



## **Terms & Conditions of Sale**

### **1. DEFINITIONS**

In these Conditions the following expressions shall have the following meanings:

'the Company'	means Peter Hawkins Limited;
'Goods'	means the articles or things or any of them referred to in the Contract and which are to transfer from the Company to the Buyer;
'the Buyer'	means the person, firm or company with whom the Contract is made by the Company, whether directly or indirectly through an agent;
'Company's Premises'	means the premises mentioned in the Company's quotation or other contractual document or if not so mentioned means the Company's works Castle Lane, Melbourne, Derbyshire DE73 8JB;
'the Contract'	means the Buyer's order for Goods and the Company's acceptance of the same incorporating these terms and conditions of sale;
'Default'	means any breach of the obligations of the Company or any default act omission negligence or statement of the Company, its employees, agents or sub-contractors in connection with or in relation to the subject matter of this agreement in respect of which the Company is liable to the Buyer;
'Intellectual Property Rights'	means patents, rights to inventions, copyright and related rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.

### **2. GENERAL**

These conditions shall be deemed to be incorporated in all contracts of the Company to sell Goods and in the case of

any inconsistency with any order letter or form of contract sent by the Buyer to the Company or any other communication between the Buyer and the Company whatever may be their respective dates the provisions of these conditions shall prevail unless expressly varied in writing and signed by a director on behalf of the Company. Any concession made or latitude allowed by the Company to the Buyer shall not affect the strict rights of the Company under the Contract. If in any particular case any of these conditions shall be held to be invalid or shall not apply to the Contract the other conditions shall continue in full force and effect.

### **3. ORDERS**

- 3.1. Unless verbal, telephone or telegraphic orders and any variations to orders are confirmed in writing by the Buyer the Company shall not be responsible for errors or subsequent misunderstandings.
- 3.2. Notwithstanding that the Company may have given a detailed quotation no order shall be binding on the Company unless and until it has been accepted in writing by the Company.
- 3.3. The Buyer has a period of 30 days from the date of the quotation to accept the quotation and proceed to order the Goods. If the Buyer does not purchase the Goods within this stated period then the Company is under no obligation to sell any Goods to the Buyer under the terms of such quotation.

### **4. PRICES**

- 4.1. The price payable for Goods shall, unless otherwise stated by the Company in writing and agreed on its behalf, be the list price of the Company current at the date of dispatch.
- 4.2. All prices are exclusive of Value Added Tax and any delivery charges. VAT will be charged at the prevailing rate.
- 4.3. The Company's prices are subject to adjustment to take account of any variation in the Company's costs including (but not limited to) variations in wages, the cost of materials, exchange rate fluctuations, alterations of duties and other costs since the date of the Company's quotation or (if no quotation is issued) the Buyer's order. The Company accordingly (acting fairly and reasonably) reserves the right to adjust the invoice price by the amount of any increase or decrease in such costs after the price is quoted. The invoice so adjusted shall be payable as if the price set out therein were the original contract price.

### **5. TERMS OF PAYMENT**

- 5.1. Unless otherwise stated by the Company in writing and recorded on the Company's acknowledgement of order, payment shall be due not later than the end of the month following the month of the date of the invoice save that payment shall become due in any event forthwith upon the occurrence of any of the events referred to in Condition 13 hereof.
- 5.2. Without prejudice to any other rights it may have, the Company is entitled to charge monthly interest at 3% above the then current Base Rate of the Bank of England

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on any overdue payments of the price of the Goods or other fees payable by the Buyer.

## 6. DELIVERY

- 6.1. All times or dates given for delivery of the goods are given in good faith but without any responsibility on the part of the Company. Time of delivery should not be of the essence of any contract nor shall the Company be under any liability for any delay beyond the Company's control.
- 6.2. Where the Goods are handed to a carrier for carriage to the Buyer or the United Kingdom port for export any such carrier shall be deemed to be an agent of the Company and not of the Buyer for the purposes of Sections 44, 45, and 46 of the Sale of Goods Act 1979.
- 6.3. The Buyer agrees that Section 32(3) of the Sale of Goods Act 1979 shall not apply to Goods sent by the Company.
- 6.4. No liability for non-delivery loss of or damage of the Goods occurring prior to delivery or for any claim that the Goods are not in accordance with the Contract will attach to the Company unless claims to that effect are notified in writing by the Buyer to the Company (and in the case of claims for non-delivery loss or damage with a copy to the carrier if the Company's own vehicles have not been used to deliver the Goods):
  - 6.4.1 within five working days of delivery for loss damage or non-compliance with the Contract; or
  - 6.4.2 within seven working days of the date of the invoice for non-delivery.
- 6.5. In the event of a valid claim for non-delivery loss damage or non-compliance with the Contract the Company undertakes at its option either to repair or replace the Goods at its expense but shall not be under any further or other liability to any person in connection with such non-delivery loss damage or non-compliance.
- 6.6. If the Buyer shall fail to give notice in accordance with condition 6(4) above the Goods shall be deemed to be satisfactory in all respects. Without prejudice to earlier acceptance by the Buyer it shall be bound to accept and pay for the same accordingly.

## 7. RETURNS

Goods supplied in accordance with the Contract cannot be returned without the Company's prior written authorisation. Duly authorised returns shall be sent to the Company's Premises at the Buyer's expense and risk.

## 8. PACKING AND CARRIAGE

- 8.1. Unless otherwise agreed by the Company in writing the prices of the Goods are exclusive of packing and carriage.

## 9. PASSING OF TITLE AND RISK

- 9.1. From the time of delivery the Goods shall be at the risk of the Buyer who shall be solely responsible for their custody and maintenance but, unless otherwise expressly agreed in writing, the Goods shall remain the property of the Company until all payments have been made in full and unconditionally. Whilst the ownership of the Company

continues the Buyer shall keep the Goods separate and identifiable from all other goods in its possession as bailee for the Company.

- 9.2. In the event of any resale by the Buyer of the Goods the beneficial entitlement of the Company shall attach to the proceeds of sale or other disposition thereof so that such proceeds or any claim therefore shall be assigned to the Company and until and subject to such assignment shall be held on trust in a separate identified account for the Company by the Buyer who will stand a strictly fiduciary capacity in respect thereof.
- 9.3. In event of failure to pay the price in accordance with the Contract, the Company shall have power to resell the Goods. Such power being additional to (and not in substitution for) any other power of sale arising by operation of law or implication or otherwise and for such purposes the Company and its servants and agents may forthwith enter upon any premises or land occupied or owned by the Buyer to remove the Goods.

## 10. CONDITIONS AND WARRANTIES

- 10.1. The Contract shall not constitute a sale by description or sample.
- 10.2. The Company shall be entitled to make variations to any of the Goods that are not material and do not affect their operation or purpose.
- 10.3. All brochures and promotional material issued by the Company from time to time is only indicative and may not reflect the exact nature or extent of the Goods and should not be treated as giving a detailed specification of the Goods which should induce any contract being entered into. All specific details in relation to the Goods will be supplied in the quotation.
- 10.4. Any conditions or warranties (whether express or implied by statute common law or arising from conduct or a previous course of dealing or trade custom or usage) as to the quality of the Goods or their fitness for any particular purposes (even if that purpose is made known expressly or by implication to the Company) or as to the correspondence of the Goods with any description or sample are hereby expressly negated.

## 11. DEFECTIVE GOODS

- 11.1. In substitution for all rights which the Buyer would or might have but for these Conditions the Company undertakes: (a) in the case of glass machinery manufactured by the Company that if within ninety days of delivery of the machinery; and (b) in the case of other Goods manufactured by the Company that if within twelve months of delivery of such other Goods a defect under proper use appears therein (fair wear and tear expected) and arising solely from faulty design, materials or workmanship (excluding any electrical component) it will at its own discretion, provided the Goods have been accepted and paid for by the Buyer, repair or replace them or supply new parts and shall return them free of charge in order to exercise its rights under this condition. The Buyer shall inform the Company as soon as practicable after the date which such defect appeared.

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11.2. In the case of Goods not manufactured by the Company, the Company will pass on to the Buyer to the extent that it is able any benefits obtainable under any warranty given by the Company's supplier provided that the Goods have been accepted and paid for.

11.3. Nothing herein shall impose any liability on the Company in respect of any defect in the Goods arising out of the acts, omissions negligence or default of the Buyer its servants or agents including in particular without prejudice to the generality of the foregoing any failure by the Buyer to comply with any recommendations of the Company as to storage and use of the Goods (including without limitation any instructions provided by the Company as to the installation and commissioning of the Goods).

11.4. Nothing herein shall have the effect of excluding or restricting the liability of the Company for death or personal injury resulting from its negligence in so far as the same is prohibited by United Kingdom statute.

## 12. DESIGN VARIATIONS

The Company reserves the right at any time prior to delivery to make any amendments, variations or alterations to the Goods, which it deems necessary, provided they do not adversely affect the Goods or their operation.

## 13. LIABILITY OF THE COMPANY

13.1. Nothing in this Agreement excludes or limits the liability of either party for fraud, fraudulent misrepresentation, death or personal injury caused by its negligence.

13.2. The aggregate liability of the Company for direct loss of or damage to the tangible, material property of the Buyer whether arising in contract, tort (including negligence) or otherwise howsoever shall be limited to a maximum amount of £[INSURED SUM] ([ ] Pounds Sterling) in aggregate.

13.3. The total aggregate liability of the Company for loss in respect of Defaults whether arising in contract, tort (including negligence) or otherwise howsoever (other than those governed by clauses 13.1 and 13.2) shall in no event exceed the price payable for the goods.

13.4. In no event shall the Company be liable in contract, tort (including negligence), breach of statutory duty or otherwise howsoever for:

13.4.1 any loss of profit, loss of business, loss of goodwill, loss of contracts, loss of revenues or loss of anticipated savings; or

13.4.2 any increased costs or expenses; or

13.4.3 loss of, damage to or corruption of data; or

13.4.4 any special, indirect or consequential loss or damage of any nature whatsoever, whatever the cause thereof, arising out of or in connection with the Agreement.

## 14. DEFAULT ON INSOLVENCY OF THE BUYER

If the Buyer shall be in breach of any of its obligations under the Contract or if any distress or execution shall be levied on the Buyer's property or assets or if the Buyer

shall make or offer to make any arrangement or composition with his creditors or commit any act of bankruptcy or if any bankruptcy petition be presented against him or (if the Buyer is a company) if any resolution or petition to wind up such company shall be passed or presented or if a Receiver of the whole or any part of such company's undertaking property or assets shall be appointed, the Company in its discretion and without prejudice to any other right or claim may by notice in writing determine wholly or in part any and every contract between the Company and the Buyer or may (without prejudice to the Company's right subsequently to determine the contract for the same cause should it so decide) by notice in writing suspend further deliveries of Goods until any defaults of the Buyer be remedied.

## 15. INSTALLATION OF GOODS

15.1. Where the Company is to erect or assemble any of the goods at the direction of the Buyer the Buyer shall ensure that the site where the goods are to be erected or assembled is suitable and adequate with proper means of entry and services required to enable the Goods to be fully installed.

15.2. The Company takes no responsibility for any loss or damage caused to the Buyer's site or equipment or any third party's site or equipment during any installation process.

15.3. The Company shall use its reasonable endeavors to install the Goods within a reasonable period of time from when the Buyer requests that they be installed.

15.4. The Buyer shall always be responsible for the connection of any services to the equipment.

## 16. NO SET OFF

Where any claim has been made against the Company, the Client shall remain liable to pay any outstanding invoices which have been raised by the Company in connection with the Services and the Client shall have no rights to set-off any amounts recovered or recoverable under any claim against the amount due under any outstanding invoice.

## 17. COPYRIGHT

The Buyer hereby acknowledges that all Intellectual Property Rights appertaining to or associated with the Goods and all materials embodying them belong to the Company to the fullest extent permitted by law.

## 18. STORAGE OF GOODS

18.1. If the Buyer is unable to accept delivery of the Goods as agreed between the parties and the Company is to remain with the Company for a period of more than [5 working days] the Company shall be entitled to charge a reasonable storage fee to the Buyer and recover any reasonable costs from the Buyer if the Company is required to sub-contract out any aspect of storing the Goods for the Buyer. For the avoidance of doubt, any risk in the Goods is deemed to have passed to the Buyer on the agreed date for delivery and the Buyer should ensure adequate insurance is in place from this date.

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18.2. Any fees payable for storage are to be discharged immediately by the Buyer on or before actual delivery of the goods.

**19. REPRESENTATIONS**

No statement description information warranty condition or recommendation contained in any catalogue price list advertisement or communication or made verbally by any of the agents or employees of the Company shall be construed to enlarge, vary or override in any way any of these conditions.

**20. FORCE MAJEURE**

The Company shall be entitled to delay or cancel delivery or to reduce the amount delivered if it is prevented from or hindered in or delayed in manufacturing obtaining or delivering the Goods by normal route or means of delivery through any circumstances beyond its control including but not limited to strikes, lock-outs, accidents, war, fire, reduction in or unavailability of power at manufacturing plant, breakdown of plant or machinery or shortage or unavailability of raw materials from normal source of supply.

**21. HEADINGS**

The headings in these conditions are intended for reference only and shall not affect their construction.

**22. SEVERANCE**

22.1. If any provision of this agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this agreement, and the validity and enforceability of the other provisions of this agreement shall not be affected.

22.2. If a provision of this agreement (or part of any provision) is found illegal, invalid or unenforceable, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

**23. ARBITRATION**

Any dispute or difference arising out of or in connection with this agreement, including any question regarding its existence, validity or termination or the legal relationships established by this agreement, shall be finally resolved by arbitration. It is agreed that in default of the parties' agreement as to the arbitrator, the appointing authority shall be the Chartered Institute of Arbitrators in London

**24. THIRD PARTY RIGHTS**

A person who is not a party to this agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999 and the rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement is not subject to the consent of any person that is not a party to this agreement.

**25. PROPER LAW**

The Contract shall in all respects be governed by English Law and shall be deemed to have been made in England and the Buyer and the Company agree to submit to the exclusive jurisdiction of the English Courts.

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