

# TERMS AND CONDITIONS OF SALE

**By placing an order, you are purchasing goods from Propbrook Ltd on and subject to the following terms and conditions and to the exclusion of all and any terms and conditions that may be put forward by the Buyer**

## 1. Definitions

In this document the following words shall have the following meanings:

- 1.1 "Buyer" means the organisation or person who buys Goods from the Seller;
- 1.2 "Conditions" means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller;
- 1.3 "Delivery date" means the date specified by the Seller when the Goods are to be delivered;
- 1.4 "Goods" means the articles to be supplied to the Buyer by the Seller;
- 1.5 "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property wherever in the world enforceable;
- 1.6 "Price" means the price set out in the quote of the Goods provided by the Seller plus such carriage, packing, insurance or other charges or interest on such as may be quoted by the Seller or as may apply in accordance with these conditions;
- 1.7 "Seller" means Propbrook Ltd, 389 Lichfield Road, Aston, Birmingham, B6 7SS.

## 2. Application of terms

- 2.1 These conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may seek to apply under any purchase order, order confirmation, specification or similar document.
- 2.2 No terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document will form part of the contract simply as a result of such document being referred to in the contract.
- 2.3 These conditions apply to all the Sellers sales and any variation to the conditions and any representations about the goods shall have no effect unless expressly agreed in writing by the Seller.
- 2.4 All orders for Goods by the Buyer to the Seller shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.
- 2.5 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate and that all designs from the Seller are approved in full and in writing by the Buyer before any work will begin. Any delays in the Seller receiving this information from the Buyer, may effect lead times or delivery dates previously given.
- 2.6 The Seller may re-schedule any date for the provision of goods where this is unavoidable due to any circumstances outside of the Sellers reasonable control (including where relevant personnel are ill) but will try to give the Buyer as much notice as possible.
- 2.7 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.

2.8 Any variation to these Conditions (including any special terms and conditions agreed between the parties including without limitation as to discounts) shall be inapplicable unless agreed in writing by the Seller.

2.9 Any advice, recommendation or representation given by the Seller or its employees to the Buyer or its employees as to the storage, application or use of the Goods or otherwise which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and, accordingly, the Seller shall not be liable for any such advice, recommendation or representation which is not so confirmed.

2.10 Any quotation given is valid for a period of 30 days only from its date, provide that the Seller has not previously withdrawn it.

2.11 Nothing in these Conditions shall effect the statutory rights of any Buyer dealing as a consumer.

### **3. Buyers obligations**

The Buyer shall indemnify and keep indemnified the Seller, on demand, from all costs (including the costs of enforcement and legal and other professional fees), expenses, liabilities, losses, damages, claims, demands, fines and judgments that the Buyer incurs.

### **4. Price and Payment**

4.1 Unless otherwise agreed by the Seller in writing the price for the Goods shall be the price set out in the Sellers quotation/offer on the date of delivery or deemed delivery.

4.2 The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to packing, packaging, loading, unloading, carriage and insurance all of which amounts the Buyer will pay in addition when it is due to pay for the Goods.

4.3 Payment of the Price is strictly BACS with order or upon delivery unless a credit account has been established with the Seller in which event payment of the Price is due 30 days following the date of invoice.

4.4 The Seller shall be entitled to charge interest on overdue invoices from the date when payment becomes due interest to accrue from day to day until the date of payment at a rate of 3% per annum above the base rate of the Bank of England, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgement. Alternatively, the Seller reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 and/or

4.4.1 suspend all or any services until payment has been received in full.

4.5 The Buyer shall make all payments due without any deduction whether by way of set-off, counter claim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.

4.6 If payment of the Price or any part thereof is not made by the due date, the Seller shall be entitled to:

4.6.1 require payment in advance of delivery in relation to any Goods not previously delivered;

4.6.2 refuse to make delivery of any undelivered Goods whether ordered under the contract or not and without incurring any liability whatever to the Buyer for non-delivery or any delay in delivery;

4.6.3 appropriate any payment made by the Buyer to such of the Goods (or Goods supplied under any other contract) as the Seller may think fit;

4.6.4 terminate the contract.

