

## **1. Interpretation**

### **1.1** In these conditions:

"BUYER" means the legal person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller. "GOODS" means the goods (including any instalment of the goods and all parts or components of them) which the Seller is to supply in accordance with these conditions and "SERVICES" means any Services which the Seller is to render in connection with or incidental to the supply of Goods. "SELLER" means *CF Parkinson Ltd* whose registered office is situated at Marsh Lane, Riverside Industrial Estate, Boston, Lincolnshire, PE21 7FP, England.

"CONDITIONS" means the standard terms and conditions of trading set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and Seller.

"CONTRACT" means the contract for the sale and purchase of the Goods (including the supply and acquisition of any services) in accordance with any written quotation of the Seller or any written order of the Buyer subject in either case to these Conditions and incorporating any Specification contained or referred to in such quotation or order. "WRITING" E-mail, facsimile transmission and comparable means of communication.

"SPECIFICATION" includes all designs, models, drawings, plans, data, processes, techniques and all other technical business and similar information relating to the Goods (or Services) including all readable or computer or other machine readable data, logic, diagrams, flow charts, orthographic representations, coding sheets, source or object codes, listings, test routines, diagnostic programs or other material relating to or comprising software.

**1.2** Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

**1.3** Where the context so permits the singular number includes the plural and vice versa and the masculine gender includes the feminine or neuter and vice versa.

## **2. Basis of the Sale**

**2.1** The Seller shall sell and the Buyer shall purchase the Goods (including the supply and acquisition of any services) in accordance with any quotation of the Seller which is accepted by the Buyer, or any order of the Buyer which is accepted by the Seller, subject in either case to these conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made by the buyer.

**2.2** These Conditions shall apply to and form part of every Contract entered into by the Buyer and Seller, and no variation to these conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and Seller.

**2.3** The Sellers employees or agents are not authorised to make any representations concerning the Goods or Services unless confirmed by the Seller in writing. In entering into the contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

**2.4** Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyers own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

## **3. Orders and Specifications**

**3.1** No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed by the Seller's authorised representative

**3.2** The buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods and Services within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

**3.3** The quantity, quality and description of and any applicable specification for the Goods and any Services shall, subject as provided in these conditions, be those set out in the Sellers quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).

**3.4** Any Specification of the Seller supplied to or used for the Buyer, or custom designed though not included in the sale to the Buyer, together with the copyright design rights or any other intellectual property rights in such Specification shall be and remain the exclusive property of the Seller. The Buyer shall not disclose to any third party or use any such specification except to the extent that it is or becomes public knowledge through no fault of the Buyer, or as permitted by the Contract.

**3.5** If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a Specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from the Sellers use of the Buyers Specification.

**3.6** The Seller reserves the right to make any changes in the specification of the Goods which are required to conform to any applicable safety or other statutory requirements or where the Goods are to be supplied to the Sellers Specification, which do not materially affect their quality of performance.

**3.7** No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profits), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

## **4. Price of the Goods and Services**

**4.1** The price of the Goods and any Services to be performed shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of order. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

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

**4.3** Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance. The cost of packing cases, pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.

**4.4** The price is excluded of any applicable value added tax duties, imports or levies, which the Buyer shall be additionally liable to pay to the Seller. The Buyer shall not be entitled to withhold payment of any amount due under the Contract to the Seller in the respect of any claim for breach of Contract or otherwise, nor shall the Buyer be

entitled to exercise any right of set-off against any payment due hereunder.

## 5. Terms of Payment

**5.1** Subject to any special terms agreed in Writing between the Buyer and the Seller, the Buyer shall (in the case of a new account only) pay the price of the Goods and the Services in cash or cleared funds on or at any time before the delivery of the Goods or performance of the Services (as the case may be). Otherwise the Seller shall be entitled to invoice the Buyer on or at any time after delivery of the Goods or performance of the Services (as the case may be), unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.

**5.2** The Buyer shall pay the price of the Goods and the Services within 30 days of the end of the month in which the Goods are supplied or its services are rendered, notwithstanding that the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payments will be issued only upon request.

**5.3** If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to (a) cancel the contract or suspend any further deliveries or Services to the Buyer; and/or (b) appropriate any payment made by the Buyer to such of the Goods and Services (or the Goods and Services supplied under any other contract between the Buyer and Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer) and/or (c) charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 5 percent per annum above Lloyds Bank plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

## 6. Delivery and Performance

**6.1** Delivery of the Goods shall be made by the Buyer collecting the Goods at the Sellers premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place. Performance of the Services shall take place wherever agreed by the Seller and Buyer.

