

## **1. Definitions**

- 1.1 "Seller" shall mean Polyaire Limited incorporated and registered in England and Wales with company number 2780551 whose registered office is at 30 Upper High Street, Thame, Oxfordshire OX9 3EZ and its successors and assigns.
- 1.2 "Buyer" shall mean the Buyer or any person acting on behalf of and with the authority of the Buyer.
- 1.3 "Goods" shall mean Goods supplied by the Seller to the Buyer (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.4 "Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).
- 1.5 "Price" shall mean the cost of the Goods as agreed between the Seller and the Buyer subject to clause 4 of this contract.

## **2. Acceptance**

- 2.1 Any instructions received by the Seller from the Buyer for the supply of Goods and/or the Buyer's acceptance. Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Buyer has entered into this agreement, the Buyers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Buyer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Seller.
- 2.4 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.
- 2.5 The Buyer undertakes to give the Seller not less than fourteen (14) days prior written notice of any proposed change in the Buyer's name and/or any other change in the Buyer's details (including but not limited to, changes in the Buyer's address, facsimile number, or business practice).

## **3. Goods**

- 3.1 The Goods are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Seller to the Buyer.

## **4. Price And Payment**

- 4.1 At the Seller's sole discretion:
  - (a) The Price shall be as indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied; or
  - (b) The Price shall be the Seller's current Price, at the date of delivery of the Goods, according to the Seller's current Price list; or

- (c) The Price of Goods shall (subject to clause 4.2) be the Seller's quoted price which shall be binding upon the Seller provided that the Buyer shall accept in writing the Seller's quotation within thirty (30) days.
- 4.2 Any variation from the plan of scheduled works or specifications will be charged for on the basis of the Seller's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be on delivery of the Goods.
- 4.4 At the Seller's sole discretion, payment for approved Buyers shall be due on 28<sup>th</sup> day of each month following the end of month in which the Goods/services are purchased or as per contracted trading terms.
- 4.5 Payment will be made by cash on delivery, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Buyer and the Seller.
- 4.6 The Price shall be exclusive of any value added tax and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Seller.

## **5. Delivery Of Goods / Services**

- 5.1 Delivery of the Goods shall be made to the Buyer's address. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Buyer at the Seller's address.
- 5.2 Delivery of the Goods to a carrier, either named by the Buyer or failing such naming to a carrier at the discretion of the Seller for the purpose of transmission to the Buyer, is deemed to be a delivery of the Goods to the Buyer.
- 5.3 Where there is no agreement that the Seller shall send the Goods to the Buyer, delivery to a carrier at limited carrier's risk at the expense of the Buyer is deemed to be delivery to the Buyer.
- 5.4 Goods delivered to site shall be at the Buyer's risk and will be deemed to be delivered upon appearing on a delivery schedule.
- 5.5 The Buyer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that:
- (a) such discrepancy in quantity shall not exceed 5%; and
  - (b) the Price shall be adjusted pro rata to the discrepancy.
- 5.6 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
- 5.7 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.

## **6. Risk**

- 6.1 All risk for the Goods passes to the Buyer on delivery.
- 6.2 If any of the Goods are damaged or destroyed prior to title in them passing to the Buyer, the Seller is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions of Trade (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under the Contract. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

## **7. Buyer's Disclaimer**

- 7.1 The Buyer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Seller and the Buyer acknowledges that he buys the Goods relying solely upon his own skill and judgement and that the Seller shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Buyer and shall not be transferable to any subsequent Buyer.

## **8. Defect/Returns**

- 8.1 The Buyer shall inspect the Goods on delivery and shall within twenty four (24) hours of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way. If the Buyer shall fail to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- 8.2 For defective Goods, which the Seller has agreed in writing that the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods provided that:
- (a) the Buyer has complied with the provisions of clause 8.1;
  - (b) the Goods are returned at the Buyer's cost within fourteen (14) days of the delivery date;
  - (c) the Seller will not be liable for Goods which have not been stored or used in a proper manner;
  - (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 8.3 The Seller may (in its discretion) accept the Goods for credit but this may incur a handling fee of 10% of the value of the returned Goods plus any freight.
- 8.4 Goods made to special order, Buyer specification or non-catalogue items are under no circumstances acceptable for credit or return. Cancellation of orders for

special or non-catalogue items will definitely not be accepted, once these orders are in production.

