 - 1.1.6 "Order" means an order for the Goods received by the Company from the Customer.
 - 1.1.7 "Sales & Customer Liaison Department" means the department to which all Orders, queries and notices should be addressed at Blaby Road, Wigton, Leicestershire, LE18 4SE (tel: 0116 275 9060) (fax: 0116 275 9066).
 - 1.1.8 "Working Day" means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory holiday.

1.2 In these Conditions (unless the context otherwise requires):

- 1.2.1 construction of these Conditions shall ignore the headings (if any) which are for reference only; and any reference to any legislative provision shall be deemed to include any subsequent re-enactment or amending provision.

2. APPLICATION

- 2.1 These Conditions shall govern and be deemed to be incorporated into every Contract, and shall prevail over any terms and conditions (whether or not inconsistent with these Conditions) contained or referred to in any Order, correspondence, documentation or otherwise submitted by the Customer or otherwise of any kind.
- 2.2 The Customer's acceptance of delivery of the Goods shall (without prejudice to condition 2.1 or any other manner in which acceptance of the Conditions may be evidenced) constitute unqualified acceptance of these Conditions.

3. QUOTATIONS AND ACCEPTANCE

- 3.1 A quotation by the Company does not constitute an offer and the Company reserves the right to withdraw or revise a quotation at any time prior before it accepts an Order.

4. DELIVERY

- 4.1 The dates mentioned in any quotation, Order, acceptance form or elsewhere for delivery of the Goods are approximate only and time for delivery is not of the essence and shall not be made so by the service of any notice. The Company accepts no liability for failure to deliver on or by a particular date or dates.
- 4.2 The Company will have fulfilled its contractual obligations in respect of each delivery of Goods provided that the quantity actually delivered is not more than 10% less than the quantity specified in the Contract. The Customer shall pay for the actual quantity delivered.
- 4.3 The Company will arrange delivery of the Goods at the Customer's premises or in the case of export sales to the designated freight forwarder such delivery is included within the price of the Goods.
- 4.4 The Customer is solely responsible for unloading the Goods at the point of delivery. Unless otherwise agreed in writing by the Company, the Customer shall unload the Goods immediately on their arrival at the Customer's premises. The Customer shall indemnify the Supplier against each loss, liability and cost arising as a result of the Supplier or its sub-contractors assisting the Customer in the unloading, loading or other removal of the Goods from the point of delivery.
- 4.5 If the Customer refuses or fails to take delivery of the Goods delivered in accordance with a Contract or fails to take any action necessary on its part for delivery or shipment of the Goods, the Company is entitled to terminate the Contract with immediate effect, dispose of the Goods as the Company may determine and to recover from the Customer any loss and additional costs incurred as a result of such refusal or failure (including, without limitation, storage costs from the due date of delivery).
- 4.6 Unless otherwise expressly agreed, the Company may effect delivery in one or more instalments. If delivery is effected by instalments, each instalment shall be treated as a separate Contract.
- 4.7 Section 32(2) of the Sale of Goods Act 1979 does not apply and the Company is not required to give the Customer the notice specified in section 32(3) of that Act.

5. EXPORT SALES

- 5.1 If the Goods are sold CIF or FOB or on the basis of other trade terms, the meaning given to such terms in the International Chamber of Commerce INCOTERMS (as revised from time to time) shall apply, except where inconsistent with any of the provisions contained in the Conditions.

6. PRICES

- 6.1 The price for each of the Goods to be sold by the Customer to the Company are the published retail prices current at the date of despatch of the Goods from the Company's works less any agreed trade discount.
- 6.2 The Company shall if applicable add to the price of the Goods, and the Customer shall pay, an amount equal to any VAT or other sales tax or duty applicable from time to time to sales or supplies of such Goods.

