

# TUBEWAY (SALES) LIMITED

## Terms & Conditions of Sale

### 1. DEFINITIONS

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

- (a) "the Company" shall mean Tubeway (Sales) Limited.
- (b) "the Buyer" shall mean the person, firm or company with whom any contract to sell Goods is made by the Company.
- (c) "Goods" shall mean the article or thing or any of them described in the contract between the Company and the Buyer for the sale or supply of goods.
- (d) "Special Goods" shall mean Goods manufactured or supplied to the detailed specifications of the Buyer.

### 2. GENERAL

- (a) These Conditions of Sale shall override and supersede any Conditions of Purchase stipulated by the Buyer or previously issued by the Company.
- (b) 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.

### 3. ORDERS

- (a) The Company undertakes to despatch all orders where possible within two working days of receipt of the order at the sales office, subject to the provisions of Clause 8b and 8c.
- (b) Where orders are placed by the Buyer verbally by telephone or by fax or received in writing at the sales office and are processed in accordance with sub-clause (a) above, without reasonable opportunity to acknowledge or confirm in writing with the Buyer before despatch of the Goods, then acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of the Company's Conditions of Sale.
- (c) Where the Company gives a "Fixed Price" quotation it will be held for a period of thirty days and will apply only to the quantities and types of products quoted. Notwithstanding that the Company may have given a detailed quotation no order in respect of the quotation shall be binding on the Company unless and until it has been acknowledged in writing by the Company.
- (d) The Company will not be liable in law for any arrangements proposed by representatives or staff relating to price, supply, delivery, returns or payment, unless they are confirmed in writing within fourteen days, signed by a Director of the Company.

### 4. CANCELLATION OF ORDERS

Save as provided in Clause 8b and 9 hereof contracts or orders may not be cancelled except by agreement in writing of both parties and upon the payment to the Company of such amount as may be necessary to indemnify the Company against all loss resulting from the said cancellation.

### 5. PRICES

- (a) Orders are accepted on condition that Goods will be invoiced at the prices ruling at the date of despatch.
- (b) The Company reserves the right to alter prices without notice to cover variations in the cost of raw materials, labour, etc., or through the Buyer's change of design or for any other reason.
- (c) All prices are exclusive of Value Added Tax and this will be charged at the appropriate rate.

### 6. CARRIAGE

- (a) Where the nett value of any order (excluding VAT) is above the minimum carriage paid order amount ruling at the time of despatch the cost of delivery of the Goods to the Buyer's premises or stipulated delivery address on the mainland of Great Britain shall be borne by the Company.
- (b) Where the Buyer requests delivery in a manner other than that selected by the Company in sub-clause (a) above any carriage charges incurred shall be charged to the Buyer's account.
- (c) In all other cases the prices are exclusive of carriage and insurance to the Buyer's premises.

### 7. PAYMENT

- (a) Settlement terms are strictly nett or subject to such discount for early settlement as may be shown on the invoice.
- (b) Payments must be received not later than the last day of the month following the month of delivery or supply of the Goods to the Buyer's address or specified delivery address. Deviation from these payment terms must be agreed by the Company and confirmed in writing signed by a director on behalf of the Company.
- (c) The time stipulated for payment shall be of the essence of the Contract and failure to pay within the period specified shall entitle the Company to suspend further deliveries of Goods to the Buyer pending payment without prejudice to any other remedy available to the Company.

(d) Unless otherwise agreed in writing the Buyer shall not be entitled to set off against any monies due to the Company under the Contract, any amount claimed by or due to the Buyer by the Company whether pursuant to the Contract or on any other account whatsoever.

(e) The Company reserves the right to charge interest at up to 2% per calendar month on all amounts for which payment remains outstanding.

## 8. DELIVERY

(a) 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 shall not be of the essence of the Contract nor shall the Company be under any liability for delay beyond the Company's reasonable control. The Buyer shall nevertheless be bound to accept the Goods ordered when available.

(b) 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, lockouts, 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.

(c) Where the Goods are to be delivered in instalments such delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the contract as a whole as repudiated.

(d) Invoices advising date of despatch are sent within twenty-four hours of despatch of Goods and notification of non-arrival of such Goods must be sent to the Company within seven days of the despatch date shown. If Goods are received damaged, or part deliveries are made the Carrier's note should be endorsed by the Buyer accordingly and the Company advised immediately not later than seven days from date of despatch. The Company cannot be held responsible for Goods not delivered by the Carrier but signed for by the Buyer.

## 9. DEFAULT OR INSOLVENCY OF BUYER

If the Buyer shall fail to accept the Goods or any instalment thereof or shall fail to pay any sum due to the Company at the proper time or if the Buyer shall 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 assets shall be appointed the Company may determine wholly or in part any and every contract between the Company and the Buyer or may by notice in writing suspend further deliveries of Goods until any defaults by the Buyer are remedied.