4.7 The Seller reserves the right to grant, refuse, restrict, cancel or alter credit terms at its sole discretion at any time.

## 5. Description

Any description given or applied to the Goods is given by way of identification only and the use of such description shall not constitute a sale by description. For the avoidance of doubt, the Buyer hereby affirms that it does not in any way rely on any description when entering into the contract.

## 6. Delivery

6.1 Unless otherwise agreed in writing, delivery of the Goods shall take place at the address specified by the Buyer. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.

6.2 The date of delivery specified by the Seller is an estimate only. Time for delivery shall not be of the essence of the contract and while every reasonable effort will be made to comply with such dates compliance is not guaranteed and the Seller will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, loss of profits, loss of business, depletion of goodwill and like loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor will any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 360 days. If no dates are specified, delivery will be within a reasonable time.

6.3 If the Seller is unable to deliver the Goods for reasons beyond its control, then the Seller shall be entitled to place the Goods in storage until such time as delivery may be effected and the Buyer shall be liable for any expense associated with such storage.

6.4 If the Buyer fails to accept delivery of Goods on the delivery date given by the Seller or within 3 days of notification that they are ready for despatch, whether prior to or after the delivery date, the Seller reserves the right to invoice the Goods to the Buyer and charge him therefore. In addition, the Buyer shall then pay reasonable storage charges or demurrage as appropriate in the circumstances until the Goods are either despatched to the Buyer or disposed of elsewhere.

6.5 The Seller shall be entitled to deliver the Goods by instalments and where the Goods are so delivered, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat any other related contract as repudiated.

6.6 Where the Buyer requires delivery of the Goods by instalments, rescheduling requires the Seller's written agreement and will not be possible unless at least 3 month's written notice is provided and so agreed. Each delivery shall constitute a separate contract and failure by the Buyer to pay the Price in respect of any instalment shall entitle the Seller to treat any other related contract as repudiated in addition to any other rights of the Seller pursuant to these Conditions.

6.7 Notwithstanding that the Seller may have delayed or failed to deliver the Goods (or any of them) promptly the Buyer shall be bound to accept delivery and to pay for the Goods in full provided that delivery shall be tendered at any time within 4 months of the delivery date.

6.8 The Buyer and the Seller agree that where the Seller sells Goods to the Buyer under this Agreement but the Seller continues to hold such Goods on behalf of the Buyer until the Buyer requests delivery of such Goods (in writing which shall include email), such Goods will be held by the Seller on the following terms:

6.8.1 the Goods shall be held by the Seller at the risk of the Buyer and the Buyer undertakes to take such action to ensure that it has the benefit of such insurance cover as necessary to cover the full invoice value of such Goods held by the Seller

6.8.2 the Seller is entitled to raise invoices in respect of the Goods notwithstanding that the Goods continue to be held by the Seller until the Buyer requests delivery in accordance with this clause: and

6.8.3 all sums set out in the invoices the Seller addresses to the Buyer will be paid by the Buyer notwithstanding that the Goods are held by the Seller and/or may not have been delivered and without any set off, deduction, abatement, defence or counterclaim in respect thereof.

## **7. Acceptance**

7.1 The Seller is a distributor of goods and the Buyer is exclusively responsible for detailing the specification of the Goods, for ascertaining the use to which they will be put and for determining their ability to function for that purpose.

7.2 The Buyer is required to test Goods upon delivery and shall be deemed to have accepted the Goods 7 days after delivery to the Buyer. Accordingly, no claim for defect, damage or quality will be entertained (without prejudice to the Seller's other rights pursuant to these Conditions) unless written notice together with all supporting evidence is received by the Seller within 7 days of delivery. After acceptance the Buyer shall not be entitled to reject Goods which are not in accordance with the contract.

7.3 The Buyer shall not remove or otherwise interfere with the marks or numbers on the Goods.

7.4 The Buyer shall accept delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that any such discrepancy shall not exceed 3%, the Price to be adjusted pro-rata to the discrepancy.

## **8. Risk and Title**

8.1 Risk of damage or loss of the Goods shall pass to the Buyer in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection, or in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery.

