

PORTER LANCASTRIAN LIMITED
STANDARD TERMS & CONDITIONS

(The customer's attention is drawn in particular to the provisions of clause 9)

1. DEFINITIONS AND INTERPRETATION

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 11.3.

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods from the Supplier.

Delivery: Completion of delivery of an Order in accordance with clause 4.2 or 4.6 of these terms and conditions.

Delivery Date: the date on which the Supplier proposes to deliver the Goods ordered to the Customer, as notified to the Customer on acceptance by the Supplier of the Customer's Order.

Force Majeure Event: an event or circumstance beyond the Supplier's reasonable control.

Goods: the goods (or any part of them) set out in the Order.

Order: the Customer's order for the Goods, as set out in the Customer's written acceptance of the Supplier's quotation and accompanying Specification.

Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.

Supplier: Porter Lancastrian Limited, of Lower Healey Business Park, Froom Street, Chorley, Lancashire, PR6 9AR (registered in England and Wales with company number 02179724).

2. BASIS OF CONTRACT

- 2.1 These Conditions apply to the any quotation given, any Order submitted or accepted, and any Contract arising between the Supplier and the Customer as a result, to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification, including drawings supplied by the Customer, are complete and accurate, and for providing to the Supplier in a complete and timely manner any other information which the Supplier may require to be able to complete the Order in accordance with these terms and conditions.
- 2.3 The Customer shall be solely responsible for ensuring that the Goods ordered are suitable for their intended application by the Customer.
- 2.4 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.5 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for acceptance for a period of 60 days from its date of issue or earlier acceptance by the Customer, after which time the Supplier shall be at liberty to increase, decrease or other wise amend its prices without notice to the Customer.
- 2.6 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

3. GOODS

- 3.1 The Goods are described in the Specification which shall accompany the Order.
- 3.2 If the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the following additional conditions shall apply:

- (a) The Customer shall provide all plans drawings or models within 7 days of the Supplier issuing a written acceptance of the Order;
- (b) The Customer shall ensure that any Specification, or any plans drawings or models supplied are true and accurate representations of the Goods sought to be manufactured;
- (c) The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification;
- (d) This clause 3.2 shall survive termination of the Contract.

3.3 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements, and shall give notice in writing to the Customer of any such amendment.

4. DELIVERY

4.1 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Delivery Date notified to the Customer by the Supplier upon acceptance by the Supplier of the Customer's Order.

4.2 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.

4.3 Any dates quoted for delivery are approximate only, and the time of Delivery is not of the essence unless previously agreed in writing between the parties. The Supplier shall not be liable for any delay in delivery of the Goods howsoever caused.

4.4 In the event of a complete failure by the Supplier to deliver the Goods, the Supplier's liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods ordered.

4.5 Clause 4.4 shall not apply to the extent that any such failure to deliver is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6 If the Customer fails to accept delivery of the Goods within three Business Days of the Delivery Date, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready; and
- (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.7 If ten Business Days after the Delivery Date the Customer has not accepted delivery of them, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.8 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. TITLE AND RISK

5.1 The risk in the Goods shall pass to the Customer upon Delivery.

- 5.2 In the event that the Customer wrongfully fails to accept delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are available for delivery in accordance with clause 4.7, then risk in the Goods shall pass to the Customer three Business Days after the Supplier notifies the Customer that the Goods are available for Delivery.
- 5.3 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 5.4 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 7.1; and
 - (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 5.5 Subject to clause 5.6, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time then it shall account to the Supplier for the proceeds of sale or otherwise of the Goods, including insurance proceeds if applicable, and shall keep such proceeds separately any other monies or property of the Supplier.
- 5.6 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 7.1, then, without limiting any other right or remedy the Supplier may have:
- (a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
 - (b) the Supplier may at any time:
 - (i) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

6. PRICE AND PAYMENT

- 6.1 Subject to clause 6.2, the price of the Goods shall be the price quoted in the Order.
- 6.2 The Supplier reserves the right, upon giving notice to the Customer at any time up to ten Business Days before delivery, to increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 6.3 The price of the Goods shall exclude:
- (a) amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
 - (b) the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 6.4 The Supplier may invoice the Customer for the Goods at any time after acceptance of an Order.
- 6.5 The Customer shall pay the invoice in full and in cleared funds within 28 days of the date of the invoice. Payment shall be made to such bank account in the Supplier's name, details of which may be notified in writing to the Customer from time to time. Time of payment is of the essence.

- 6.6 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment:
- (a) The Supplier reserves the right to cancel the remainder of the Order or any other Orders which have been placed but in respect of which Delivery has not taken place;
 - (b) The Supplier reserves the right to appropriate any sums which have been paid by the Customer to such of the Goods (or such other Goods as may have been ordered by the Customer under any other contract with the Supplier) as the Supplier thinks fit, irrespective of any purported apportionment by the Customer;
 - (c) The Late Payment of Commercial Debts (Interest) Act 1998 shall apply.
- 6.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

7. TERMINATION

- 7.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of the Customer being notified in writing to do so;
 - (b) the Customer fails to supply information required by the Supplier in order for it to fulfil any Order or Orders within 14 days of written request for such information;
 - (c) the Customer, being a company, takes any step or action in connection with its entering administration, liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (d) the Customer, being a partnership or an individual, enters into an Individual Voluntary Arrangement or makes any composition or arrangement with his creditors, or takes any step towards declaring himself bankrupt or is presented with a bankruptcy petition or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (e) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (f) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 7.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 7.1(a) to clause 7.1(f), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 7.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.
- 7.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.
- 7.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 7.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

8. WARRANTIES

8.1 Subject to clause 8.2, if:

- (a) the Customer gives notice in writing to the Supplier within 14 days of Delivery that some or all of the Goods do not comply with the Specification;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at Customer's cost,

then the Supplier shall, strictly at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

8.2 The Supplier shall not be liable for the Goods' failure to comply with the Specification in any of the following events or for any of the following causes:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 8.1;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any instruction drawing, design or Specification supplied by the Customer;
- (d) the Customer alters or repairs, or causes to be altered or repaired, such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements; or
- (g) the Goods are not suitable for use in their intended application by the Customer, where such application was not brought to the Supplier's attention by the Customer prior to acceptance of the Order.

8.3 Except as provided in clause 9.1 herein, and as implied by law, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the Specification.

8.4 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

9. LIABILITY

9.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) defective products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

9.2 Subject to clause 9.1:

- (a) the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract, including delay or failure in the performance of any of the Seller's obligations if such delay or failure is caused by any matter which is beyond the Seller's reasonable knowledge and control; and

- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed one million pounds (£1,000,000.00).

10. FORCE MAJEURE

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues 4 weeks, the party not affected may terminate this Contract by giving 7 days' written notice to the affected party.

11. GENERAL

11.1 Assignment and other dealings.

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

11.2 Entire agreement.

- (a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

11.3 Variation.

No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11.4 Waiver.

A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

- (a) waive that or any other right or remedy; nor
- (b) prevent or restrict the further exercise of that or any other right or remedy.

11.5 Severance.

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

11.6 Notices

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be sufficiently served if delivered personally, sent by pre-paid first class post or other next working day delivery service, or by commercial courier, unless otherwise required by statute.

- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in *clause 11.6(a)*; if sent by pre-paid first class post or other next working day delivery service, on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.7 Third party rights

No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

11.8 Governing law

The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

11.9 Jurisdiction.

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.