

Fusion Group Limited Terms and Conditions of Sale

1. Interpretation

"Agreement" the terms and conditions set out below, (and any other special terms and conditions in writing) that the parties agree governs the relationship; "Calendar Day" all days of a month including public holidays and weekends; "Calendar Month" one of the 12 divisions of the Gregorian Calendar; "Due Date" the day by which any payment owed by you must be paid, as detailed in clause 5.4 of this Agreement; "Goods" the items that you wish to buy and we agree to sell to you; "our/us/we" Fusion Group Limited registered in England and Wales under registration no 3563691, with registered office Smeckley Wood Close, Chesterfield Trading Estate, Sheepbridge, Chesterfield, S41 9PZ and our successors and assignees; "WEEE Regulations" the Waste Electrical and Electronic Equipment Regulations 2006 (as amended) "you/your/yourself" the person (whether a company, individual or firm) purchasing our goods.

2. Form of Agreement.

2.1 You agree to buy the Goods from us under the terms and conditions of this Agreement. All issues relating to the Goods shall be controlled by this Agreement.

2.2 You cannot change any term of this Agreement without our consent in writing. We can change the Agreement by giving you notice in writing.

2.3 We nor our employees are bound by comments about the Goods unless confirmed by us in writing.

2.4 Occasionally we may accidentally send to you a document or pamphlet containing a typographical, clerical and/or some other error or omission. We do not accept liability to you for such errors or omissions and we reserve the right to amend any such error or omission.

2.5 This document sets out the Agreement between the parties and supersedes any terms previously notified. If any document of yours has terms and conditions on it, you agree that those terms and conditions shall not apply between the parties.

3. Orders and Specification

3.1 Any order from you to us is an offer by you to contract with us on the terms and conditions of this Agreement. A contract shall only exist between the parties when our authorized representative accepts your offer under the terms of this Agreement.

3.2 You shall ensure that any order you submit to us is accurate. It is your responsibility to check the accuracy of any specification or any information in relation to the Goods. You must tell us in time if there is any correction to be made by you or if there is further information we require to be able to perform the Agreement.

3.3 If you fail to comply with clause 3.2 we will be under no obligation to compensate you in any way, but you shall compensate us for any losses or expenses we may incur as a result of your failure to comply.

3.4 The quantity, quality, description or specification of the Goods shall be those set out in the quotation against which your offer to purchase the Goods is made.

3.5 We shall make and/or treat the Goods in the manner you request and you shall indemnify us for all loss, damage, costs, expenses against us or incurred by us arising and/or from any claims for infringement of any intellectual property right when complying with your requests.

3.6 If you ask us to make the Goods, either to your or our specification, we reserve the right to change the Goods (if it does not materially affect the Goods' quality or performance) so that they meet any applicable safety or legal requirements.

3.7 If you cancel (without our prior consent) an order that we have accepted you shall indemnify us in full for all our losses, including loss of profit, labour, material, damages, charges and expenses.

4. Price of the Goods

4.1 You shall pay for the Goods: i) any price quoted by us in writing; or ii) the relevant price published in our current price list, if the price was not separately quoted or the quoted price is not valid; or iii) our published export price (if the Goods are to be exported and the price was not separately quoted).

4.2 The price quoted to you for the Goods is valid for 30 days from the day the quote was given.

4.3 Upon expiry of the 30 days quotation period we may alter the price without giving you notice.

4.4 We reserve the right to increase the price of the Goods by written notice at any time before we deliver the Goods to you where it reflects an increase in costs to that is due to any factor beyond our control. Examples of this would be currency fluctuations or significant increases in the costs of labour and/or materials.

4.5 We reserve the right to increase the price of the Goods where you change the:

4.5.1 delivery dates; and/or

4.5.2 quantities of the Goods required; and/or

4.5.3 specification for the Goods requested by you; and/or

4.5.4 your instructions or failure to give us adequate instructions or information causes us delay.

4.6 All prices are quoted on the basis that you shall collect the Goods from our factory gate.

4.7 If we agree to deliver the Goods to a site other than our factory gate we shall confirm this in writing and you shall pay our costs of which may include packaging, insurance and transportation costs.

4.8 We shall pay the cost of the delivery of Goods to you only where we have agreed to do so in writing or we have stated in our quotation or in the relevant price list.