8.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these conditions, the property in the Goods shall not pass to the Buyer until the Seller has received cleared funds payment in full of the Price of the Goods and of all other Goods agreed to be sold by the Seller to the Buyer for which payment is then due.

8.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee;

8.3.1 Store the Goods (at no cost to the Seller) separately from all other goods from those of the Buyer and third parties and properly identified as the Seller's property.

8.3.2 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;

8.4 Until payment of the Price the Buyer shall be entitled to resell or use the Goods in the course of its business but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured. On request the Buyer shall produce the policy of insurance to the Seller.

8.5 Until such time as the property in the Goods passes to the Buyer (and provided that the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to

deliver up the Goods to the Seller and if the Buyer fails to do so forthwith to enter upon any premises of the Buyer or of any third party where the Goods are stored and repossess the Goods.

8.6 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

8.7 The Seller shall be entitled to recover the Price notwithstanding that property in any of the Goods has not passed from the Seller.

## **9. Insolvency of Buyer**

9.1 If the Buyer fails to make payment for the Goods in accordance with the contract of sale or commits any other breach of this contract of sale or if any distress or execution shall be levied upon any of the Buyer's property or the Goods or if the Buyer offers to make any arrangement with its creditors or commits an act of bankruptcy or if any petition in bankruptcy is presented against the Buyer or the Buyer is unable to pay its debts as they fall due or if being a limited company any resolution or petition to wind up the Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver, administrator administrative receiver or manager shall be appointed over the whole or any part of the Buyer's business or assets or if the Buyer shall suffer any analogous proceedings under foreign law or if any such matter as provided for in this clause is reasonably apprehended by the Seller all sums outstanding in respect of the Goods shall become payable immediately.

9.2 The Seller may in the circumstances set out in clause 9.1 above also in its absolute discretion, and without prejudice to any other rights which it may have, exercise any of its rights pursuant to clause 8 above.

## **10. Warranty**

10.1 Where the Goods are found to be defective, the Seller shall, replace defective Goods free of charge within the manufacturer's warranty period if acceptable from the date of delivery, subject to the following conditions;

10.1.1. the Buyer notifying the Seller in writing immediately upon the defect becoming apparent;

10.1.2. the defect being due to faulty design, materials or workmanship;

10.2 Any Goods to be repaired or replaced shall be returned to the Seller at the Buyer's expense, if so requested by the Seller.

10.2 Where the Goods have been manufactured and supplied to the Seller by a third party, any warranty granted to the Seller in respect of the Goods shall be passed on to the Buyer and the Buyer shall have no other remedy against the Seller

10.3 The Seller shall be entitled in its absolute discretion to refund the Price of the defective Goods in the event that the Price has already been paid.

10.4 The remedies contained in this Clause are without prejudice and subject to the other Conditions herein, including, but without limitation, to conditions 11 and 12 below.

## **11. Liability**

11.1 No liability of any nature shall be incurred or accepted by the Seller in respect of any representation made by the Seller, or on its behalf, to the Buyer, or to any party acting on its behalf, prior to the making of this contract where such representations were made or given in relation to: -

11.1.1. the correspondence of the Goods with any description or sample;

11.1.2. the quality of the Goods; or

11.1.3. the fitness of the Goods for any purpose whatsoever.

11.2 Except where the Buyer deals as a consumer all other warranties, conditions or terms relating to fitness for purpose, quality or condition of the Goods, whether express or implied by statute or common law or otherwise are hereby excluded from the contract to the fullest extent permitted by law.

11.3 For the avoidance of doubt the Seller will not accept any claim for consequential or financial loss of any kind however caused.

## **12. Limitation of Liability**

12.1 Where any court or arbitrator determines that any part of Clause 11 above is, for whatever reason, unenforceable, the Seller shall be liable for all loss or damage suffered by the Buyer but in an amount not exceeding the Price.

12.2 Nothing contained in these Conditions shall be construed so as to limit or exclude the liability of the Seller for death or personal injury as a result of the Seller's negligence or that of its employees or agents.

