

## GENERAL TERMS AND CONDITIONS

### (1) Interpretation

In these conditions:

- (a) "agreement" means the agreement between the buyer and the seller.
- (b) "seller" means Kam Kiu (Hong Kong) Limited
- (c) "buyer" means the buyer specified in the seller's Customer Application/Renewal Form.
- (d) "goods" means the goods and, if any, services specified in the agreement.
- (e) "trade term" is defined according to ICC official rules for the interpretation of trade terms Incoterms 2000.

### (2) Quotation

A quotation, offer or invitation to treat made by the seller is an estimate only and is subject to withdrawal or variation.

### (3) Packaging and delivery

- (a) Goods will be packaged in the seller's normal packaging for the type of goods.
- (b) The seller will not be liable for damage or deterioration of the goods in transit.
- (c) Delivery dates are approximate only, and the seller is not liable for late delivery.
- (d) If for any reason the buyer does not take delivery when goods are ready, the seller may store the goods without liability and at the buyer's cost.

### (4) Acknowledgements

The buyer acknowledges:

- (a) that in entering into the agreement it is not relying on any oral or written representation made by the seller; and
- (b) the buyer relies on its own skills, judgment and expertise and has made its own independent investigations into all matters in determining the suitability of the goods for the buyer's purposes.

### (5) Inspection and return

- (a) All goods are received subject to inspection immediately upon delivery or before delivery at the buyer's discretion irrespective of date of payment.
- (b) The buyer is deemed to have accepted that the goods are of the same description, quality and quantity ordered by the buyer unless within 30 business days of delivery the buyer notifies the seller to the contrary in writing.
- (c) If the buyer notifies the seller in writing in accordance with sub paragraph (b) above:
  - (i) The buyer agrees to hold the goods for the seller's instructions for a period not exceeding 90 days.
  - (ii) if the seller's instructions are not received within that period, the buyer may return the goods to the seller's premises at the buyer's expense and risk.

(d) If the buyer does not notify the seller in writing in accordance with sub paragraph (b) above then, to the extent permitted by law, the seller shall not be held liable for any claim relating to any failure of the goods in complying with the description, quality and quantity ordered by the buyer.

## **(6) Payments**

- (a) The buyer must pay each invoice issued in full on or before the expiry of the credit period approved by the Seller.
- (b) If the buyer does not settle the seller's invoice(s) in full on or before the expiry of its credit period or any cheque issued for payment of the goods is dishonoured in its first presentation:
  - (i) the Seller shall be entitled to refuse to supply any further goods or to make any further deliveries of the goods until payment in full of all outstanding and due invoice(s) has been received; and
  - (ii) the seller is entitled to treat the dishonour of the cheque as a repudiation of this agreement by the buyer and the seller shall have the right to elect between terminating this agreement or affirming this agreement, and in each case, claiming and recovering compensation for loss or damage suffered from the buyer.
- (c) If the buyer does not pay and settle any invoice punctually on its due date, then without prejudice to any other right or remedy of the seller:
  - (i) all outstanding unsettled invoice(s) and other monies shall, notwithstanding any agreement to the contrary, immediately become due and payable;
  - (ii) all unsettled invoice(s) and other outstanding monies shall carry interest at the rate of 2% per calendar month until payment; and
  - (iii) the seller may recover the price of the goods together with all interest forthwith from the buyer as a liquidated debt in a court or tribunal of competent jurisdiction irrespective of any claim that the buyer may have against the seller for any thing or matter related to the goods delivered under this agreement.

## **(7) Risk**

- (a) Subject to sub paragraph (b) below, risk in the goods passes to the buyer upon the happening of:
  - (i) actual or constructive delivery of the goods to the buyer, or
  - (ii) collection of the goods from the seller or any agent of the seller by the buyer, any agent of the buyer, or the buyer's carrier or courier whichever is the earlier.
- (b) Where the goods are delivered or collected in instalments, risk in the goods comprising each instalment passes upon the delivery of those goods.