4.9 All VAT on the price of the goods and our costs and expenses shall be additionally payable by you, unless otherwise specified.

5. Terms of Payment

5.1 We may invoice you for the price of the Goods at any time after we have either given the Goods to you, or we have made the Goods available to you, even where you may have failed to take possession of them.

5.2 If you fail to collect the Goods (having agreed to collect the Goods), we shall be entitled to invoice you for the price of the Goods from the time when we notified you that you may collect the Goods.

5.3 You must pay the invoice in full by cash or cleared funds by the Due Date and shall not make any deduction for any reason.

5.4 Our terms of payment are payment by:

5.4.1 the 25 Calendar Days of the month following the month in which we delivered the Goods you if you are paying by cheque; or,

5.4.2 the last Calendar Days of the month following the month in which we delivered the Goods to you if you are paying by bacs transfer or cash;

5.4.3 the 60th Calendar Day following the end of the month in which we delivered the Goods to you if we have expressly agreed to this in our acceptance of your order and you are paying by bacs transfer.

5.5 If you fail to pay on or by the due date in full by cash or cleared funds, we have a number of rights and remedies, which include the right to terminate this Agreement without liability to you and/or not to make any further delivery of the Goods to you.

5.6 We shall only issue you a receipt if you ask for one.

5.7 If you have more than one order with us, and you are making payments under those orders, we may allocate those payments against any of those orders we wish rather than how you allocate the payments.

5.8 We may charge you interest on any unpaid sums at the rate of 8% per annum above the base rate of the Bank of England, as it may be from time to time or under the late Payment of Commercial Debts (Interest) Act 1998 (as amended), whichever is the higher, until payment is received in full. We may charge interest at this rate before and after judgment. A part month will be treated as a full month for the purpose of calculating interest.

5.9 We may set a credit limit for you at our absolute discretion. We will notify you of any changes to your credit limit from time to time.

5.10 We reserve the right to accept orders for Goods and/or to suspend or withhold the delivery of Goods if this would result in you exceeding your credit limit or the credit limit is already exceeded.

6. Delivery

6.1 Our obligation to deliver to you the goods is completed when we make the goods available for you to collect at our premises. You shall have met your obligation to take the Goods when you collect the Goods from our premises.

6.2 If we agree in writing to deliver the goods to you at a site other than our factory gate we delivery shall be deemed to have occurred at the other site as soon as the Goods are available at that site.

6.3 You shall not have the right to cancel this Agreement if we do not deliver the goods to you on the agreed dates or time. Any date or time given to you by us for delivery is a guide only. We shall not pay you any compensation and you shall not have any remedy for late delivery and time shall not be of the essence.

6.4 We shall be entitled to deliver the Goods to you earlier than the date agreed if we give you reasonable notice.

6.5 When we are delivering a large number of Goods to you, we shall not be in breach of this Agreement if we deliver up to 15% less or more of the Goods. The amount delivered shall be deemed to be the contract amount. You shall be obliged to accept the Goods and where there is a shortfall pay for the Goods using the unit price agreed. If you do not want the excess then you shall make the excess available to us for collection at your premises. You shall be responsible for any loss or damage to the excess amount. We shall collect as soon as it is convenient for us. We shall not have to compensate you for your costs of storage of the excess amount. You shall compensate us for loss or damage to the excess amount.

6.6 If the Goods are being delivered by instalments, each instalment shall be treated as an individual contract. If we fail to deliver any instalment or you claim that any instalment fails to meet the terms of this Agreement in some way, you cannot terminate the Agreement for the remaining instalments. Nor may you refuse to pay for any other instalments that are delivered and meet the agreed standard.

6.7 We have no liability to you if we fail to deliver Goods to you either due to reasons beyond our reasonable control or due to your fault.

6.8 If we fail to deliver Goods to you due to our own fault, you shall be entitled to buy alternative Goods from another supplier. If they cost more than the Goods we shall pay you the difference between the price of our goods and the alternative goods by way of compensation and we shall only pay you the difference if you bought the replacements from the cheapest available source and you provide us with written evidence of your quotations and subsequent purchase.

