

## **EMP Designs Ltd Terms and Conditions.**

### **1 INTERPRETATION**

1.1 In these conditions the following words have the following meanings:

**“the Buyer”** means the person(s), firm or company who purchases the Goods from the Supplier;

**“Conditions”** means the standard terms of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Supplier;

**“Contract”** means the Order Form and the Conditions;

**“Delivery Date”** means such date as may be agreed between the Buyer and Supplier as set out in the Order Form;

**“Delivery Location”** means such place as is agreed between the Buyer and the Supplier as set out in the Order Form;

**“Event of Default”** means any of:

- any breach of its obligations under the Contract;

- any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; or

- any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract

**“Goods”** means any goods agreed in the Contract to be supplied to the Buyer by the Supplier (including any part or parts of them) as specified on the Order Form;

**“Intellectual Property**

**Rights”** any patent, registered design, copyright, design right, database right, topography right, trade mark, service mark, application to register any of the aforementioned rights, trade secret, right in unpatented know-how, right of confidence and any other intellectual or industrial property right of any nature in any part of the world;

**“Order Form”** means the Supplier’s order form specifying the Goods, the Price, the Delivery Location, the Delivery Date and any other terms or specifications which will apply to the sale by the Supplier of the Goods to the Buyer;

**“Price”** means the amount specified on the Order Form payable by the Buyer for the Goods;

**“Supplier”** means EMP Designs Limited (with registered number 04717243);

**“Writing”** and any similar expression includes facsimile transmissions and comparable means of communications, including electronic mail.

1.2 In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

1.3 In these Conditions headings are used for convenience only and will not affect the construction of these conditions.

### **2 APPLICATION OF TERMS**

2.1 Subject to any variation under Clause 2.2, the Contract will be subject to these Conditions to the exclusion of all other terms and conditions (including any terms which the Buyer purports to apply under any purchase order, confirmation of order or other document).

2.2 These Conditions apply to all the Supplier’s sales and any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in Writing by the Supplier. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

2.3 Each order for goods by the Buyer from the Supplier shall be deemed to be an offer by the Buyer to purchase the Goods subject to these Conditions.

2.4 No order placed by the Buyer shall be deemed to be accepted until an Order Form is issued by the Supplier or (if earlier) the Supplier delivers the Goods to the Buyer.

### **3 ORDERS**

3.1 The Buyer must ensure that the terms of the Order Form including any applicable specifications are complete and accurate.

3.2 The Supplier does not accept any responsibility for errors or omissions resulting from verbal or telephoned orders and any variation to such orders unless the order or the variation has been confirmed to the Supplier in Writing by the Buyer before the date the Order Form is issued by the Supplier.

3.3 The Buyer may cancel or amend an order by giving the Supplier notice in Writing which must reach the Supplier before the date the Order Form is issued by the Supplier.

3.4 If an order is cancelled or amended by the Buyer after the date the Order Form is issued by the Supplier, the Supplier will be entitled to withhold all or part of any monies paid and /or charge the Buyer for all costs, expenses, or losses incurred by the Supplier as a result of such cancellation (including loss of profit).

#### 4 DRAWINGS, SPECIFICATIONS AND CATALOGUES

4.1 All specifications drawings and particulars in any quotation or contained in the Supplier's leaflet or catalogue are merely intended to present a general idea of the Goods described therein and shall not form part of the Contract.

#### 5 PRICE

5.1 The price for the Goods shall be the Price as set out in the Order Form.

5.2 The Price shall be exclusive of any value added tax for which the Buyer shall be additionally liable to the Supplier at the prevailing rate.

5.3 The Price shall be exclusive of delivery costs for which the Buyer will be additionally liable and which will be charged at the road, rail, air or sea rates applicable at that time.

#### 6 DELIVERY

6.1 Unless otherwise agreed in Writing by the Supplier, delivery of the Goods shall take place at the Delivery Location on the Delivery Date.

6.2 The Delivery Date is approximate only and intended to be an estimate only. Time for delivery will not be of the essence, nor will it be made of the essence by notice. If no dates are specified, delivery will be within a reasonable time.