## **(8) Retention of Title**

- (a) Property in
  - (i) the goods; and

- (ii) the goods, where they have been joined or mixed with other goods in a process of manufacture;  
shall not pass to the buyer until all the invoices relating to the said goods and all other monies due to the seller shall have been fully paid to the seller.
- (b) Until all invoices relating to the said goods and all other monies due to the seller shall have been fully paid to the seller, the buyer shall hold the goods and each of them on a fiduciary basis as bailee for the seller and:
  - (i) the buyer must store the goods on its premises separately from its own goods or those of any other person; and
  - (ii) the buyer must label the goods in a manner which makes them readily identifiable as the seller's goods; and
  - (iii) if required by the seller, the buyer must deliver up the goods to the seller; and
  - (iv) the seller may enter the buyer's premises, or the premises of any associated company or agent where the goods are located or stored, during business hours without notice to recover possession of the goods.
- (c) If the buyer re sells the goods, or sells products manufactured using the goods, to a third party, the buyer must:
  - (i) ensure that products manufactured using the goods are identified as being produced from the goods,
  - (ii) not assign the benefit of receiving the proceeds received from a third party which are referable to the goods ("the proceeds of sale");
  - (iii) ensure that the buyer's records distinguish between the proceeds of sale and proceeds received from a third party which are not referable to the goods;
  - (iv) hold the proceeds of sale on trust, in a separate identifiable account, for the benefit of the seller in an amount not exceeding the monies owed from time to time to the seller; and
  - (v) pay the proceeds held on trust to the seller upon request.
- (d) If the buyer enters voluntary liquidation and the buyer has not at the commencement of liquidation paid to the seller all moneys owed by the buyer to the seller, the seller may demand repossession of the goods in writing to the liquidator; and the seller may terminate the agreement in writing to the liquidator; and neither the buyer nor the liquidator may re sell the goods or sell products manufactured using the goods.

## **(9) Costs**

The buyer agrees to bear all costs of and in connection with the agreement, including without limitation any stamp duty or other taxation or impost, bank charges, and costs incurred in the recovery or attempted recovery of any amounts owing pursuant to this agreement.

## **(10) Termination**

- (a) The seller may at any time and for any reason at its absolute discretion refuse to extend any further credit to the buyer or may at its absolute discretion terminate the agreement forthwith.

(b) Upon notice to the buyer of the termination of this agreement, all outstanding monies payable to the seller shall become immediately due and payable.

### **(11) Exclusions**

To the extent permitted by law:

- (a) the liability of the seller in respect of a breach of a statutory implied term relating to the goods or any part of the goods is limited at the option of the seller to the replacement or repair of the goods or part thereof or payment of the cost of repairing or replacing the goods or any part of the goods.
- (b) the buyer does not have any cause of action against or right to claim or recover from the seller for, or in respect of, any loss or damage of any kind whatsoever, caused directly or indirectly by:
  - (i) any defect in material or workmanship of, or any other defect whatsoever in, or unsuitability for, any purpose of the goods or any part of the goods; or
  - (ii) by default or negligence on the part of the seller or of any employee, contractor or agent of the seller or of any person for whom the seller has legal responsibility relating to the supply of, or otherwise concerning goods or any part of the goods.
- (c) the seller is not liable to the buyer in contract or in tort arising out of, or in connection with, or relating to:
  - (i) the performance of the goods or any breach of these terms and conditions by the seller; or
  - (ii) any fact, matter or thing relating to the products; or
  - (iii) any error (whether negligent or in breach of contract or not) in information supplied to the buyer or a user before or after the date of the purchaser's or user's use of the goods.

### **(12) Authority**

The buyer, and if applicable, its directors and other officers, authorize the seller to provide the credit and other trading information, references and files to any bank, credit reporting agency, trade reference or any other third party as it sees fit for any reason whatsoever.

### **(13) General**

- (a) If any term or condition in this agreement shall in whole or in part be held to any extent to be unlawful or unenforceable under any enactment or rule of law, that term or condition or part thereof (b) shall to that extent be deemed not to form part of this agreement and the enforceability of the remainder of this agreement shall not be affected.
- (c) Any delay or failure to act, or acceptance of part payment, by the seller will not prejudice its right to exercise any remedy against the buyer or constitute a waiver of any of its rights against the buyer.
- (d) Any variation or amendment to any term or condition in this agreement (including any special term or condition agreed between the seller and buyer) shall be inapplicable, ineffective and of no legal effect unless agreed in writing and signed by the seller.

The buyer warrants that:

- (i) the buyer's representatives are authorized to execute and enter into the agreement;
- (ii) the buyer's representatives have read and understood these terms and conditions;
- (iii) the information provided by the buyer in the seller's Customer Application/Renewal Form is true and correct.