6.9 If you fail to collect the Goods or fail to give us adequate delivery instructions before the time for delivery of the Goods, even though we may have other remedies and rights, we shall be entitled to:

6.9.1 store the Goods and you shall pay all of our costs associated with the storage until the Goods are delivered to you or sold;

6.9.2 Sell the Goods at the best price available and from the amount that we receive we shall be allowed to deduct all the costs have incurred in storing the Goods and/or selling the Goods. If there is any money left over after deducting our costs we shall return that money to you. We shall not have to invest the money or pay interest on the money held by us. If we sell the Goods and receive money for the Goods if the sum received does not cover our costs of storage and/or sale of the Goods, we may reclaim the shortfall from you. You shall also pay interest as described above on the shortfall.

6.10 You shall be responsible for the transportation of any Goods requiring disposal by us under the WEEE Regulations.

6.11 Upon receipt of the Goods from you in accordance with clause 6.10 above, we shall dispose of the Goods in accordance with our obligations under the WEEE Regulations.

7. Risk and Property

7.1 Risk in the Goods shall pass to you upon delivery, which shall be:

7.1.1 after the expiration of 3 Calendar Days after we inform you that the Goods are ready for collection from our premises; and/or

7.1.2 when we at your request deliver the Goods to an alternative address (even where you fail to take receipt).

7.2 You are responsible for the Goods once delivery has occurred under clause 7.1.

7.3 You shall not own the Goods even though we have given you physical possession of the Goods if we have not been paid in full for the Goods by the Due Date in accordance with clause 6.

7.4 If you have ordered Goods and receive them in instalments, you shall not own any of the Goods until you have paid us in full in accordance with clause 6 either by receipt of cash or cleared funds by us for each instalment of the goods.

7.5 Until payment in full of the price for all Goods has been received by us, the Goods shall be stored separately from any products or goods belonging to You or any third party and must be clearly marked and identified as being our property. You agree that Our employees and/or agents shall be entitled to enter your premises to check compliance with this clause.

7.6 You shall return the Goods to us if we ask you to return them where you or a third party has possession of the Goods, and we have not been paid in full, and the Goods are still in existence and you have not yet sold the Goods to another person who does not know about us.

7.7 If you fail to return the Goods to us, you authorise us to enter any premises whether yours or someone else's to recover the Goods.

7.8 Where we have given you possession of the Goods, but we are still the owners of the Goods, you shall not use the Goods as any form of security or for any indebtedness. You shall not use the Goods to raise money for yourself or another person. If you do so, all money owed by you to us including unbilled amounts becomes immediately due and payable. You agree to immediately pay to us all money owed by you under this Agreement or any other agreement with you.

7.9 Until legal ownership of the Goods has passed to you, you shall keep the Goods insured for the price at which the Goods were sold to you against all normal risks and shall account to us for any proceeds of such policy of insurance upon respect of the same. Any monies received from you by us in accordance with this clause shall not discharge your liability to pay the price for the goods plus interest accrued in accordance with clause 6 but shall be set off against any such liability.

8. Warranties and Liabilities

8.1 We shall compensate you if the Goods fail to meet the description agreed between the parties. We shall also compensate you if the Goods are not free from defects in material and workmanship for 12 months from the time we delivered the Goods to you.

8.2 We shall not compensate you if you asked us to make the Goods according to any instruction and the defect is due to your instruction.

8.3 We shall not compensate you for the following circumstances: for fair wear and tear, or damage caused by your deliberate or negligent use of the Goods, or your use of the Goods in abnormal working conditions, or your failure to follow our instructions written or oral, or the manufacturers instructions written or oral, or you fail to treat the Goods in a sensible and proper manner, or if you repair or alter the Goods without our written consent.

8.4 You shall not be entitled to any compensation from us if you have failed to pay us the full price for the Goods by the Due Date.

8.5 We shall not have an obligation to compensate you for parts, materials or equipment that do not comply with this Agreement manufactured by a third party. However you shall have the benefit of any warranty or guarantee that we are entitled to transfer to you.

8.7 We shall not have to compensate you if you do not notify us in writing about any defect with the Goods within 7 days of your receipt of the Goods. If you fail to do so you shall still have to pay for the Goods even if you refused to take receipt of the Goods.

8.8 If the defect was not noticeable on reasonable inspection at the time of delivery of the Goods then you have 7 days from when the defect was noticeable to notify us in writing of the defect.

8.9 If you accept receipt of the Goods and you do not notify us pursuant to clause 8.5, you shall not be able to return to us and/or refuse to pay.