7. PAYMENT TERMS

- 7.1 The Customer shall make all payments due to the Company under any Contract within the credit terms agreed between the Customer and the Company.
- 7.2 If the Customer fails to pay any amount due to the Company under any Contract on the due date, the Company may add interest to such amount at the rate of 2.5% over the base rate for the time being of the Bank of Scotland for the period from and including the date of receipt (whether before or after judgment) (unless waived in whole or in part in writing by the Company) ("interest").
- 7.3 The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 in lieu of interest.
- 7.4 If, in the Company's view, the Customer's credit-worthiness deteriorates before delivery of the Goods, the Company may require payment in full or in part of the price prior to delivery, or the provision of security for payment by the Customer in such form as is acceptable to the Company.

7.5 Time is of the essence for payment, and the Company reserves the right to suspend the provision of Goods to the Customer where any amounts are overdue under any Contract until all such amounts have been paid.

7.6 The Customer is not entitled to withhold payment of any amount due to the Company by way of set off or counterclaim.

7.7 The Company reserves the right to bill or withdraw at any time any credit allowed to the Customer.

7.8 The Company may offset any amount owing to it from the Customer against any amount owed to the Customer by the Company.

7.9 Notwithstanding any appropriation by the Customer to the contrary, all payments made by the Customer to the Company shall be appropriated first to Goods which have been received by the Customer and then to Goods which remain in the Customer's possession or control.

8. INFINGEMENTS OF THIRD PARTY RIGHTS

- 8.1 The Company is not liable to the Customer if the Goods infringe or are alleged to infringe the rights of any third party if such Goods are supplied pursuant to an international supply contract as defined by section 26 of the Unfair Contract Terms Act 1977.

9. RISK AND TITLE

- 9.1 Risk for the Goods passes on delivery but title to the Goods (whether separate and identifiable or incorporated in or mixed with other goods) shall remain with the Company until the Customer pays to the Company the agreed price in full for the Goods (together with any accrued interest at the rate specified in condition 7.2) and other amounts owed by the Customer to the Company in respect of any other goods or agreement.

9.2 Until title to the Goods passes to the Customer under condition 9.1 above the Customer shall:

9.2.1 keep the Goods separately and readily identifiable as the property of the Company;

9.2.2 keep the Goods insured and/or used in the order that they were delivered to the Customer;

9.3 The return of any Goods by the Customer in which the risk has not passed to the Customer shall be between the Company and the Customer only) be made by the Customer as agent for the Company.

9.4 At any time prior to title to the Goods passing to the Customer (whether or not any payment to the Company is then made) the Customer is deemed in breach of any obligation to the Company (the Company may (without prejudice to any other of its rights):

9.4.1 refuse possession of all or any part of the Goods; and enter any premises for that purpose for authorisation others to do so) which the Customer hereby authorises.

9.4.2 require delivery up to it of all or any part of the Goods;

9.4.3 terminate the Customer's authority to resist or use the Goods forthwith by written notice to the Customer;

9.4.4 The Company may at any time appropriate sums received from the Customer as if they fit, notwithstanding any purported appropriation by the Customer;

9.4.5 Each paragraph and sub-paragraph of this condition 10 is separate, severable and distinct.

10. TERMINATION

- 10.1 On or at any time after the occurrence of any of the events in condition 10.2, the Company may:
 - 10.1.1 stop any Goods in transit;
 - 10.1.2 suspend further deliveries to the Customer;
 - 10.1.3 exercise its rights under condition 9;
 - 10.1.4 terminate any Contract forthwith by giving notice to that effect to the Customer.

10.2 The events are:

10.2.1 The Customer being in breach of any obligation under a Contract or these Conditions;

10.2.2 a meeting being convened, a petition presented, an order made, an effective resolution passed, or notice given for the Customer's winding up or dissolution (other than for the sole purpose of amalgamation and reconstruction); or

10.2.3 an incorporation being made, or resolved to be made by any meeting of the Customer's directors or members, for an administration order or in relation to it or any other provision of the Insolvency Act 1986; or

10.2.4 an incorporation being made, or resolved to be made by any meeting of the Customer's directors or members, for an administration order or in relation to it or any other provision of the Insolvency Act 1986; or

10.2.5 the Customer ceasing or suspending payment of its debts or being unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986; or

10.2.6 a proposal being made for a composition in satisfaction of the Customer's debts or a scheme or arrangement of its affairs including a voluntary arrangement within the meaning of part 1 of the Insolvency Act 1986.

