

# CONDITIONS

## 1. Interpretation

### 1.1. In these Conditions:

"the Company" means A1 Paper Ltd whose registered office is at Roebuck Street West Bromwich.

"conditions" means the terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the customer and the Company.

"contract" means a contract for the sale or provision and purchase of goods and any contract shall include the conditions.

"customer" includes any person, firm or company who accepts a quotation of the Company for the sale of goods or whose order for goods is accepted by the Company or who purchases or contracts for the purchase of goods from the Company.

"delivery address" means any address for delivery of goods agreed in writing or (failing which) at the Company's discretion any address for delivery given in the Company's quotation or any address or business premises used by a customer in correspondence or otherwise used, advertised or notified.

"goods" means any goods (including any instalment of goods or any parts for them) and/or services and work which the Company is to supply, provide or carry out or supplied, provided or carried out by the Company for the customer.

"indemnified matters" includes without limitation all liability, actions, proceedings, claims, demands, injury, loss, damage, damages, costs and expenses whatsoever and howsoever arising.

"writing" includes telex, cable, facsimile transmission and comparable means of communication.

### 1.2. The headings in these conditions are for convenience only and shall not affect their interpretation.

## 2. Basis of Contract

2.1. The conditions will apply to any order and to any acceptance of an order. No variations or additions shall be effective unless agreed by the Company in writing. Any terms or conditions in a customer's order not agreed by the Company in writing shall have no effect. The conditions supersede all conditions previously issued by the Company.

2.2. Estimates do not constitute contractual offers.

2.3. The Company may correct any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company without liability.

## 3. Customer Returns

3.1. The customer is legally bound to take the goods comprised in the contract and return of goods will not be accepted without prior written consent by the Company.

3.2. Any goods returned for any reason will remain at the risk of the customer until actual receipt by the Company. The Company may in any event refuse to accept back any goods which have deteriorated or been damaged.

3.3. Where the Company agrees to accept back any goods which are not defective the Customer shall pay a handling charge amounting to 15% of the price of the goods.

## 4. Risk

4.1. Delivery shall be deemed to take place at the moment when possession or control of goods are offered or transferred to the customer or its agent at a delivery address before off-loading or otherwise.

4.2. Risk in respect of goods shall pass upon delivery.

4.3. Receipt or delivery note signed by or on behalf of a customer or by its purported agent, employee or carrier or a statement that goods have been duly delivered signed by an agent, employee or carrier of the Company shall be conclusive proof that goods have been duly delivered and as to the date and time of delivery.

## 5. Deliveries

5.1. Estimated delivery dates (if any) are given in good faith but are not binding unless so confirmed in writing and in any event time shall not in this respect be of the essence of the contract.

5.2. Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the customer.

5.3. Where the contract provides for delivery by instalments (whether or not on specified dates) and the customer fails to take delivery of an instalment the Company shall not in any event be bound to make up such instalment according to any informal or binding schedules, programme or time table.

5.4. A contract for scheduled deliveries or by instalments is for the purpose of all the goods comprised in the contract and the customer may not refuse to take or accept delivery of any consignment or treat a contract as repudiated on account of any alleged failure, shortage or defect in that or any other delivery.

## 6. Failure to accept delivery

6.1. If the customer fails to accept or take delivery by or from the Company or if there is no representative of the Company at the delivery address to accept delivery:

6.1.1. the Company at its own initiative (and without prejudice to any rights against the customer) or at the request of the customer may store the goods at the risk of the customer and the customer shall pay upon demand a handling charge amounting to 15% of the price of the goods, the reasonable storage costs of the Company and all other expenses involved including insurance (at the Company's option), costs of re-delivery, loading and unloading and the goods may be re-invoiced at the rates ruling at the date of actual despatch;

6.1.2. the Company may sell goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the customer for the excess over the price under the contract or charge the customer for any shortfall below the price under the contract;

6.1.3. the Company may deposit goods at or near the delivery address which shall constitute due delivery;

6.1.4. risk in goods shall pass to the customer forthwith; and

6.1.5. the customer shall be deemed to have inspected and accepted goods as satisfactory and complete in all respects.

## 7. Unloading

7.1. The customer shall provide adequate labour and facilities at the delivery address for unloading goods and shall indemnify the Company from and against the indemnified matters under or in respect of unloading operations.

## 8. Prices

8.1. The price of the goods shall be the price quoted by the Company or where no price has been quoted a reasonable price.

