



# CONYERS

## Packaging

### TERMS & CONDITIONS

#### 1. GENERAL

- (a) In these Conditions the Company or the seller means C L Conyers & Sons (Smethwick) Ltd and any subsidiary or associate thereof, by which the goods in question are sold and "the Agreement" means these conditions together with any Contract in which they may be incorporated by reference or otherwise.
- (b) These terms shall prevail over any inconsistent terms contained in a Purchaser's order.
- (c) Where goods are ordered for delivery by instalments, each instalment shall be deemed to be a separate contract.
- (d) A contract cannot be cancelled except by mutual agreement and then only on terms which would fully indemnify the company.
- (e) No defect or invalidity affecting the whole or any part of any of these conditions shall affect the validity of any other condition or any part thereof.
- (f) No variation of these conditions shall be recognised by us unless accepted by us in writing.
- (g) The Company shall be entitled to withhold delivery of any goods if at such time there shall be any moneys due and owing from the buyer which shall have been due and owing for more than 30 days.
- (h) Without prejudice to any other remedies we may have in respect of unpaid debts due to us from the buyer we shall have a general lien on all such buyers goods or property in our possession (whether worked on or not) and we shall be entitled on the expiration of 21 days notice in writing to dispose of such goods or property as we think fit and to apply any proceeds received towards such debts.
- (i) The Company shall be entitled to cancel any order by written notice and without prejudice to our right to recover damages if:
  - 1. The buyer shall go into liquidation
  - 2. A distress or execution is levied or enforced upon any other property of the buyer and is not paid out or discharged within 14 days or
  - 3. The buyer stops payment or ceases or threatens to cease to carry on his business or to pay his debts as and when they fall due.
- (j) The Company will accept no liability for any claim made against the customer for any infringement of patent rights of registered or unregistered trade marks (including any copyright therein) or of registered designs or copyright involved in the use, resale or offering for resale of goods either as originally sold by us or otherwise.

#### 2. PRICE

- (a) All prices quoted are, unless otherwise stated, net ex works exclusive of VAT and any other taxes and are subject to increase in the events of any increase from the time of quotation in the cost to the Company of the goods to be sold hereunder imposed by any supplier or by way of rise or fall, in the level of labour rates and emoluments overheads or other costs to the Company and in case of goods imported by the Company by any increase in any import duty or other taxation or charge imposed thereon or due to any change in the rate of exchange for the currency concerned.
- (b) The prices quoted are for the total quantity shown and the Company shall not be obliged to accept a portion only of the rates or prices quoted.
- (c) If by agreement with the Company or on default of the buyer the goods are stored on the Company's premises then the Company may make a reasonable charge therefor.
- (d) In the event that the Company accepts variations requested by the Buyer to the terms and specifications of the Contract, then the Company may make additional charge therefor.

#### 3. DELIVERY

Every effort will be made to deliver on the date agreed but time of delivery shall not be of the essence of the Contract and late delivery in the event of strikes, lock-outs, breakdown of plant or transport or failure on the part of any supplier of the Seller's shall not entitle the Buyer to claim any damages or set-off against the price in no case shall damages for non-delivery exceed the measure laid down in Section 51(3) of the Sale of Goods Act 1979 or any statutory re-enactment or modification thereof or any law, order or regulation made thereunder.

#### 4. QUANTITIES

If the quantity of goods delivered is less than the quantity stated in the Buyer's order, the Buyer must notify the Seller of such deficiency within one day (24 hours) of delivery and must give the Seller forthwith upon notification the opportunity to inspect and/or re-weigh the goods. Time is of the essence in this clause. Unless notification is made according to this condition the Buyer shall lose the right to reject the goods and no deduction or set off may be made in any proceedings against a claim by the Seller for the invoice value of the goods. However, delivery of 10 percent more or less in quantity of material ordered shall be a good delivery, a pro rata charge or allowance at the contract price (subject to variation under the provisions of clause 2) be made to cover any such difference in quantity.

## **5. DESCRIPTION**

No discrepancy between the description of the goods contained in an Acknowledgement of Order and the goods delivered shall entitle the Buyer to reject the goods or to claim any damages or set-off unless the discrepancy is notified to the Seller within one day (24 hours) of delivery and unless the Seller is given the opportunity forthwith upon notification to inspect the goods. This clause is subject to Condition 7 and time shall be of the essence of this condition.

## **6. QUALITY**

No defective quality or fitness shall entitle the Buyer to reject the goods unless notified to the Seller within one day (24 hours) of delivery and unless the Seller is given the opportunity forthwith upon notification to inspect the goods. No claim for damages or any set-off for breach of any terms express or implied as to the quality of fitness of any of the goods shall be made by the buyer unless the defect is notified to the Seller within one day (24 hours) of its discovery by the Buyer and unless the Seller is given the opportunity forthwith upon notification to inspect the goods. This clause is subject to Condition 7 and time shall be of the essence of this condition.

## **7. REPLACEMENT**

Upon notification of any discrepancy between description and quality or fitness in any goods supplied the Seller may at its option replace the goods complained of with goods of correct description and/or quality or fitness and if the Seller makes such replacement within a reasonable time of notification under Conditions 5 or 6 (as the case may be) the Buyer shall not make any claim against the Seller for any damages or costs and shall pay the full invoice value without set-off of the goods replaced at the price stated in the original invoice.