8.10 If your complaint about the Goods is upheld, we may at our option replace the Goods (in whole or in part) free of charge, or refund the price of the Goods or a proportionate part of the price. Once we have replaced the Goods or paid a refund you shall have no further right to compensation or a remedy from us.

8.11 Nothing in this Agreement shall exclude our liability for personal injury, death, fraud or any other matter which we are not permitted to exclude by law.

8.12 We shall not be liable to you for any consequential loss, economic loss or loss of profit under any circumstances.

8.13 We shall not be held to be in breach of the Agreement nor shall we have to compensate you if due to circumstances beyond our reasonable control we cannot perform any of our obligations under this Agreement including without limitation Acts of God, explosion, flood, tempest, fire, accident war of threat of war, sabotage, insurrection, civil disturbance or requisition; act, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any Government or Parliament or Local Authority, import or export regulations or embargoes, strikes, lock-outs or other industrial actions or trade disputes (whether involving our employees or employees of a third party), difficulties in obtaining raw materials, labour, fuel, parts or machinery, power failure or breakdown in machinery.

9. Indemnity

9.1 You agree to indemnify and keep indemnified us against any and all losses, proceedings, lost profits, damages, awards, expenses, costs (including increased administration costs and legal costs on a full indemnity basis), claims, actions and any other losses and/or liabilities suffered by us and arising rising out of our use of specifications, details and/or drawings supplied by you or from or due to your breach of contract, any tortious act and/or omission and/or any breach of statutory duty.

10. Default

10.1 If You:

10.1.1 fail to make any payment to us when due;

10.1.2 breach the terms of this Agreement and fail to remedy such breach after having been given 14 days to remedy the breach by us;

10.1.3 persistently breach any one or more terms of this Agreement;

10.1.4 pledge or charge any Goods which are our property, or cease or threaten to cease to carry on business, or propose to compound with your creditors, apply for an interim order under Section 252 Insolvency Act 1986 or have a Bankruptcy Petition presented against you, enter into voluntary or compulsory liquidation, have a receiver, administrator or administrative receiver appointed over all or any of your assets, or take or suffer any similar action in any jurisdiction;

10.1.5 appear to us due to your credit rating to be financially inadequate to meet your obligations under the Agreement; and/or

10.1.6 appear reasonably to Us to be about to suffer any of the above events;

then we shall have the right, without prejudice to any other remedies, to exercise any or all of the rights set out in clause 10.2 below.

10.2 If any of the events set out in clause 10.1 above occurs in relation to you then:

10.2.1 we may enter, without prior notice, any of your premises (or premises of third parties with their consent) where Goods owned by us may be and repossess and dispose of or sell any Goods found which are owned by us so as to discharge any sums due to us under this Agreement or any other agreement with you;

10.2.2 we may require you not to re-sell or part with the possession of any Goods owned by us until you have paid in full all sums due to us under this Agreement or any other agreement with you;

10.2.3 we may withhold delivery of any undelivered Goods and stop any Goods in transit;

10.2.4 we may cancel, terminate and/or suspend without liability to you any agreement with you; and/or,

10.2.5 all monies owed by you to Us shall forthwith become due and payable.

11. General

11.1 If either party want to serve a notice on the other party that notice must be in writing and sent to any premises that have been identified as the place for the service of notices. If no place has been identified then notice may be sent to the registered office or principal place of business of the other party.

11.2 If we waive one breach of the Agreement, it does not mean that we shall forgive any other breaches of the Agreement, and we shall be entitled to take legal action against you for any new breaches of the Agreement.

11.3 If any words in this Agreement make the Agreement invalid or unenforceable, if however those words were to be omitted the Agreement would be lawful and enforceable, you agree with us that those words will be deleted and the rest of the Agreement would be valid and enforceable.

11.4 The parties agree to choose an arbitrator to judge any dispute between the parties.

11.5 If the parties cannot agree on an arbitrator, then either party may ask the President of the Law Society to nominate an arbitrator.

11.6 English law shall apply to the agreement and its interpretation. Only the English courts may judge any disagreement between the parties.

11.7 You shall not transfer any of your rights or duties or subcontract any rights or duties without our written consent. We may pass any of our rights or duties or subcontract them without your written consent.

11.8 A person who is not a party to this Agreement shall not have any rights under the Contracts (rights of Third Parties) Act 1999 to rely upon or enforce any term of this Agreement provided that this does not affect any right or remedy of the third party which exists or is available apart from that Act.