8.2. Prices are subject to the addition of VAT at the rates ruling at the date of tax point.

## 9. Payment

- 9.1. The Company may invoice the customer on or at any time after delivery.
- 9.2. Payment is due not later than the last day of the month following the month of the invoice date.
- 9.3. The time of payment shall be of the essence of the contract.
- 9.4. The Company may at any time at its discretion require the customer to provide security for payment or withdraw credit facilities and/or require the customer to make payment in cash (when payment shall be legally due forthwith).
- 9.5. Without prejudice to any other rights of the Company it may charge interest (both before and after any judgment) at the rate of 1 ½% per month from the due payment date until date of payment on any payment overdue and interest shall accrue from day to day.
- 9.6. Payment shall not be deemed to have been made until payment in cash or cleared funds has been received by the Company.
- 9.7. The customer shall not be entitled to withhold payment of any sums due to the Company by reason of any claim by the customer relating to any goods, deliveries or work.
- 9.8. If the customer fails to make any payment by the due date then without prejudice to any other rights of the Company:
  - 9.8.1. the Company shall be entitled to suspend all or any other deliveries or work under that or any other contract with the customer and in such event the customer shall not in any respect be released from his obligations to the Company under that or any such other contract.
  - 9.8.2. the Company shall be entitled to treat the relevant contract or any other contract with the customer as having been unlawfully terminated by the customer and to claim damages for breach of contract accordingly.
  - 9.8.3. the Company shall be entitled to appropriate any payment made by the customer (on any account) to such goods under that or any other contract as the Company may think fit (notwithstanding any purported appropriation by the customer).
  - 9.8.4. the Company shall have a general lien on any tangible property of the customer in the Company's possession.

## 10. Title

- 10.1. While any money remains owing by the customer to the Company on any account (whether due for payment or not):
  - 10.1.1. title to all goods (under any contract) shall remain vested in the Company notwithstanding delivery or passing of risk;
  - 10.1.2. the Company may recover and re-sell any goods and the customer shall deliver any goods to the Company upon demand and the Company may enter upon any premises of the customer or any third party where goods are stored to repossess goods whether or not they have been affixed to any property and/or to examine any goods;
  - 10.1.3. the customer shall hold all goods as trustee for the Company; stored separately; properly protected and insured and clearly identified as the Company's property;
  - 10.1.4. the customer's authority to use or resell goods is not implied and any authority given by the Company may be revoked at any time and is automatically revoked when any money owing to the Company becomes overdue for payment or on the occurrence of any event specified in condition 15;
  - 10.1.5. any resale of goods by the customer will be as agent for the Company and shall be on the condition that title does not pass to the purchaser except on the same basis as set out in this condition; and
  - 10.1.6. to the extent of any money is owing the customer shall pay the proceeds of any resale of goods including proceeds of any insurance or factoring of debts to the Company and in the case of tangible or non-monetary proceeds shall keep the same stored separately, properly protected and insured and clearly identified as the Company's property.
- 10.2. The customer may not pledge or in any way charge by way of security for an indebtedness any goods which remain the property of the Company but if the customer does so all monies owing by the customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.
- 10.3. Nothing contained in this clause shall confer any right on the customer to return goods or to refuse or delay payment.
- 10.4. The provisions of this condition shall continue to apply notwithstanding that goods are incorporated in the customer's or other goods or products.

## 11. Acceptance

- 11.1. The customer shall inspect the goods immediately upon arrival at the delivery address and will be deemed to have received, inspected and accepted goods as satisfactory and complete in all respects unless written notice (otherwise than on a consignment note or delivery document) of any alleged non-delivery, shortage or defect is given to the Company (a) in the case of alleged non-delivery forthwith when the customer becomes aware or ought reasonably to be aware that delivery is overdue or should have taken place in the ordinary course of events or that the Company purports to have made delivery (b) in the case of alleged under-delivery, shortages or damaged goods within 3 days from delivery and (c) in the case of alleged defects or failure to comply with specification forthwith upon the same becoming apparent.

## 12. Complaints

- 12.1. The Company shall be given every facility to examine at the delivery address goods the subject of any complaint and to take them back to the Company's premises.
- 12.2. The Company may at its sole discretion either replace or make up free of charge any goods which are incomplete or defective or may refund the price or give credit therefore and the Company shall be under no further liability to the customer.

## 13. Warranties

- 13.1. Subject to the conditions the Company warrants that at the time of delivery the goods will correspond in all material respects with their specification and will be free from material defects in materials and workmanship.
- 13.2. So far as and to the fullest extent permitted by law all conditions and warranties whether express or implied and whether arising by statute, custom of the trade or at common law are excluded.
- 13.3. The Company shall not in any event be liable for loss of profit, injury, damage or any consequential or special loss or damage howsoever arising except for any loss or damage arising from the death of or personal injury to any person resulting from negligence on the part of the Company.
- 13.4. If the Company fails to deliver goods in circumstances that the company is liable to the customer the Company's liability shall be limited at the Company's option;
  - 13.4.1. to the excess (if any) of the cost to the customer (in the cheapest available market) of similar goods to replace those not delivered over the price of the goods; or
  - 13.4.2. to replacing the goods within a reasonable time; or
  - 13.4.3. to the amount of any insurance monies received by the Company in respect of the loss or non-delivery of the goods; or
  - 13.4.4. to assigning to the customer any claim the Company may have against the carrier.
- 13.5. Any advice or recommendation given by the Company or its employees or agents to the customer or its employees or agents as to the storage, application or use of goods which is not confirmed in writing by the Company is followed or acted upon entirely at the customer's own risk and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.