## **8. TERMS OF PAYMENT**

- (a) Payment is due within 30 days of the dates of delivery and time shall be of the essence of this condition.
- (b) This condition 8 shall apply whether or not there is any dispute arising under the contract or any delay in delivery.
- (c) Interest will be charged on unpaid accounts at the rate (as well after as before any judgement) of 2 per cent per annum in excess of the Base Rate for the time being of National Westminster Bank Plc or alternatively such interest rate as shall from time to time be applicable as the rate of interest upon judgements in a High Court whichever interest rate shall be the greater and interest shall be chargeable from 30 days after delivery.

## **9. RISK**

- (a) Risk in material which is the subject matter of a contract passes to the Purchaser when the material is off loaded from the Company's vehicle at the point of destination; or (in a case where the Company does not itself effect delivery) at the time when the material leaves the Company's premises or (in case where the Purchaser is to collect the material, and if earlier) seven days after notification to the Purchaser that the material is ready for dispatch. Any storage of material on the Company's premises after the expiry of the latter period of seven days is at the Purchaser's risk.
- (b) Material supplied to the Company by a Purchaser in connection with an order is held by the Company at the risk of the Purchaser.

## **10. PROPERTY**

- (i) Property in the goods shall not pass until payment in full has been received by the Seller for the Goods and for all other goods supplied by the Seller to the Buyer at any time prior to the delivery of goods.
- (ii) Until the Company has received payment in full for all goods whatsoever which we have supplied at any time to the Buyer, all such goods remain our property and the Buyer shall hold such goods as trustee for the Seller.
- (iii) Notwithstanding that property in the goods has not yet passed by the Buyer may nevertheless sell the goods in the ordinary course of its business but shall do so as agent for the Seller. All proceeds of such sales shall accordingly belong to the Seller and shall be kept by the Buyer in a separate bank account to be opened by the Buyer for the purpose of receiving only the proceeds of such sales and of which purpose notice shall have been given on the opening of the account to the bank at which the account is kept. If at any time the balance of such account exceeds the invoice value of the total of goods supplied by the Seller to the Buyer but not yet paid for, the Buyer may retain such surplus for its own use and benefit.
- (iv) Notwithstanding that property in the goods has not yet passed, the Buyer may use the goods in any process of manufacture in the ordinary course of the Buyer's business. If the Buyer sells any product manufactured by using the Seller's goods before property in the goods used has passed to the Buyer the Buyer shall sell such products as agent of the Seller but the Buyer's liability to account as agent for the proceeds of sale shall be limited to the Seller's invoice value of goods so used. The sums so accountable shall be dealt with by the Buyer in the same manner as is provided by part (iii) of this condition.
- (v) Until property passes any of the goods remaining in the possession of the Buyer and unsold or unused in manufacture shall be kept separate and distinct from all property of the Buyer or of other persons and if any goods are used in manufacture before property passes the Buyer shall maintain records sufficient to enable the manufactured products and goods incorporated to be identified, measured or otherwise qualified.
- (vi) If the Buyer is in default for longer than seven days in one payment of any invoice as provided for by Condition 8 or is in default in payment of any sum whatsoever due to us or if any bill of exchange cheque or negotiable instrument drawn or accepted by the Buyer in our favour or at our request is dishonored on presentation for payment or if we have bona fide doubts as to the solvency of the Buyer. Time shall be of the essence of this condition.
- (vii) The Buyer's licence to sell or use the goods given by parts (iii) or (iv) of this condition shall automatically determine if the Buyer shall cease trading or suspend payment of its debts or enter into any scheme or arrangement whether formal or informal with its creditors or any section of its creditors or shall have a receiver appointed over any part of its property or undertaking or if a petition to wind up the Buyer shall be presented or if the Buyer shall pass a resolution for winding up otherwise than for the purpose of amalgamation or the Buyer shall forthwith deliver up to the Seller all goods of the Seller's in its possession and unsold as at the moment of determination. The Seller shall be entitled to enter upon any premises of the Buyer for the purpose of removing the goods and to remove such goods from the premises (including severance from the realty where necessary).
- (viii) No defect or invalidity affecting any of parts (i) (ii) (vii) inclusive of this condition shall affect the validity of any other part.

## **11. INSPECTION**

All testing of material shall be done at the Seller's premises, but the cost of transporting such material shall be borne by the Purchaser.

## **12. CONSEQUENTIAL LOSS & CLAIMS**

- (a) The Company shall not be liable for loss or damage due directly or indirectly to causes beyond its control or of an indirect or consequential nature.
- (b) The Company will not accept responsibility for notifying carriers (on behalf of the Purchaser) or any claims for loss, damage or delay in transit or mis-delivery or non-delivery unless the purchaser puts the Company in possession of relevant information in reasonable time for the Company to comply with claims procedures under the Road Haulage Association conditions current at the commencement of transit.
- (c) The Company shall not be liable for imperfections in its work caused directly or indirectly by defects in or unsuitability for purpose of any material supplied to the Company by a purchaser in connection with an order. The Company shall be entitled to be paid the full contract price notwithstanding any such imperfection.

## **13. FORCE MAJEURE**

The acceptance of an order may be revoked (in whole or in part) or delivery dates postponed by us without liability in the event of any contingency beyond our control which does or in our opinion is likely to prevent, hinder, delay, interrupt or interfere with the fulfilment of the order or any part of it.

## **14. APPLICABLE LAW & JURISDICTION**

The contract shall be construed according to the Law of England and shall be subject to jurisdiction of the English Courts.