6.3 The Supplier will not be liable for any direct, indirect or consequential loss (which shall include loss of profits, loss of business and like loss), costs, damages, charges or expenses caused directly or indirectly by any delay in delivery of the Goods (or any part thereof) howsoever caused. Any delay shall not entitle the Buyer to terminate the Contract unless such delay exceeds 45 days after the Delivery Date.

6.4 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract subject to these Conditions.

6.5 If the Buyer fails to provide adequate delivery instructions or changes such instructions, or for any reason will not accept delivery of the Goods the Buyer will be liable for all related costs and expenses incurred by the Supplier (including, without limitation, storage and insurance).

6.6 The Supplier is not responsible for off-loading the Goods which is at all times the responsibility of the Buyer. The Buyer will provide at its own expense adequate and appropriate equipment and manual labour for off-loading the Goods.

6.7 Any liability of the Supplier for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods

#### 7 RISK AND TITLE

7.1 Risk in the Goods shall pass to the Buyer at the time of delivery, or if the Buyer wrongfully fails to take delivery of the Goods, the time when the Supplier has tendered delivery.

7.2 Notwithstanding the passing of risk in the Goods, the title to the Goods shall not pass to the Buyer until the Supplier has received in cleared funds all sums due to it in respect of:

7.2.1 the Goods together with any interest;

7.2.2 all other sums which are or which become due to the Supplier from the Buyer on any account.

7.3 Until such time as title in the Goods has passed to the Buyer:

7.3.1 the Buyer must hold the Goods on a fiduciary basis as the Supplier's bailee and keep the Goods separate from those of third parties properly protected, stored, insured and identified as the property of the Supplier;

7.3.2 the Buyer may resell the Goods in the ordinary course of its business for full market value and shall hold such part of the proceeds of sale as represent the amount owed by the Buyer to the Supplier as agent for the Supplier and shall account to the Supplier accordingly;

7.3.3 the Supplier may at any time after payment has become due require the Buyer to deliver up the Goods to the Supplier and if the Buyer fails to do so, the Buyer hereby grants the Supplier (and its servants or agents) the right to enter upon any premises where the Goods are stored and repossess the Goods.

7.4 The Supplier shall be entitled to recover payment for the Goods notwithstanding that title in any of the Goods has not passed from the Supplier.

7.5 On termination of the Contract, howsoever caused, the Supplier's rights contained in this Clause 7 shall remain in effect.

## 8 PAYMENT TERMS

8.1 Unless otherwise agreed in Writing, the Buyer shall pay the Price in pounds sterling (without any set off, counterclaim or other deduction) within 14 days of the Supplier's invoice and time for payment shall be of the essence.

8.2 No payment shall be deemed to have been received until the Supplier has received cleared funds.

8.3 If the Buyer fails to make payment of any sum due on or before the due date the Supplier may:-

8.3.1 suspend any further deliveries to the Buyer; and/or

8.3.2 charge the Buyer interest (both before and after judgement) on the amount unpaid at the rate of 3% per annum above the base rate from time to time of Barclays Bank Plc accruing daily from the date of the invoice until payment is received in full.

8.4 The Buyer acknowledges that the Supplier shall be entitled to set off any sums it is owed by the Buyer against any sums owed to the Buyer by the Supplier.

8.5 All payments to the Supplier under the Contract shall become due immediately on its termination despite any other provision.

8.6 If Payment is via a credit card we will not store credit card details nor will we share customer details with any 3rd parties, a 4% charge will be added to the total chargeable amount.

## 9 WARRANTIES AND LIABILITY

9.1 Subject to the remaining provisions of Clause 9, the Supplier shall have no liability to the Buyer in respect of any defect in or damage to the Goods unless:

9.1.1 the Buyer gives written notice of such claim to the Supplier and the carrier within 3 working days of the Delivery Date; and

9.1.2 the Supplier is given a reasonable opportunity after receiving the notice to examine such Goods and the Buyer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost for the examination to take place there

9.2 Where a valid claim is notified to the Supplier by the Buyer in accordance with Clause 9.1, the Supplier may replace the Goods (or the part in question) or, at the Supplier's sole discretion, refund to the Buyer the Price of the Goods (or a proportionate part thereof), in which case the Supplier shall have no further liability to the Buyer.

