

## Terms and Conditions of Sale

### 1. INTERPRETATION

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

**Customer:** means the person, business or company who purchases the Products from the Supplier.

**Supplier:** means Island Leisure Products Limited EuroLink Industrial Estate, Sittingbourne, Kent ME10 3RN.

**Contract:** means any contract between the Supplier and the Customer for the sale and purchase of the Products incorporating these conditions.

**Products:** the products specified in the Contract including any replacement or replacement part.

1.2 A reference to a law is a 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.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 Any reference to 'written' or 'in writing' includes faxes, emails and handwriting.

### 2. APPLICATION OF TERMS

2.1 Subject to condition 2.2 and any variation made in accordance with these conditions the Contract shall be subject to these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply).

2.2 These conditions are subject to any special conditions in the Contract.

2.3 These conditions apply to all the Supplier's sales and any variation to these conditions and any representations about the Products shall have no effect unless expressly agreed in writing and signed on behalf of the Supplier. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not specified in the Contract. Nothing in this condition shall exclude or limit the Supplier's liability for fraudulent misrepresentation.

2.4 Each order or acceptance of a quotation for Products by the Customer from the Supplier shall be deemed to be an offer by the Customer to buy Products subject to these conditions.

2.5 Any quotation is valid for a period of 30 days only from its date, provided that the Supplier has not previously withdrawn it.

2.6 Where the Customer is a consumer (as defined in the Unfair Contract Terms Act 1977 or the Unfair Terms in Consumer Contracts Regulations 1999), the consumer's statutory rights are not adversely affected by anything contained in these conditions.

### 3. DESCRIPTION OF PRODUCTS

3.1 The quantity and description of the Products shall be as specified in the Contract.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Products described in them. They shall not form part of the Contract and this is not a sale by sample.

### 4. DELIVERY OF THE PRODUCTS

4.1 Unless otherwise specified in the Contract or agreed in writing between the parties, the Supplier shall deliver the Products to the location specified in the Contract and subject to condition 7.3 it shall do so at the Customer's expense.

4.2 Any obligation of the Supplier in respect of performance dates are approximate only and time shall not be of the essence in respect of delivery.

4.3 The Supplier may effect delivery in one or more instalments.

4.4 Subject to the other provisions of these conditions the Supplier 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 delivery of the Products (even if caused by the Supplier's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 90 days.

4.5 If for any reason the Customer fails to accept delivery of any of the Products when they are ready for delivery, or the Supplier is unable to deliver the Products on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:

- risk in the Products shall pass to the Customer (including for loss or damage caused by the Supplier's negligence);
- the Products shall be deemed to have been delivered; and
- the Supplier may store the Products until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

### 5. NON-DELIVERY OF PRODUCTS

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

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

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

### 6. RISK/TITLE IN THE PRODUCTS

6.1 The Products are at the risk of the Customer from the time of delivery or deemed delivery whichever is earlier.

6.2 Ownership of the Products shall not pass to the Customer until the Supplier receives in full (in cash or cleared funds) all sums due to it in respect of:

- the Products; and
  - all other sums which are or which become due to the Supplier from the Customer on any account.
- 6.3 Until ownership of the Products has passed to the Customer, the Customer shall:
- hold the Products on a fiduciary basis as the Supplier's bailee; and
  - maintain the Products in satisfactory condition and keep them insured on the Supplier's behalf for their full price against all risks.

6.4 The Customer may resell the Products before ownership has passed to it solely on the following conditions:

- any sale shall be effected in the ordinary course of the Customer's business at full market value; and
- and such sale shall be a sale of the Supplier's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.

6.5 The Customer's right to possession of the Products shall terminate immediately if:

- the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
- the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Supplier and the Customer, or is unable to pay
- its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
- the Customer encumbers or in any way charges any of the Products.

6.6 The Customer grants the Supplier, its agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect them, or where the Customer's right to possession has terminated, to recover them.

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

6.8 The Customer shall resell the Products in the same order in which it purchased them from the Supplier (ie by selling first, those of the Products which have been in the Customer's possession the longest) and this requirement shall be deemed always to have been complied with for the purposes of clause 6.

6.9 On termination of the Contract, howsoever caused, the Supplier's (but not the Customer's) rights contained in this condition 6 shall remain in effect.

### 7. PRICE

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

7.2 Subject to condition 7.3 the price for the Products shall be exclusive of any value added tax, and all costs or charges in relation to postage, packaging, loading, unloading, carriage, freight, bank charges, insurance and, all of which amounts the Customer shall pay in addition when it is due to pay for the Products.

7.3 Condition 7.3 shall not apply where non-standard delivery terms are requested by the Customer and the decision as to whether delivery terms are non-standard shall be at the discretion of the Supplier.

7.4 Where the Supplier incurs extra cost owing to suspension or alteration of the time or location of delivery or installation arising from the Customer's instructions or lack of instructions, or by reason of interruptions, delays, overtime, unusual hours, mistakes or work occasioned by the act or default of the Customer, such cost shall be added to the price and paid for by the Customer.

### 8. PAYMENT

8.1 Subject to condition 8.5, and unless otherwise specified in the Contract, or agreed in writing between the parties, payment shall be made as follows:

- where the Customer does not have a credit account with the Supplier, the total price of the Products together with all other charges and payments due to the Supplier shall be payable immediately.

(b) Where the Customer has a credit account with the Supplier, the Customer shall pay each invoice issued by the Supplier within 30 days from the date on the invoice.

8.2 Time for payment shall be of the essence.

8.3 The Supplier reserves the right to withdraw, or amend the terms of, any credit account at any time.

8.4 Unless otherwise agreed between the parties in writing, all payments are due in pounds sterling and no payment shall be deemed to have been received until the Supplier has received cleared funds.

8.5 All payments payable to the Supplier under the Contract shall become due immediately on its termination despite any other provision.

8.6 The Customer 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 Customer has a valid court order requiring an amount equal to such deduction to be paid by the Supplier to the Customer.

8.7 If the Customer fails to pay the Supplier any sum due pursuant to the Contract, the Customer shall be liable to pay interest to the Supplier 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 Bank of England, accruing on a daily basis until payment is made, whether before or after any judgment. The Supplier reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

### 9. QUALITY OF PRODUCTS

9.1 Where the Supplier is not the manufacturer of the Products, the Supplier shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Supplier.

9.2 The Supplier warrants that (subject to the other provisions contained in these conditions) on delivery the Products shall be of satisfactory quality.

9.3 The Customer is required to carry out all reasonable inspections to Products on the date of delivery for the purpose of identifying defects and/or damage and advise the Supplier of any missing or faulty goods within 7 days of delivery.

### 10. ACCURACY OF DATA SHEETS

10.1 The Supplier may at its discretion issue technical data sheets or safety data sheets or both in respect of the Products.

10.2 The information contained in technical data sheets is based on results gained from experience and testing, and whilst believed to be reasonably accurate, the Supplier provides no warranty in respect of the accuracy of such information.

10.3 Conditions of use of the Products are not within the Supplier's control and it is recommended that the Customer determines for themselves the suitability of the Products for their particular application.

10.4 The Supplier accepts no liability whatsoever for any loss or damage of any kind resulting directly or indirectly from the Customer's reliance upon the accuracy of the information contained in any technical data sheet, and/or any product safety data sheet.

### 11. TERMINATION

11.1 Without prejudice to any other rights or remedies which the parties may have, the Supplier may terminate the Contract without liability to the Customer immediately on giving notice to the other if; (a) the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment; or

- the Customer commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within seven days of that party being notified in writing of the breach; or
- circumstances exist or arise which, in the reasonable opinion of the Supplier, materially and adversely affect the performance of, or the ability to perform, the Customer's duties and obligations under the Contract; or
- the Customer ceases or threatens to cease to carry out its business; or
- the Customer becomes bankrupt or makes a composition or arrangement with his creditors or being a limited company has a Petition issued for the Insolvency of that company or goes into liquidation or carries out its business under an Administrator, Receiver, Manager or Liquidator or enters into a scheme or arrangement for the benefit of its creditors or any of them.

11.2 On termination of the Contract by either party and for any reason:

- All monies due to the Supplier under the Contract and not yet paid shall become payable immediately;
- The Products will remain the property of the Supplier;
- The accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive, implicitly surviving termination, shall not be affected.

### 12. LIMITATION OF LIABILITY

12.1 Subject to condition 4, condition 5, condition 9 and condition 10, the following provisions set out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- any breach of the Contract;
- any use made or resale by the Customer of any of the Products or of any goods incorporating any of the Products; and
- any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

12.2 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) are, to the fullest extent permitted by law, excluded from the Contract.

12.3 Nothing in these conditions excludes or limits the liability of the Supplier:

- for death or personal injury caused by the Supplier's negligence; or
- under section 2(3), Consumer Protection Act 1987; or
- for any matter which it would be illegal for the Supplier to exclude or attempt to exclude its liability;
- for any liability incurred by the Customer as a result of any breach by the Supplier of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982;
- for fraud or fraudulent misrepresentation.

12.4 Subject to condition 12.2 and condition 12.3;

- the Supplier shall not be liable to the Customer for loss of profit, loss of business, loss of use, or depletion of goodwill in each case whether direct, indirect or consequential; and
- the Supplier'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 price of the Products supplied or which were agreed to be supplied under the Contract.

### 13. ASSIGNMENT

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

13.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Supplier.

### 14. FORCE MAJEURE

14.1 The Supplier reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Products ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in carrying out its business due to circumstances beyond the reasonable control of the Supplier including, without limitation, acts of God, governmental actions, 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), 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 90 days, the Customer shall be entitled to give notice in writing to the Supplier to terminate the Contract.

### 15. GENERAL

15.1 Each right or remedy of the Supplier under the Contract is without prejudice to any other right or remedy of the Supplier whether under the Contract or not.

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, void ability, 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 Supplier 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 Supplier of any breach of, or any default under, any provision of the Contract by the Customer 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. NOTICES

16.1 All notices between the parties about the Contract shall be in writing and delivered by hand or sent by first class post or sent by fax or email:

- in case of notices to the Supplier to its place of business or such changed address as shall be notified to the Customer by the Supplier; or
- (in the case of notices to the Customer) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to the Supplier by the Customer.

16.2 Notices shall be deemed to have been received:

- if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- if delivered by hand, on the day of delivery; or
- if sent by fax or email on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