## **9. Warranty**

9.1 Subject to the conditions of warranty set out in Clause 9.2 the Seller warrants that if any defect in any workmanship manufactured by the Seller becomes apparent and is reported to the Seller within twelve (12) months of the date of delivery (time being of the essence) then the Seller will either (at the Seller's sole discretion) repair the defect or replace the workmanship.

9.2 The conditions applicable to the warranty given by Clause 9.1 are:

- (a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
  - (i) Failure on the part of the Buyer to properly maintain any Goods; or
  - (ii) Failure on the part of the Buyer to follow any instructions or guidelines provided by the Seller; or
  - (iii) Any use of any Goods otherwise than for any application specified on a quote or order form; or
  - (iv) The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
  - (v) Fair wear and tear, any accident or act of God.
- (b) The warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Seller's consent.
- (c) In respect of all claims the Seller shall not be liable to compensate the Buyer for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Buyer's claim.

9.3 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall be under no liability whatsoever, except for the express conditions as detailed and stipulated in the manufacturers warranty.

## **10. Intellectual Property**

10.1 Where the Seller has designed or drawn Goods for the Buyer, then the copyright in those designs and drawings shall remain vested in the Seller, and shall only be used by the Buyer at the Seller's discretion.

10.2 Conversely, in such a situation, where the Buyer has supplied drawings, the Seller in its sale conditions may look for an indemnity (the specifications and design of the Goods (including the copyright, design right or other intellectual property in them) shall as between the parties be the property of the Seller).

10.3 Where any designs or specifications have been supplied by the Buyer for manufacture, by or to the order of the Seller then the Buyer warrants that the use

of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party.

- 10.4 The Buyer warrants that all designs or instructions to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Buyer's order.

## **11. Default & Consequences Of Default**

- 11.1 Without limiting any other right or remedy of the Seller, if the Buyer fails to make any payment due to the Seller by the due date for payment ("Due Date"), the Seller shall have the right to charge interest on the overdue amount at the rate of 2.5 per cent per annum above the then current Barclays Bank Plc's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

- 11.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall reimburse the Seller on demand, on a full indemnity basis, all reasonable and properly incurred costs, charges, expenses and liabilities of any kind including, without limitation, costs in connection with litigation, professional fees, disbursements and any value added tax charged on such costs incurred by the Seller to recover any such outstanding payments.

- 11.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.

- 11.4 Without limiting its other rights or remedies, the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed and all amounts owing to the Seller shall, whether or not due for payment, immediately become payable if:

- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
- (b) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors; or
- (c) a receiver, administrator, liquidator or similar person is appointed in respect of the Buyer or any asset of the Buyer.

## **12. Title**

- 12.1 It is agreed by the parties that title to the Goods shall not pass to the Buyer until:
- (a) the Seller has received payment in full (in cash or cleared funds) for the particular Goods;
  - (b) the Seller has received payment in full (in cash or cleared funds) for any other Goods and Services that the Seller has supplied to the Buyer in respect of which payment has become due; and

- (c) the Buyer has met all other obligations due by the Buyer to the Seller in respect of all contracts between the Seller and the Buyer.

12.2 Until title to the Goods has passed to the Buyer, the Buyer shall:

- (a) hold the Goods on a fiduciary basis as the Seller's bailee;
- (b) store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;
- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Seller's behalf from the date of delivery;
- (e) notify the Seller immediately if the Buyer becomes subject to any of the events listed in clause 12.4(b) and (c); and
- (f) give the Seller such information relating to the Goods as the Seller may require from time to time,

but the Buyer may resell or use the Goods in the ordinary course of its business.