## **13. Intellectual Property Rights**

13.1 The Buyer will indemnify us against all liabilities for infringement of third party intellectual property rights arising from our compliance with the Buyer's specific requirements regarding design or specification for the Goods or arising from the use of the Goods in combination with other products.

13.2 In the event that all the Goods or the use thereof (subject as aforesaid) are held to constitute an infringement of any intellectual property rights and the use is thereby prevented, the will at its own expense and option either procure for the Buyer the right to continue using the Goods or replace the same with a non-infringing product, or modify the Goods so that they become non-infringing, or may elect to retake possession of the Goods and refund the Price. Subject to the foregoing, the Seller shall be under no liability to the Buyer for any loss, damage or enquiry, whether direct or indirect, resulting from any intellectual property right infringement of the Goods.

13.3 All Intellectual Property Rights produced from or arising as a result of the performance of any contract shall, so far as not already vested, become the absolute property of the Seller, and the Buyer shall do all that is reasonably necessary to ensure that such rights vest in the Seller by the execution of appropriate instruments or the making of agreements with third parties.

13.4 All orders are processed in accordance with the quality system elements of ISO 9001:2015 however the Goods may not have been procured from a quality assured source unless there is an asterisk (\*) against the relevant items

## **14. Force Majeure**

The Seller reserves the right to defer the date of delivery or payment or to cancel the contract or reduce the volume of goods ordered by the Buyer (without liability to the Buyer) if it is prevented from, delayed or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, governmental actions, lock outs, accidents, war, fire, acts of terrorism, protests, riot, civil commotion, explosion, flood, labour disputes (whether or not relating to either parties workforce) breakdown of plant or machinery or shortage, delay or unavailability of suitable materials, and the Seller shall be entitled to a reasonable extension of its obligations. If the delay persists for a continuous period in excess of 180 days, it may without liability on its part, terminate the contract or any part of it.

## 15. Assignment and Sub-Contracting

The contract between the Buyer and Seller for the sale of Goods shall not be assigned or transferred, nor the performance of any obligation sub-contracted, in either case by the Buyer, without the prior written consent of the Seller.

## 16. Waiver

The failure by either party to enforce at any time or for any period any one or more of the Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Conditions of this Agreement.

## 17. Severability

If any term or provision of these Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

## 18. No set off

The Buyer may not withhold payment of any invoice or other amount due to the Seller by reason of any right of set-off or counterclaim which the Buyer may have or allege to have for any reason whatsoever.

## 19. Entire Agreement

19.1 These Conditions and any documents incorporating them or incorporated by them constitute the entire agreement and understanding between the parties and supersedes all prior agreements and understandings between the Buyer and Seller relating to such subject matter.

19.2. Each party acknowledges and agrees that, in entering into the Contract, it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Contract or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract.

19.3. Nothing in this condition 19 excludes any liability which one party would otherwise have for any statement it has made fraudulently to the other party.

## 20. General

20.1. Subject to the Proposal and condition 7, no variation of the Contract or these Conditions or of any of the documents referred to in them shall be valid unless it is in writing and signed by or on behalf of each of the parties.

20.2. If any provision (or part of a provision) of these Conditions or the Proposal is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.

20.3. The Contract is personal to the Customer who shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract. The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

20.4. Nothing in the Contract is intended to, or shall operate to, create a partnership between the Customer and the Supplier, or to authorise either party to act as agent for the other, and neither the

Customer nor the Supplier shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

20.5. The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

20.6. Notice given under the Contract shall be in writing, sent for the attention of the person, and to the address or email address, given in the Contract (or such other address, email address or person as the relevant party may notify to the other party in accordance with this condition 20.6) and shall be delivered personally, sent by email or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of email, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting and, if deemed receipt under this condition is not within business hours (meaning 7.30 am to 4.30 pm Monday to Thursday and 7.30 to 1.00 on Friday on a day that is a business day), at 7.30 am on the first business day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by email to the email address of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

20.7. The failure to exercise or delay in exercising any right by the Supplier or the Customer will not be deemed to be a waiver of such right and will not bar the exercise of that or any other right at any time thereafter.

20.8. The Contract and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with, the law of England and Wales. The Customer and the Supplier irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter.