

CONDITIONS OF SALE**1. DEFINITIONS AND INTERPRETATION:**

1.1 The following terms as used herein shall have the meaning as stated:

"Company" means Torton Bodies Limited;

"Conditions" means these Conditions of Sale;

"Confidential Information" means any information disclosed by one (the disclosing party) to another (the receiving party) if the disclosing party has notified the receiving party that the information is confidential or the information could reasonably be supposed to be confidential;

"Contract" means any contract between the Company and the Customer for the sale of any Goods, incorporating these Conditions;

"Customer" means any person, firm, company or other organisation who is the addressee of the Company's quotation or acceptance of order issued by the Company and shall include any parent or subsidiary company and any successor-in-title of the Customer and any company or entity arising (wholly or partly) by way of any merger, amalgamation, reorganisation or acquisition of the Customer;

"Goods" means any goods or materials agreed in the Contract to be sold by the Company to the Customer (including any part or parts of them);

"Input Material" means any documents, plans, drawings, logos, designs or other materials, and any specification, data or other information provided by the Customer to the Company relating to the Goods;

"Intellectual Property Rights" means any design rights, utility models, patents, inventions, logos, business names, trademarks, domain names, copyright, moral rights, rights in databases, source codes, reports, drawings, specifications, know how, trade secrets, rights in software, rights in the nature of unfair competition and the right to sue for passing off and any other equivalent or similar rights to any of the foregoing in any jurisdiction, whether registered or unregistered;

"Output Material" means any documents, plans, drawings, logos, designs or other materials, and any data or other information provided by the Company to the Customer relating to the Goods.

1.2 A reference to a "clause" is to a clause of these Conditions.

1.3 Clause headings shall not affect the interpretation of these Conditions.

1.4 Any reference to "parties" means the parties to the Contract and "party" shall be construed accordingly.

1.5 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.6 Words in the singular include the plural and in the plural include the singular.

2. APPLICATION OF CONDITIONS AND DESCRIPTION OF GOODS:

2.1 All quotations are made and all orders are accepted by the Company subject only to these Conditions, which shall prevail to the exclusion of any other terms including any conditions, warranties or representations written or oral, express or implied, even if contained in any of the Customer's documents which purport to provide that the Customer's own terms shall prevail. Any representations about any Goods shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Company.

2.2 Any quotation is given on the basis that no Contract shall come into existence until the Company accepts the Customer's order in accordance with the provisions of clause 2.3. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

2.3 The placing of an order following any quotation or other indication of price shall not be binding on the Company unless and until accepted by the Company in writing.

2.4 The Customer shall ensure that the terms of its order and any Input Material are complete and accurate.

2.5 Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

2.6 No order of the Customer may be cancelled by the Customer, except with the Company's express agreement and on such terms as the Company may require.

2.7 No order of the Customer may be varied, altered or deferred by the Customer, except with the agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of such variation, alteration or deferment and subject to any reasonable adjustment to the Contract price which may be requested by the Company.

2.8 The description of the Goods shall be as set out in the Company's acknowledgement of order.

2.9 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's website, catalogues or brochures or otherwise issued by the Company are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

2.10 The Company has no obligation to accept any variation to the Contract requested by the Customer, whether by addition, substitution or omission (or, without limitation, to the Goods to be supplied under the Contract) and no such request shall be deemed to be accepted in the absence of the Company's written agreement to the variation.

3. OBLIGATIONS OF THE CUSTOMER:

3.1 The Customer shall provide the Company with all information, co-operation and support that may be required to enable the Company to carry out its obligations to the Customer.

3.2 If any Goods are to be manufactured, ordered, designed, built, configured, altered, adapted, or subjected to any process by or on behalf of the Company for the Customer, in each case in accordance with any Input Material or instructions submitted by the Customer, the Customer shall hold the Company harmless and shall fully indemnify the Company against any and all loss, damage, costs and expenses awarded against or incurred by the Company in connection with, or paid or agreed to be paid by, the Company in settlement of any claim:

(a) for the infringement of any Intellectual Property Rights of any third party resulting from the Company's use of any Input Material or instructions so submitted;

(b) that any Input Material or instructions so submitted contravene any applicable safety or other statutory or regulatory requirement; and

(c) that any Goods supplied in accordance with any Input Material or instructions so submitted are defective, insofar as the defect in the Goods is attributable to the design of the Goods.

4. PRICE:

4.1 Prices for the Goods, howsoever given, are based on conditions ruling on the date of their giving and are subject to change. The Contract price for the Goods shall be the price confirmed by the Company in its written notification of acceptance of the Customer's order pursuant to clause 2.3.

4.2 The Company reserves the right, by giving notice to the Customer at any time before delivery of the Goods, to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, any increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate, accurate or complete information or instructions.

4.3 Unless otherwise stated, the price quoted will be exclusive of Value Added Tax which will be charged at the rate which is applicable at the date of dispatch of the Goods.

4.4 Any waiver or reduction of any price will only be applicable if agreed by the Company in writing.

5. DELIVERY:

5.1 Whilst the Company will reasonably endeavour to deliver the Goods in accordance with the Customer's requirements, the Company will not be liable for any consequences of any delay in the delivery of the Goods, howsoever caused. Without limitation, the Customer acknowledges that in order for the Company to supply the Goods to the Customer in accordance with the Customer's specification, the Company is required to procure vehicles from particular manufacturers who are unable to guarantee delivery dates to the Company and this can have a corresponding effect on the time of delivery of the Goods to the Customer and accordingly, time for delivery shall not be of the essence of the Contract.

5.2 Unless otherwise agreed in writing by the Company, the Company's obligation to deliver the Goods shall be deemed fulfilled upon delivery, ex-Telford. The Customer shall be responsible for arranging for the carriage of the Goods to the destination address. All transportation and carriage costs (including, without limitation, the cost of all related insurance coverage and the cost of loading and unloading the Goods) shall be borne by the Customer and the Customer shall pay any and all customs, import, excise and other duties and taxes payable in respect of the Goods.

5.3 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

5.4 Each instalment shall be a separate contract.

5.5 No cancellation or termination of any one contract relating to an instalment shall entitle the Customer to repudiate or cancel any other contract or instalment.

5.6 If for any reason the Customer fails to take or accept delivery of any of the Goods, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations, the Company will charge the Customer an abortive delivery charge and:

(a) risk in the Goods shall pass to the Customer (including for loss or damage caused by the Company's negligence);

(b) the Goods shall be deemed to have been delivered; and

(c) the Company may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance); or

(d) sell the Goods at the best price readily obtainable and (after deducting any reasonable costs and expenses in connection with the storage and expedited sale of the Goods), charge the Customer for any shortfall below the price for the Goods.

6. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY RIGHTS:

6.1 The Customer and the Company agree that in the course of the Company supplying Goods to the Customer, the parties may disclose to each other certain Confidential Information. The Customer and the Company agree that each party will maintain the Confidential Information's confidentiality and not disseminate it to any third party without the disclosing party's prior written consent, save that this obligation shall not apply to any Confidential Information that either party has a duty (whether legal or otherwise) to communicate or that is in the public domain or is already in the receiving party's possession through no fault of the receiving party.

6.2 The Customer acknowledges the Company's ownership or use under licence of any Intellectual Property Rights in any Output Material and in any Goods supplied to the Customer pursuant to the Contract and agrees not to contest the Company's ownership or use of any such Intellectual Property Rights. Without limitation, the Customer shall not acquire any such Intellectual Property Rights or any licence or grant of rights therein, nor shall the Customer register or attempt or permit to be registered, any such Intellectual Property Rights or any licence or grant of rights therein. The Customer further acknowledges that, without limitation, any and all Intellectual Property Rights developed by the Company in supplying any Goods shall become vested and shall vest in the Company absolutely and shall also be subject to the other provisions of this clause 6.2.

7. PAYMENT:

7.1 Subject only to any special terms agreed in writing between the Company and the Customer, the Company shall be entitled to invoice the Customer for the price of the Goods on or at any time after acceptance of the Customer's order.

7.2 Payment of the price for the Goods shall be made to the Company in such amounts and at such times as shall be stipulated in the Company's written acceptance of the Customer's order.

7.3 Invoices shall be settled within the period stated in the Company's written acceptance of the Customer's order. The time of payment of the price shall be of the essence of the Contract.