10.3 On termination of a Contract pursuant to condition 10.1.4 or 10.2.2, any indebtedness of the Customer to the Company shall become immediately due and payable and the Company is relieved of any further obligation to supply Goods to the Customer pursuant to that Contract.

11. WARRANTY/LIMITATION ON LIABILITY

- 11.1 The Company warrants that it will fit the Company's choice either repair or replace or refund the full purchase price of any Goods found to be defective or not in accordance with their specification provided that the defect is notified to the Company within a period of 3 months from the date of delivery.
- 11.2 The warranties in condition 11.1 are given on the following conditions:
 - 11.2.1 The Company is not liable for a defect in the Goods caused by fire war and law, abnormal or unsuitable conditions of storage or use or an act, neglect or default of the Customer or a third party;
 - 11.2.2 The Company is not liable for a defect in the Goods unless it is notified to the Company's Sales & Customer Liaison Department within 15 Working Days of the date of delivery or, if the defect would not be apparent on reasonable inspection, within 4 months of the date of delivery.
 - 11.3 The Company is not liable for:
 - 11.3.1 non-delivery unless the Customer notifies the Company's Sales & Customer Liaison Department of the claim within 7 Working Days of the date of the Company's invoice;
 - 11.3.2 shortages in quantity delivered in excess of those permitted by condition 4.2, unless the Customer notifies the Company's Sales & Customer Liaison Department of a claim within 15 Working Days of receipt of the Goods;
 - 11.3.3 damage to or loss of all or parts of the Goods or of the scheduled date of delivery, whichever is the earlier.

11.4 Except as set out in this condition 11, all conditions, warranties and representations, expressed or implied by statute, common law or otherwise, in relation to the supply, use or failure to supply the Goods are excluded to the extent permitted by law.

11.5 Subject to the provisions in condition 11.1, below, the Company is not liable to the Customer in contract, tort (including negligence or breach of statutory duty) misrepresentation or otherwise for any of the following losses or damages, whether direct or indirect, and even if such losses and/or damages were foreseeable, foreseeable or known, or the Company was advised of the possibility of them in advance:

- 11.5.1 loss or damage incurred by the Customer as a result of third party claims;
- 11.5.2 loss of business opportunity;
- 11.5.3 loss of goodwill;
- 11.5.4 loss of anticipated profits;
- 11.5.5 loss of business opportunity;
- 11.5.6 any indirect, special or consequential loss or damage howsoever caused.

11.6 Nothing in these Conditions shall operate to exclude or restrict the Company's liability for:

11.6.1 death or personal injury resulting from negligence;

11.6.2 breach of the obligations arising from section 12 of the Sale of Goods Act 1979; or

11.6.3 fraud or deceit.

12. FORCE MAJEURE

- 12.1 In this condition 12, "Force Majeure Event" means any circumstance beyond the control of the Company including, but not limited to acts of God, fire, explosion, adverse weather conditions, flood, earthquake, terrorism, riot, civil commotion, war, hostilities, strikes, work stoppages, slow-downs or other industrial disputes, accidents, riots or civil disturbances, acts of government, lack of power and delays by suppliers or materials shortages but, for the avoidance of doubt, nothing shall excuse the Customer from any payment obligations under these Conditions.
- 12.2 If the Company is prevented, hindered or delayed from or in supplying the Goods under these Conditions by a Force Majeure Event the Company may, at its sole option, and without being liable for any loss or damage suffered by the Customer as a result:
 - 12.2.1 suspend deliveries until the Force Majeure Event continues;
 - 12.2.2 suspend available stocks of Goods between its customers if the Company has insufficient stocks to meet orders;
 - 12.2.3 terminate any Contract forthwith by giving notice to that effect to the Customer.

13. ASSIGNMENT AND SUB-CONTRACTING

- 13.1 The Customer may not assign or deal in any part of the benefit of, or its rights or benefits under, a Contract.
- 13.2 The Company is entitled at any time to assign or deal with the benefit of any Contract or sub-contract any work relating to the contract without obtaining the consent of, or giving notice to, the Customer.