9.3 The Supplier shall not be liable to the Buyer for any defect in or damage to the Goods whatsoever or any other loss, damage, liability, cost or expenses suffered or incurred by the Buyer arising from:

9.3.1 the Buyer's failure to follow the Supplier's oral or written instructions (including any manual provided to the Buyer) as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

9.3.2 the fair wear and tear, wilful damage, negligence, abnormal working conditions, misuse, alteration or repair of the Goods without the Supplier's approval in Writing;

9.3.3 the use by the Buyer of the Goods in conjunction with any other electrical products or equipment including, without limitation, any external electrical connections between the Goods and third party products or equipment; or

9.3.4 any drawings, designs or specifications supplied by the Buyer.

9.4 All warranties, conditions and other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law. For the avoidance of doubt, the Supplier gives no warranty

or representation as to the suitability or compatibility of the Goods in conjunction with other electrical products or equipment.

9.5 Nothing in these Conditions excludes or limits the liability of the Supplier for death or personal injury caused by the Supplier's negligence or for fraudulent misrepresentation.

9.6 Subject to Clause 9.6, the Supplier's entire liability in respect of any Event of Default shall not exceed an amount equal to the Price paid by the Buyer under the Contract.

9.7 Subject to Clause 9.6, the Supplier shall not be liable to the Buyer in respect of any Event of Default for any type of:-

9.7.1 special, indirect or consequential loss (even if such loss was reasonably foreseeable or the Supplier had been advised of the possibility of the Buyer incurring the same);

9.7.2 loss of profit; and/or

9.7.3 loss of anticipated savings; and/or

9.7.4 loss of business and/or goods; and/or

9.7.5 loss of revenue; and/or

9.7.6 loss of contract; and/or

9.7.7 loss of goodwill.

9.8 If a number of Events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under the Contract.

9.9 Nothing in this Clause 9 shall confer any right or remedy upon the Buyer to which it would not otherwise be entitled.

## 10 INSOLVENCY OF THE BUYER

10.1 This Clause applies if:

10.1.1 the Buyer makes a voluntary arrangement with its creditors or becomes subject to an administration order or goes into liquidation;

10.1.2 an encumbrancer takes possession, or a receiver is appointed of any of the property or assets of the Buyer;

10.1.3 the Buyer ceases, or threatens to cease, to carry on its business.

10.2 If this Clause applies then the Supplier may cancel the Contract or suspend any further deliveries under the Contract without liability to the Buyer, and if the Goods have been delivered but not paid for the Price shall become immediately due and payable, notwithstanding Clause 8.1.

## 11 INTELLECTUAL PROPERTY RIGHTS

11.1 All Intellectual Property Rights in the Goods and in all drawings, specifications, leaflets or catalogues submitted to the Buyer remain at all times the property of the Supplier, unless otherwise agreed in Writing.

## 12 FORCE MAJEURE

12.1 The Supplier 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 failure to perform any of the Supplier's obligations under the Contract if the delay or failure was due to any cause beyond the Supplier's reasonable control including, without limitation, acts of God, governmental actions, war, acts of terrorism, fire, explosion, flood, strikes or other labour disputes, or restraints or delays affecting carriers or inability or delay in obtaining suitable materials, and the time for the performance of that obligation shall be extended accordingly.

12.2 If the cause of the delay under Clause 12.1 extends beyond a period of 3 months the Supplier shall be entitled to terminate the Contract with no liability to the Buyer.

## 13 GENERAL

13.1 A notice required or permitted to be given by either party to the other under the Contract shall be in Writing, and addressed to the 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.

13.2 No failure or delay by the Supplier in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by the Supplier of any breach of the Contract by the Buyer shall be deemed a waiver of any subsequent breach of the same or any other provision.

13.3 The Contract is personal to the Buyer who shall not assign his rights or obligations hereunder without the prior consent of the Supplier.

13.4 If any provision of these Conditions is held by any court or other 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.

13.5 The parties to the Contract do not intend that any terms of the Contract will be enforceable by virtue of the Contract (Rights of Third Parties) Act 1999 by any person that is not a party to it.

#### 14 GOVERNING LAW

The Contract shall in all respects be governed by English law and the parties agree to submit any dispute or claim under it to the exclusive jurisdiction of the English