7.4 All payments shall be made without any deduction, withholding or set-off.

7.5 Failure by the Customer to pay any invoice by its due date shall entitle the Company : a) at its option, to charge interest at the rate of five percent (5%) per annum above Lloyds TSB Bank plc's base lending rate from time to time calculated on a daily basis (whether before or after any judgment) until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest); b) to charge the Customer with any costs incurred by the Company in the course of collecting outstanding monies due to the Company from the Customer, including the cost of taking legal action against the Customer in order to obtain payment; c) suspend any warranty for the Goods or any other goods supplied by the Company to the Customer, whether or not they have been paid for; d) appropriate any payment made by the Customer to such of the Goods as the Company may think fit; e) set off any amount owed by the Company to the Customer against any amount owed by the Customer to the Company on any account whatsoever; f) terminate the Contract, or suspend or cancel any future delivery of Goods; g) cancel any discount (if any) offered to the Customer; and h) if the Customer has an approved credit account, withdraw or reduce its credit limit or bring forward its due date for payment without notice. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

7.6 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

8. FORCE MAJEURE:

The Company reserves the right to defer the date of delivery of the Goods, or to cancel the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from, or delayed in, the carrying on of its business (wholly or in part) due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers, or any inability or delay in obtaining Goods of adequate or suitable materials, or the failure or demise of any source of supply.