14. NOTICES

- 14.1 Notices given by one party to the other in connection with a Contract must be in writing and may be delivered personally or by pre-paid first class post and in the case of post will be deemed to have been given 2 Working Days after the date of posting. Notices shall be delivered or sent to the last known addresses of the parties or to any other address notified in writing by one party to the other for the purpose of receiving notices in connection with a Contract. Each party may specify by notice to the other a particular individual or office holder to whom any notices served on it are to be addressed, in which case a notice shall not be validly given (unless so addressed).
- 14.2 **FORCE MAJEURE**
 - 12.1 In this condition 12, "Force Majeure Event" means any circumstance beyond the control of the Company including, but not limited to acts of God, fire, explosion, adverse weather conditions, flood, earthquake, terrorism, riot, civil commotion, war, hostilities, strikes, work stoppages, slow-downs or other industrial disputes, accidents, riots or civil disturbances, acts of government, lack of power and delays by suppliers or materials shortages but, for the avoidance of doubt, nothing shall excuse the Customer from any payment obligations under these Conditions.
 - 12.2 If the Company is prevented, hindered or delayed from or in supplying the Goods under these Conditions by a Force Majeure Event the Company may, at its sole option, and without being liable for any loss or damage suffered by the Customer as a result:
 - 12.2.1 suspend deliveries until the Force Majeure Event continues;
 - 12.2.2 suspend available stocks of Goods between its customers if the Company has insufficient stocks to meet orders;
 - 12.2.3 terminate any Contract forthwith by giving notice to that effect to the Customer.

15. SEVERANCE

- 15.1 If any of these Conditions is found to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other Conditions which shall remain in full force and effect.
- 15.2 If any of these Conditions is so found to be invalid or unenforceable but would cause to be invalid or unenforceable if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid and enforceable.

16. THIRD PARTIES

- 16.1 A Contract and any matter arising from or in connection with a Contract or the legal relationships established by or in connection with such Contract shall not constitute a waiver of any other rights or remedies. A waiver of any breach of any of the terms of a Contract or of a default under a Contract shall not affect the other terms of such Contract.

17. WAIVER

- 17.1 The rights and remedies provided by any Contract may be waived only in writing and specifically, and any failure to exercise or any delay in exercising a right or remedy by the Company shall not constitute a waiver of that right or remedy or of any other rights or remedies. A waiver of any breach of any of the terms of a Contract or of a default under a Contract shall not affect the other terms of such Contract.

18. VARIATION

- 18.1 No variation or alteration of any of the provisions of a Contract or these Conditions shall be effective unless it is in writing and signed by or on behalf of each party.

19. APPLICABLE LAW

- 19.1 A Contract and any matter arising from or in connection with a Contract or the legal relationships established by or in connection with such Contract shall be governed by and construed in accordance with English law.
- 19.2 Each party irrevocably agrees to submit to the exclusive jurisdiction of the English courts over any claim or matter arising from or in connection with a Contract or the legal relationships established by or in connection with such Contract.

20. ENTIRE AGREEMENT

- 20.1 This Contract and any conditions, warranties and representations, expressed or implied by statute, common law or otherwise, in relation to the supply, use or failure to supply the Goods are intended to constitute the entire agreement between the parties and to supersede all other agreements, understandings, arrangements or negotiations, written or oral, in relation to the subject matter of this Contract.

21. ASSIGNMENT

- 21.1 The Customer may not assign or deal in any part of the benefit of, or its rights or benefits under, a Contract.
- 21.2 The Company is entitled at any time to assign or deal with the benefit of any Contract or sub-contract any work relating to the contract without obtaining the consent of, or giving notice to, the Customer.

22. NOTICES

- 22.1 Notices given by one party to the other in connection with a Contract must be in writing and may be delivered personally or by pre-paid first class post and in the case of post will be deemed to have been given 2 Working Days after the date of posting. Notices shall be delivered or sent to the last known addresses of the parties or to any other address notified in writing by one party to the other for the purpose of receiving notices in connection with a Contract. Each party may specify by notice to the other a particular individual or office holder to whom any notices served on it are to be addressed, in which case a notice shall not be validly given (unless so addressed).