12.3 If before title to the Goods passes to the Buyer and provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Seller may have, the Seller may at any time require the Buyer to deliver up the Goods and, if the Buyer fails to do so promptly, the Seller may enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

### **13. Cancellation**

13.1 The Seller may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.

### **14. Data Sharing**

14.1 The Buyer agrees for the Seller to obtain from a credit-reporting agency a credit report containing personal credit information about the Buyer in relation to credit provided by the Seller.

14.2 The Buyer agrees that the Seller may exchange information about Buyer with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:

- (a) To assess an application by Buyer;
- (b) To notify other credit providers of a default by the Buyer;
- (c) To exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and
- (d) To assess the credit worthiness of the Buyer.

14.3 The Buyer agrees that Personal Data provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Buyer and Seller or required by law from time to time:

- (a) provision of Services and Goods;
- (b) marketing of Services and or Goods by the Seller, its agents or distributors in relation to the Services and Goods;
- (c) analysing, verifying and/or checking Buyer's credit, payment and/or status in relation to provision of Services/Goods;
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Buyer; and
- (e) enabling the daily operation of Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Services and Goods.

14.4 The Seller may give, information about the Buyer to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Buyer; and or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer.

## **15. Unpaid Seller's Rights To Dispose Of Goods**

15.1 In the event that:

- (a) the Seller retains possession or control of the Goods; and
- (b) payment of the Price is due to the Seller; and
- (c) the Seller has made demand in writing of the Buyer for payment of the Price in terms of this contract; and
- (d) the Seller has not received the Price of the Goods, then, whether title in the Goods has passed to the Buyer or has remained with the Seller, the Seller may dispose of the Goods and may claim from the Buyer the loss to the Seller on such disposal.

## **16. Lien**

16.1 Where the Seller has not received or been tendered the whole of the price, or the payment has been dishonoured, the Seller shall have:

- (a) a lien on the goods;
- (b) the right to retain them for the price while the Seller is in possession of them;
- (c) a right of stopping the goods in transit whether or not delivery has been made or ownership has passed;

- (d) a right of resale; and
- (e) the foregoing right of disposal, provided that the lien of the Seller shall continue despite the commencement of proceedings or judgment for the price having been obtained.

**17. Display Stands**

17.1 Display stands and associated equipment (“Equipment”) shall at all times remain the property of the Seller and are returnable on demand by the Seller. In the event that the Equipment are not returned to the Seller in the condition in which they were delivered the Seller retains the right to charge the Price of repair or replacement of the Equipment.

17.2 The Buyer acknowledges that the Equipment is to only be utilised for the display of Goods provided by the Seller or any of the Seller’s associated companies.

17.3 The Buyer shall:

- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to lien over the Equipment and the Buyer accepts full responsibility for the safekeeping of the Equipment and indemnifies the Seller for all loss theft or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss theft or damage is attributable to any negligence failure or omission of the Buyer;
- (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
- (c) comply with all occupational health and safety laws relating to the Equipment and its operation.

17.4 The Buyer acknowledges and agrees that it holds the Equipment at its own risk and the Buyer is responsible for theft or damage to the Equipment whilst in its possession.

**18. General**

18.1 If a court or any other competent authority finds that any provision of these terms and conditions (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of these terms and conditions shall not be affected.

18.2 These terms and conditions, and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

18.3 The Seller shall not be liable to the Buyer, 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 these terms and conditions.

- 18.4 The Seller's total liability to the Buyer in respect of all losses arising under or in connection with these terms and conditions, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed the Price.
- 18.5 Nothing in these terms and conditions shall exclude or limit the liability of the Seller for:
- (a) death or personal injury caused by the Seller's negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - (b) defective products under the Consumer Protection Act 1987;
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
  - (d) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
  - (e) fraud or fraudulent misrepresentation; or
  - (f) any matter in respect of which it would be unlawful for the Seller to exclude or limit.
- 18.6 The Buyer shall not set off against the Price amounts due from the Seller.
- 18.7 The Seller may assign all or any part of its rights and obligations under these terms and conditions without the Buyer's consent.
- 18.8 The Seller reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Seller notifies the Buyer of such change.
- 18.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 18.10 A person who is not a party to these terms and conditions shall not have any rights under or in connection with them.