

PKL HOLDINGS LIMITED

CONDITIONS OF SALE

These conditions apply to all sales of goods by and company within the **PKL Holdings Limited** group to any purchaser and shall apply in place of and prevail over any terms or conditions contained or referred to in any purchaser's order or in correspondence or elsewhere or implied by trade custom, practice or course of dealing.

1. DEFINITIONS

- 1.1 "the Seller" means the member of the PKL Holdings Limited group which issued the Quotation to the Buyer.
- 1.2 "the Buyer" means the person, firm, company, corporation, organisation or authority seeking to purchase goods from the Seller and includes his, its or their successors or personal representatives.
- 1.3 "Goods" means all goods of any description which are the subject of a Sale Contract between the Seller and the Buyer.
- 1.4 "the Quotation" means the Seller's quotation for the supply of the Goods and, where applicable, the Works.
- 1.5 "Sale contract" means a contract for the sale of goods by the Seller.
- 1.6 "the Site" means the location where the Goods are to be installed.
- 1.7 "the Works" means the services to be supplied by the Seller under the terms of the Sale Contract in or in connection with the installation of the Goods.

2. CONCLUSION OF CONTRACT

No contract for the sale of goods by the Seller is concluded until the Seller sends an acknowledgement of order form to the Buyer indicating acceptance of an order placed by the Buyer.

3. PRICES

- 3.1 Where the Goods are sold on the basis of prices set out in the Seller's price list, the Seller shall be at liberty to alter any price shown in its price list from time to time and the price for the Goods under the Sale Contract shall be the price shown for goods of that description or those descriptions set out in the Seller's price list ruling at the date of despatch or delivery of the Goods.
- 3.2 Unless otherwise specified the price of the Goods is exclusive of VAT, Customs or harbour dues and any importation charge or fee levied by any government or authority in respect of the Goods.

4. PAYMENT

- 4.1 Unless otherwise specified by the Seller in writing payment for the Goods **or any instalment of the price for the goods or for services to be provided by the Seller to the Buyer** shall be made in full without any set-off or deduction by the Buyer within thirty days after the date of invoice from the Seller.
- 4.2 Interest shall be payable on overdue accounts at the statutory rate applying from time to time from the due date for payment thereof until receipt by the Seller of the full amount, whether before or after judgement.
- 4.3 If at the time of failure by the Buyer to pay the full price for the Goods or any instalment of the price on the due date for payment any further goods or services remain to be supplied by the

Seller under the terms of the Sale Contract the Seller shall have the right at any time while such default continues.

4.3.1 to suspend any further deliveries of goods due to be made pursuant to the Sale Contract and to demand payment in advance by the Buyer for all or any such goods or services remaining to be supplied by the Seller.

Or

4.3.2 to treat the contract as terminated by the Buyer thus releasing the Seller from any further obligation to supply goods or services under the Sale Contract and giving rise to a claim by the Seller against the Buyer for the loss of profit it would have made had such goods or services been supplied under the Sale Contract and paid for by the Buyer.

5. DELIVERY

5.1 **Unless otherwise expressly agreed in writing between the Seller and the Buyer**, delivery dates mentioned in any quotation, acknowledgement of order or elsewhere are approximate only and not of any contractual effect and the Seller shall not be under any liability to the Buyer in respect of any failure to deliver on any particular date or dates.

5.2 Delivery shall be at the Seller's premises unless otherwise stipulated or agreed by the Seller. **Unless otherwise expressly agreed in writing, transportation of the Goods from the Seller's premises shall be the responsibility of the Buyer.**

5.3 If the Buyer refuses or fails to take delivery of the Goods or any part of the Goods tendered in accordance with the Sale Contract or fails to take any action necessary on its part for delivery and/or shipment of the Goods **or any part of the Goods** the Seller shall be entitled either to

5.3.1 terminate the Sale Contract with immediate effect, to dispose of the Goods **or such part of the Goods as remains in the Seller's possession in such manner** as the Seller may determine and to recover from the Buyer any loss and additional costs incurred as a result of such refusal or failure;

or

5.3.2 store the Goods **or such part of the Goods as remains in the Seller's possession** for the Buyer and charge the Buyer for storage at the rate of 2.5% of the invoice price of the Goods **or the relevant part thereof** per month.

5.4 Unless otherwise expressly agreed the Seller may effect delivery in one or more instalments and each instalment shall be treated as a separate contract.

6. RISK

Risk in any part of the Goods shall pass to the Buyer when that part of the Goods is delivered to the Buyer. If the goods are sold ex-works delivery is deemed for this purpose to occur when the Goods are loaded on to transport to take them from the Seller's premises. If the Sale Contract obliges the Seller to deliver the Goods, delivery is deemed for this purpose to occur when the Goods arrive at the delivery location and before they are unloaded.

7. TITLE

7.1 The Goods shall remain the sole and absolute property of the Seller until such time as the Buyer shall have paid to the Seller the agreed price for all the Goods which are the subject of the Sale Contract.

7.2 Until such payment the Buyer shall be in possession of the Goods solely as bailee for the Seller and in a fiduciary capacity and shall store the Goods in such a way as to enable them to be identified as the property of the Seller.

- 7.3 The Seller reserves the immediate right of repossession of any of the Goods to which it has retained title as aforesaid and thereafter to resell the same and for this purpose the Buyer hereby grants an irrevocable right and licence to the Seller, its servants and agents to enter upon all or any of the Buyer's premises with or without vehicles during normal business hours. This right shall continue to subsist notwithstanding the termination of the Sale Contract for any reason and is without prejudice to any accrued rights of the Seller thereunder or otherwise.
- 7.4 The Buyer shall have the right in the ordinary course of its business to sell and deliver the Goods or any of them to any third party as the Seller's bailee and in a fiduciary capacity and provided that the entire proceeds of sale are held in trust for the Seller and not mingled with any other monies and shall be kept at all times identifiable as the Seller's monies. The Buyer agrees immediately upon being so requested by the Seller to assign to the Seller all rights and claims which the Buyer may have against its customers arising from such sales until payment in full is made by the Buyer to the Seller as aforesaid.

8. LIABILITY

- 8.1 Subject to the provisions of this clause 8 and 9 the Seller warrants to the Buyer that the Goods will be of satisfactory quality in that they will be
- 8.1.1 fit for use;
 - 8.1.2 safe; and
 - 8.1.3 durable
- when used in conditions and for the purpose for which goods of that kind are commonly supplied.
- 8.2 Subject to the provisions of this clause 8 and clause 9, if the Goods are sold as new, the Seller warrants that they will have an appearance and finish consistent with new goods and they will be reasonably free from minor defects.
- 8.3 If the Goods are sold as second-hand goods, the Seller gives no warranty as the appearance or finish of the Goods or as to their freedom from minor defects.
- 8.4 The warranties set out in clauses 8.1 and 8.2 do not extend to any matter making the quality of the Goods unsatisfactory
- 8.4.1 which is specifically drawn to the Buyer's attention before the Sale Contract is made; or
 - 8.4.2 where the Buyer examines the Goods before the Sale Contract is made, which that examination ought to reveal.
- 8.5 The Seller shall not be liable to the Buyer for any defect in the Goods unless that defect is notified to the Seller within the **warranty period** and for this purpose
- 8.5.1 **the warranty period, in the case of all Goods or parts of Goods which are new, shall be the period of twelve months from the date when the Goods or such parts of the Goods is or are delivered to the Buyer and in the case of all Goods or parts of Goods which are second-hand, shall be the period of three months from the date when the Goods or such part or parts of the Goods is or are delivered to the Buyer; and**
 - 8.5.2 delivery shall be deemed to occur
 - 8.5.2.1 in the case of Goods sold under a Sale Contract which does not oblige the Seller to carry out any installation work in relation to the Goods, when the Goods are loaded onto transport from the Seller's premises; or

8.5.2.2 in the case of Goods sold under a Sale Contract which does oblige the Seller to carry out installation work in relation to the Goods, when the Seller notifies the Buyer that such installation work has been carried out.

8.6 The Seller shall not be liable for any damage or loss to the Goods occurring in transit to the buyer unless the Buyer notifies the Seller of such loss or damage within seven days of the Goods being unloaded at the delivery location.

8.7 The Seller shall not in any case be liable to the Buyer for any defects in the Goods caused by fair wear and tear while used by the Buyer, abnormal conditions of storage or use or any neglect or default of the Buyer or any third party which is not consistent with use of the Goods in conditions and for the purpose for which goods of that kind are commonly supplied.

8.8 Where the Seller is liable for any defect in the Goods, the Seller's only obligation shall be at its option

8.8.1 to make good or repair the relevant items of the Goods or

8.8.2 to replace it or

8.8.3 to refund the cost of that item to the Buyer

and, if the Sale Contract under which the Goods are supplied obliged the Seller to carry out installation work in relation to the Goods, at its option either

8.8.4 itself to carry out the work of renewing the defective item and installing a made good, repaired or replaced item or

8.8.5 to reimburse the Buyer for its costs incurred in such removal and installation.

8.9 Any liability of the Seller under or in respect of the warranties contained in this clause 8 or otherwise arising in respect of the supply of goods or services to the Buyer in connection with the Sale Contract shall cease in the event that

8.9.1 the Buyer fails to pay the price for the Goods in accordance with the terms of the Sale Contract.

8.9.2 the Buyer carries out any repairs or maintenance to the Goods otherwise than in accordance with instructions from the Seller or using parts not recommended by the Seller.

8.10 The Seller's aggregate liability to the Buyer whether for negligence, breach of contract, misrepresentation or otherwise shall in no circumstances exceed the price payable under the Sale contract.

9. **EXCLUSION**

9.1 Save as expressly set out in these conditions, all conditions, warranties and representations, expressed or implied by statute, common law or otherwise, **made or given in connection with the supply of the Goods or services by the Seller to the Buyer** are hereby excluded and the Seller shall be under no liability to the Buyer for any loss, damage or injury, direct or indirect, resulting from defective material, faulty workmanship or otherwise howsoever arising and whether or not caused by the negligence of the Seller, its employees or agents save that the Seller shall accept liability for death or personal injury caused by the negligence of the Seller and for any fraudulent misrepresentation made by the Seller.

9.2 In no circumstances will the Seller have any liability for any consequential loss or damage due to any failure of the Goods or any part thereof to operate satisfactorily or at all or for any breach of the Sale Contract whatsoever or negligence by the Seller.

10. **FORCE MAJEURE**

- 10.1 The Seller shall not be liable to the Buyer for any loss or damage which may be suffered by the Buyer as a direct or indirect result of the supply of the Goods by the Seller or the performance by the Seller of any services to be supplied under the terms of the Sale Contract being prevented, hindered, delayed or rendered uneconomic by reason of circumstances or events beyond the Seller's control including but not limited to act of God, war, military or terrorist activity, riot, strike, lock-out, trade dispute or labour disturbance, accident, breakdown of plant or machinery, fire, flood, storm or adverse weather conditions or difficulty or increased expense in obtaining workmen, materials or transport.
- 10.2 If due to any such circumstances or events the Seller has insufficient stocks to meet all its commitments, the Seller may apportion available stocks between its customers at its sole discretion.

11. **INSOLVENCY AND DEFAULT**

If the Buyer enters into a deed of arrangement or has a bankruptcy order made against him or compounds with his creditors or if, being a company, the Buyer shall be liquidated or wound up or have a petition for winding up presented against it or pass a resolution for voluntary winding up (otherwise than for a bona fide reconstruction previously approved in writing by the Seller) or if a petition for the appointment of an administrator is presented against the Buyer or if the Buyer has a receiver or administrative receiver appointed over the whole or any part of its assets or if the Buyer shall convene any meeting of its creditors or make a deed of assignment or arrangement or otherwise compound with its creditors or if the Buyer commits any breach of any of the terms of the Sale Contract, the Seller may without prejudice to any of its other rights stop any of the Goods in transit and/or suspend further deliveries and/or determine the rights of the Buyer to sell on the Goods or any of them and/or by notice in writing to the Buyer determine the Sale Contract.