- 13.6. The customer acknowledges that:
- 13.6.1. no statement or representation (save as may have been made by the Company in writing) which may have been made to the customer or anyone concerned on the customer's behalf by or on behalf of the Company induced the customer to enter into the contract;
  - 13.6.2. any such statement or representation as aforesaid does not form part of the contract; and
  - 13.6.3. any liability of the Company and any remedy of the customer at law or in equity in respect of any such statement or representation as aforesaid is hereby excluded save in so far as liability in respect of any particular statement may not be excluded pursuant to law.
- 13.7. In no event will the Company be liable:
- 13.7.1. in respect of goods which have been damaged or altered in any manner after delivery;
  - 13.7.2. in respect of goods which have been used after discovery of defect;
  - 13.7.3. if the customer has not served notice in due time under the provisions of condition 11.

#### **14. Force Majeure**

- 14.1. The Company shall not be liable to the customer or be deemed to be in breach of the contract by reason of any delay in delivery or any delay in performing or any failure to perform any of the Company's obligations if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control: Act of God, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary, or local authority; import or export regulations or embargoes; strikes, lockouts or other industrial actions or trade disputes (whether involving employees of the Company or of a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery: power failure or breakdown in machinery.

#### **15. Termination**

Without prejudice to any of its other rights or remedies the Company may without liability cancel a contract or suspend further deliveries or work:

- 15.1. If the customer shall commit any breach of this or any other contract with the Company including (without limitation) any failure to make any payments on the due dates;
- 15.2. If being an individual the customer shall die;
- 15.3. If a meeting of the shareholders of the customer (being a company) is convened for the purpose of considering a resolution for the winding up of the customer or a meeting of the creditors of the customer is convened or the customer goes into liquidation or there is a winding up petition or it circumstances exist in which the customer may be wound up by the court;
- 15.4. If the customer does or fails to do anything which could entitle any person (including without limitation any debenture holder or secured creditor) to initiate or which could give rise to a relevant event; or if any step is taken (including without limitation a resolution being passed, a meeting being called, a petition being presented or any order being made) for or towards a relevant event; or if any relevant event shall occur: and in this condition a "relevant event" means a voluntary arrangement (as defined by Ss1 and 253(1) Insolvency Act 1986), any scheme, arrangement or composition with or any assignment for the benefit of all or any creditors of the customer; bankruptcy of the customer (being an individual) or of any member of the customer (being an unincorporated firm or a partnership); the levying, threat or enforcement of any distress, execution or other legal process upon or sued against or any other exercise of rights over or against any assets, property or undertaking of the customer; the taking possession by an encumbrancer of any asset, property or undertaking of the customer; the appointment of a receiver or manager or an administrative receiver, liquidator or other similar official or insolvency practitioner in respect of the customer or any assets, property or undertaking of the customer; the appointment of an administrator or similar official or the making of an administration order or of in respect of the customer; and any similar or analogous event;
- 15.5. If the customer becomes insolvent or unable to pay its debts (within the meaning of S123 Insolvency Act 1986) or permits any judgement against it to remain unsatisfied for 14 days;
- 15.6. If the customer ceases or threatens to cease to carry on business;
- 15.7. If any event occurs in relation to the customer under the laws of any other jurisdiction which is similar to or analogous with any of the events described above;
- 15.8. If the Company reasonably considers that any of the events mentioned above is about to occur and notifies the customer accordingly.

#### **16. Sub-Contractors**

- 16.1. The Company may sub-contract all or any part of the performance of the contract.

#### **17. Severance**

- 17.1. The conditions are considered to be reasonable in the circumstances and the trade. Any avoidance or restriction or limitation upon them or their effect by statute shall be limited to the condition or the part of the condition and the issue to which it specifically relates and applies. If any condition or part of a condition or limitation of liability is found to be invalid and would be valid if modified by extension of time or otherwise it shall at the option of the Company take effect with such modification or amendment as may be necessary to make it valid and effective. If the Company at its discretion decides that the effect of any such avoidance restriction or limitation is to defeat the original intention of the parties the Company may without liability cancel the contract.

#### **18. Jurisdiction**

- 18.1. The contract between the Company and the customer shall be deemed to have been made in England and shall be governed in all respects by English law. The customer shall submit to the jurisdiction of the English courts provided that the Company at its option may bring any legal proceedings against the customer in the courts of any other country.

#### **19. Waiver**

- 19.1. No indulgence granted or delay permitted by the Company shall constitute any bar to its enforcement of its rights at any time and no waiver in respect of any breach shall operate as a waiver in respect of any other or subsequent breach.

#### **20. Notices**

- 20.1. Any notice or communication (including without limitation invoices or other documents) may be sent by first class post, telex or facsimile or delivered to the Company at its registered office or to the customer at any address which it may have used in correspondence with the Company or (if the customer is a Company) at its registered office or may be served personally on any Director or the Secretary of the customer.
- 20.2. A notice by first class post shall be deemed served on the next day after posting.
- 20.3. A notice by telex or facsimile shall be deemed served at the time of sending.

#### **21. Trade Customs**

- 21.1. Except insofar as they are inconsistent with the conditions or with the express terms of the contract the British Paper and Board Trade customs for the time being in force shall be incorporated herein.