**6.2** Any dates quoted for delivery of the Goods or the performances of the Services are approximate only and the Seller shall not be liable for any delay in delivery of the Goods or the performance of the Services howsoever caused. Time for delivery of the Goods and of performance of the Services shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered or the Services may be performed by the Seller in advance of the quoted delivery or performance date upon giving reasonable notice to the buyer.

**6.3** Where delivery of the Goods is to be made otherwise than at the Sellers premises by public or private carrier, the Seller will repair or replace, free of charge, any of the Goods which are damaged or lost in transit provided the Buyer shall give to the Seller written notification of any such damage or loss within such time as will enable the Seller to comply with the carriers condition s of carriage affecting damage or loss in transit.

**6.4** Where the Goods are to be delivered in instalments, 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 the contract as a whole as repudiated.

**6.5** If the Seller fails to deliver the Goods or perform the Services for any reason other than any cause beyond the Sellers reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Sellers liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods or (as the case may be) of similar Services to replace those not performed over the price of the Services.

**6.6** If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyers control or by reason of the Sellers fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage or sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and Selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the contract.

## 7 Risk and Property

**7.1** Risk of damage to or loss of the Goods shall pass to the Buyer (a) in the case of Goods to be delivered at the Sellers premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or (b) in the case of Goods to be delivered otherwise than at the Sellers premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

**7.2** 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 in cash or cleared funds payment in full of the price of the Goods and all other Goods agreed to be sold by the Seller to the Buyer for which payment is then due.

**7.3** Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller fiduciary agent and the bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Sellers property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary 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.

**7.4** Until such time as the property in the Goods passes to the Buyer (and provided 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 third party where the Goods are stored and repossess the Goods.

**7.5** 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. Warranties and liability

**8.1** Subject to the conditions set out below the Seller warrants that the Goods will correspond with their Specification at the time of delivery and will be free from defects in material and workmanship for a period of twelve months from delivery.

**8.2** The above warranty is given by the Seller subject to the following conditions:

**8.2.1** the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

**8.2.2** the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing) misuse or alteration or repair of the Goods without the Sellers approval.

**8.2.3** the Seller shall be under no liability under the above warranty (or any other warranty condition or guarantee) if the total price for the Goods and Services has not been paid by the due date for payment.

**8.2.4** the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

**8.3** Subject as expressly provided in these Conditions, and except where the Goods are sold or the Services are supplied to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by

statute or common law are excluded or otherwise limited to the fullest extent permitted by law.

**8.4** Where the Goods are sold or the Services are performed under a consumer transaction as defined by the Consumer Transactions (Restrictions on Statements) Order 1976 the statutory rights of the buyer are not affected by these Conditions.

**8.5** Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or Services or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or performance, or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods or Services and the Seller shall have no liability for such defect of failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered or the Services had been performed in accordance with the Contract.

**8.6** Where any valid claim in respect of any of the Goods or Services which is based on any defect in their quality or condition or their failure to meet Specification is notified to the Seller in accordance with these Conditions, the Seller's liability shall be limited for a period of twelve months from delivery to making good defects developing in Goods of the Seller's manufacture under proper use and arising solely from faulty design, materials or workmanship provided always that such defective parts are promptly returned free of charge to the Seller's premises (unless otherwise arranged) and the repaired or new parts will be delivered free of charge to the Buyer within railway company's free delivery area, but the Seller shall have no further liability to the Buyer at the termination of the said period of twelve months.

**8.7** Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, or the performance of the Services by the Seller, except as expressly provided in these Conditions.

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

## **9. Insolvency of buyer**

**9.1** This clause applies if: (a) the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or (b) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer, or (c) the buyer ceases, or threatens to cease, to carry on business; or (d) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

**9.2** If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries or Services under the Contract without any liability to the Buyer, and if the

Goods have been delivered or the Services been performed but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## **10. Export terms**

**10.1** In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the contract is made. Unless the context otherwise requires, any term or expression which is defined or given a particular meaning by the provisions of incoterms shall have the same meaning in these conditions, the latter shall prevail.

**10.2** Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 10 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these conditions.

**10.3** The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.

**10.4** The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which are made after shipment, or in respect of any damage during transit.

## **11. General**

**11.1** 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 or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

**11.2** No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

**11.3** 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 thereby.

**11.4** The Contract is personal to the Buyer and the Buyer shall not assign or transfer or purport to assign or transfer to any other person the whole or any part of it without the written consent of the Seller.

**11.5** The Contract shall be governed by the laws of England & Wales and the Buyer hereby submits to the exclusive jurisdiction of the English Courts in all matters regarding the Contract.