12. **INSTALLATION**

If the Sale Contract obliges the Seller to supply any services for the installation of any of the Goods, the following conditions shall apply:

- 12.1 If occupation of the Site is not given to the Seller within three months after the date on which the Sale Contract is entered into the Seller shall be entitled to terminate the Sale Contract by notice to the Buyer and to recover from the Buyer all costs, charges and expenses incurred by the Seller in performing or preparing to perform its obligations under the Sale Contract.
- 12.2 Subject to clause 12.3 the Works shall be carried out in accordance with the Seller's specification contained or referred to in the Quotation and any plans and drawings approved by the Buyer subject to the right of the Seller to make minor variations from the specification, plans and drawings as may be reasonably necessary in the opinion of the Seller.
- 12.3 Minor variations from the specification, plans and drawings ordered in writing by the Buyer shall be carried out subject to agreeing details and the value before the variation is started and such value shall be added to or deducted from (as the case may be) the quoted price.
- 12.4 The Seller reserves the right to sub-contract the whole or any part of the Works.
- 12.5 The Buyer will procure that all necessary services (including without limitation gas, electricity and water) are supplied on Site prior to the commencement of the Works. If such services are not so provided, the Buyer shall indemnify the Seller against any additional costs incurred by the Seller.
- 12.6 Unless otherwise provided in the Quotation the Buyer shall obtain all permissions, consents and licenses required for the Works under any statute, regulation or bye-law and in due time comply with the same and any conditions imposed in respect thereof. The Buyer shall indemnify the Seller against any loss or damage suffered by the Seller on account of any failure of the Buyer to do so and against any expenses or fees payable by the Seller in connection with such statutes, regulations or bye-laws.
- 12.7 It is the responsibility of the Buyer to ensure that the carrying out by the Seller of the Works in accordance with the specification included in the Sale Contract does not contravene any applicable environmental, health or safety law or regulation.

12.8 Where a local or statutory authority requires any amendment to the Seller's specification, then the additional cost incurred by the Seller in complying with such amended specification shall be borne by the Buyer.

12.9 Unless otherwise provided in the quotation, the Buyer shall provide vehicular access to the Site with adequate unloading facilities alongside the designated position for the Goods at all times necessary for the delivery of materials or the execution of the Works.

12.10 The Buyer shall indemnify the Seller against all claims, demands and proceedings made or brought by any person claiming

12.10.1 any estate or interest in or over the Site or any part thereof, in respect of any injury or damage thereto caused or which might be caused by the Works; and

12.10.2 that the Works or any part thereof which was specified or designed by the Buyer infringes any registered design or other intellectual property right of such person.

13. ENTIRE AGREEMENT

The terms set out in the Quotation and in these conditions comprise the entire agreement between the Seller and the Buyer relating to the supply of the Goods and services by the Seller to the Buyer and the Buyer waives any and all rights in respect of any breach of warranty or undertaking or any misrepresentation made or given by the Seller unless such warranty, representation or undertaking was given or made fraudulently or is expressly set out in the Quotation or these conditions.

14. WAIVER

Failure by the Seller to exercise or enforce any rights under these conditions shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time thereafter.

15. ASSIGNMENT

Unless otherwise agreed in writing by the Seller the Sale Contract is personal to the Buyer and the Buyer may not sell, transfer or assign the benefit of the Sale Contract.

16. NOTICES

Any notice to be given hereunder shall be deemed to have been duly given if put in writing and sent by prepaid first class post or telefax to the party concerned at its last known address. Notices sent by first class post shall be deemed to have been given two days after despatch and notices sent by telefax shall be deemed to have been given on the date of despatch.

17. GOVERNING LAW

The Sale Contract shall be governed by and construed in accordance with the laws of England and the Seller and the Buyer submit to the non-exclusive jurisdiction of the English courts.

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