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- 9. WARRANTY:**
- 9.1 The Company will endeavour to transfer to the Customer the benefit of any manufacturer's warranty or guarantee given to the Company and the Company warrants (subject to the other provisions of these Conditions) that:
- on delivery, the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
 - if the Customer has made it expressly known to the Company in the Customer's order that the Goods shall be suitable for a particular purpose and the Company has expressly stated in its written acceptance of the Customer's order that it will supply Goods suitable for that purpose, then the Goods shall, on delivery, be reasonably fit for the purpose so stated.
- 9.2 The Company's liability pursuant to clause 9.1 shall be limited to the replacement of any part of the Goods found to be defective and notified to the Company within the period set forth in clause 9.3 (or, if the claim is on any manufacturer's warranty, within the relevant manufacturer's warranty period).
- 9.3 Any defect or deficiency in, or malfunction or loss or shortage or failure to correspond to specification of the Goods shall be notified to the Company within 7 days from the delivery date; otherwise, the Goods shall be deemed to be satisfactory and a charge will be made for additional rectification work.
- 9.4 The Company shall not be liable for any breach of any warranty in clause 9.1, if: a) the Customer makes any further use of any Goods which the Customer has alleged to be defective after giving notice of any such defect; b) the Customer modifies, adjusts, alters or repairs the Goods without the prior written consent of the Company; c) the defect arises because the Customer failed to follow any oral or written instructions as to the storage, use or maintenance of the Goods or (if there are none) good trade practice; d) the defect arises from any specification supplied by the Customer, or from fair wear and tear, wilful damage, negligence, misuse of the Goods or from any other cause which is not due to the neglect or default of the Company; e) the defect relates to anything which is external to the Goods, or arises by virtue of any act or omission of the Customer relating to the operation of the Goods, or by subjecting the Goods to any unusual physical or other stress or adverse environmental conditions, or by use of the Goods in excess of any performance or load-bearing specifications recommended or otherwise stated by the Company; f) the full price for the Goods has not been paid by the time for payment stipulated in clause 7.2; or g) the defect is of a type specifically excluded by the Company by notice in writing.
- 9.5 If upon investigation, the Company reasonably determines that any defect or deficiency in, or malfunction or loss or shortage or failure to correspond to specification of the Goods is a result of, or is excused by, any of the matters referred to in Condition 9.4, the Customer shall be liable for all costs reasonably incurred by the Company in investigating the same and determining the cause.
- 9.6 Subject to and without limiting the generality of any of the provisions of this Condition 9 (including, without limitation, any of the provisions of Condition 9.4) the Company offers a 12 month back-to-base warranty where the alleged defect in the Goods is solely attributable to defective workmanship or materials.
- 10. EXCLUSION OF LIABILITY AND INDEMNITY:**
- 10.1 The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- any breach of these Conditions;
 - any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and
 - any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these Conditions excludes or limits the liability of the Company:
- for death or personal injury caused by the Company's negligence; or
 - under section 2(3), Consumer Protection Act 1987; or
 - for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
 - for fraud or fraudulent misrepresentation.
- 10.4 Subject to Condition 10.2 and Condition 10.3:
- the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
 - the Company shall not be liable to the Customer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 10.5 The Customer shall hold the Company harmless and keep the Company fully and promptly indemnified against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with any claim made by or against the Company in respect of any liability, loss, damage, injury, cost or expense whatsoever, howsoever and to whomsoever occurring, to the extent that such liability, loss, damage, injury, cost or expense arises directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Customer in writing.
- 11. CHANGES:**
- The Company reserves the right without prior approval from or notice to the Customer to make any changes in the specification of the Goods which are required to conform to any applicable safety or other statutory or regulatory requirements or which, in the reasonable opinion of the Company, do not materially affect the specification of the Goods.
- 12. RISK AND TITLE:**
- 12.1 Risk of damage to or loss of the Goods shall pass to the Customer:
- in the case of Goods to be delivered ex-Telford, at the time when the Company notifies the Customer that the Goods are available for collection; or
 - in the case of Goods to be delivered otherwise than ex-Telford, at the time of delivery of the Goods to the Customer's premises, or such other location as shall be notified by the Customer to the Company in advance of despatch of the Goods.
- 12.2 Title to the Goods shall not pass to the Customer until the Company has received payment in full (including any interest or other sums payable) in cash or cleared funds (i) for the Goods and (ii) for any other goods that the Company has supplied to the Customer in respect of which payment has become due.
- 12.3 Until title to the Goods has passed to the Customer, the Customer shall: a) hold the Goods on a fiduciary basis as the Company's bailee; b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company'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 from the date of delivery (and shall on request, produce the policy of insurance to the Company) and indemnify the Company against all loss or damage of whatsoever nature affecting the Goods; e) notify the Company immediately if it becomes subject to any of the events listed in clause 12.4; f) not assign to any other person any rights arising from a sale of the Goods without the Company's written consent (and then only subject to a set of terms and conditions containing a Risk and Title clause which is at least as onerous as this Condition 12); and g) give the Company such information relating to the Goods as the Company may require from time to time, but the Customer may use or resell the Goods in the ordinary course of its business, provided always that nothing herein shall constitute the Customer the agent of the Company for the purpose of any such resale of the Goods.
- 12.4 The Customer's right to possession of the Goods shall terminate immediately if:
- the Customer has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed over its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer, or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
 - the Customer suffers or allows any execution distress or diligence, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or a secured lender to the Customer takes any steps to obtain possession of the secured property or otherwise enforce its security, or the Customer ceases or threatens to cease to trade.
- 12.5 If:
- the Customer is late in paying for the Goods; or
 - the Customer is late in paying for any other goods supplied by the Company; or if
 - before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in clause 12.4 or the Company reasonably believes that any such event is about to happen and notifies the Customer accordingly, then
- without limiting any other right or remedy the Company may have, the Company may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, the Company may enter any premises of the Customer or of any third party where the Goods are stored or kept in order to recover them. The Customer shall not keep the Goods at any premises other than such premises as shall be specified in writing by the Customer to the Company prior to the dispatch of Goods to the Customer, or at any premises at which the Customer does not have the right to grant access to the Company. All costs associated with any action taken by the Company pursuant to this clause 12.5 shall be for the sole account of the Customer.
- 12.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 12.7 On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this clause 12 shall remain in effect.
- 13. TERMINATION:**
- 13.1 Either party shall be entitled to immediately terminate the Contract on giving written notice to the other if:
- the other party commits any material breach of any of these Conditions and in the case of such a breach which is capable of remedy, fails to remedy the same within 14 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied (for the avoidance of doubt any late payment or failure to pay by the Customer any sums due shall be a material breach); or
 - any one or more of the events set forth in Condition 12.4 occurs in relation to the other party.
- 13.2 Termination of the Contract shall be without prejudice to any accrued rights and remedies of either party.
- 14. GENERAL:**
- 14.1 No forbearance or indulgence granted by the Company to the Customer shall in any way limit the rights of the Company under these Conditions.
- 14.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business.
- 14.3 Neither the Company nor the Customer intends that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 14.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 14.5 The Company shall be entitled at its discretion to perform any of the obligations assumed by it and to exercise any of its rights granted to it under the Contract through any other company or subsidiary.
- 14.6 The Contract constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements and understandings between the parties.
- 14.7 Any dispute arising under or in connection with the Contract shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application by either party to the President for the time being of the Law Society whose decision as to the type, qualifications and experience of such arbitrator shall be final and binding on the parties. The costs of the arbitrator shall be borne by the parties as he directs and his decision on the issue in dispute shall be final.
- 14.8 These Conditions shall be subject to and construed under English Law and the parties hereby submit to the exclusive jurisdiction of the English courts for that purpose.

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