## 10. PASSING OF TITLE AND RISK

From the time of delivery of the Goods to the Buyer's premises or when the Company shall have tendered delivery the Goods shall be at the risk of the Buyer who shall be solely responsible for their custody and maintenance as if he were the owner but the Goods shall remain the property of the Company until payment thereof has 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 the Company's fiduciary agent and bailee. In the event of any resale by the Buyer of the Goods the proceeds of the sale thereof shall be held on trust for the Company by the Buyer who will stand in a strictly fiduciary capacity in respect thereof.

## 11. RECOVERY OF PROPERTY

In the event of the Buyer failing to pay the price in accordance with the contractual obligations within the specified time the Company shall have the right to repossess all Goods supplied by the Company to the Buyer at any time, whether they have been paid for or not. The Buyer, for itself, its administrators, receivers, manager, liquidators or trustees in bankruptcy grants to the Company an irrevocable licence to enter its premises for the purpose of such repossession or possession.

## 12. SPECIFICATIONS

The Company reserves the right to alter the specifications of Goods without notice provided that such alterations result from an improvement in the relevant specification and the Buyer is not prejudiced thereby. The Company gives no guarantee or representation that the illustrations, weights and dimensions specified in any catalogue literature will in all cases be identical with the Goods supplied due to improvements and modifications that may be made from time to time.

## 13. BUYER'S DRAWINGS

The Company shall not be liable for imperfect work caused by any inaccuracies in any drawing, bills of quantities or specifications supplied by the Buyer.

#### 14. SPECIAL GOODS

(a) The Company reserves the right to supply 10% more or less than the exact quantity of Special Goods ordered, such overs and shortages to be charged for or deducted pro-rata.

(b) The Company shall be entitled to reject any materials supplied or specified by the Buyer which the Company in its judgement considers unsuitable.

(c) The Company accepts no responsibility for the accuracy or suitability of patterns, designs, tools, drawings, particulars or specifications relating to Special Goods which shall be supplied by the Buyer and the Company shall be entitled to accept the same without defect. The Company shall have no responsibility for the quality or fitness of Special Goods for any particular purpose whether or not such purpose is made known to the Company and the conditions implied by Sections 13 to 15 inclusive of the Sale of Goods Act 1979 shall be excluded. The Buyer undertakes to indemnify the Company and to keep the Company fully and effectually indemnified from and against all actions, proceedings, claims, costs, loss, damage or expense whatsoever whether arising in contract or in tort which the Company may suffer or incur as a result of any defect in the Special Goods whether due to quality, design, fitness for purpose or in any other way whatsoever unless the same is due directly to the negligence of the Company, its servants or agents.

(d) The Buyer represents and warrants to the Company that neither the Special Goods nor the manufacture thereof by the Company will infringe any patent, copyright, registered design or any other proprietary right of any third party and the Buyer further undertakes to indemnify the Company and keep the Company fully and effectually indemnified from and against all actions, proceedings, claims, costs, loss, damage or expense whatsoever in respect of any infringement by the Company of any patent, copyright, design, trademark or any other proprietary right which the Company may suffer or incur in connection with the execution and performance of the Contract and such indemnity shall extend to any amount paid by the Company (upon legal advice) in settlement of any claim out of court.

#### 15. DEFECTIVE GOODS

Goods represented by the Buyer to be defective or not to conform to contract and returned to and accepted by the Company as such will be replaced as originally ordered if required and practicable or will be credited. No claim in respect of defective goods will be valid unless made and alleged defective goods returned within ninety days of the date of despatch of the goods nor will such claim be accepted as a reason for cancellation of the remainder of the order. Except in respect of death or personal injury caused by the Company's negligence the Company shall not be liable to the Buyer by reason of any implied warranty condition or other term or any duty at common law or under the express terms of these Conditions or the contract between the Company and the Buyer for any consequential loss or damage (whether for loss of profit or otherwise) costs, expenses or other claims for consequential compensation whatsoever which arise out of or in connection with the supply of Goods to or the resale by the Buyer.

#### 16. RETURN OF GOODS

Where Goods have been correctly supplied to order, exchange or return of Goods will be subject to 20% re-handling charge. Delivery Note or Invoice Number with reason for exchange must be given to the Company and Goods must be in a condition suitable for re-sale. The Company reserves the right to reject any Goods returned that are unsuitable for re-sale or to make a charge for work necessary to bring these Goods up to an acceptable condition. The Buyer shall make all arrangements and bear all costs in returning the Goods to the Company's premises whereupon the necessary credit will be raised, alternatively the Company can arrange collection of the Goods and all expenses incurred will be charged to the Buyer.

#### 17. 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 representatives or employees of the Company shall be construed to enlarge, vary or override in any way any of these Conditions.

#### 18. PROPER LAW

If at any time any one or more of the provisions of these Conditions becomes invalid, illegal or unenforceable in any respect under any law the validity and enforceability of the remaining provisions thereof shall not in any way be affected or impaired thereby. The benefit of the Contract shall not be capable of assignment by either of the parties without the consent in writing of the other party. These Conditions and each and every Contract made pursuant thereto shall be governed by and construed in all aspects in accordance with the Laws of England and the Company and the Buyer irrevocably submit to the exclusive jurisdiction of the English Courts.