

TERMS AND CONDITIONS FOR THE SALE OF GOODS
(the "Conditions")

1. Definitions and Interpretation

In these Conditions:

- 1.1 **"Conditions"** means these supply terms and conditions;
- "Contract"** means the contract between us and you formed in accordance with Condition 2.3;
- "Contract Documentation"** means all the documents which form part of, constitute or evidence the Contract or any terms of the Contract, including these Conditions, and including any quotations, offers, orders, acknowledgments of order and acceptances, and any documents incorporated by reference in any of them;
- "Delivery"** means: (i) you collecting the Goods from us pursuant to Condition 3.1 or, if earlier, the expiry of the Collection Period; or (ii) us delivering the Goods to you in accordance with Condition 3.2, (as applicable); and the term "Delivered" shall be construed accordingly;
- "Goods"** means the goods supplied or to be supplied by us to you under the Contract;
- "Order Acknowledgement"** means our written acceptance of either your order or your acceptance of quotation (as applicable);
- "Total Contract Price"** means the total amount payable by you for the Goods pursuant to Conditions 6.1;
- "we", "us" and "our"** means Cottam & Preedy Limited a company registered in England and Wales of 68 Lower City Road, Tividale, Warley, West Midlands B69 2HF registered number 00562817;
- "you" and "your"** means the person from whom we receive an order or acceptance of quotation as the case may be;

- 1.2 a reference to any statute or statutory provision is a reference to it as it is in force for the time being taking account of any amendment, extension or re-enactment and includes any subordinate legislation made under it;
- 1.3 the words "includes" and "including" mean includes without limitation and including without limitation; the singular includes the plural and vice versa; "person" means any person including individuals, firms, partnerships, bodies corporate, associations, organisations and trusts; and the clause headings in these Conditions do not affect interpretation.

2. Contract Formation

- 2.1 Any quotation issued by us is an invitation to treat and not an offer. Your order or acceptance of quotation (as applicable) is an offer by you to purchase goods from us on and subject to these Conditions.
- 2.2 Your offer is not accepted by us unless and until we issue an Order Acknowledgement or, if earlier, Delivery occurs.
- 2.3 A contract for the supply of goods by us to you on and subject to these Conditions is formed upon the acceptance by us of your offer in accordance with Condition 2.2.
- 2.4 Your standard terms and conditions of purchase (if any) are expressly excluded from the Contract.

3. Delivery

- 3.1 Unless we and you agree otherwise, you must collect the Goods from our premises within 7 days from the date on which we inform you that they are available for collection (the "Collection Period").
- 3.2 If the Order Acknowledgement provides/or we and you agree that we are responsible for delivering the Goods, we will deliver the Goods to the agreed UK delivery address (mainland only), deliveries to the Scottish Highlands, Islands, Northern Ireland and non-UK areas are subject to individual costing and agreement.
- 3.3 Risk in the Goods will pass from us to you upon Delivery.
- 3.4 If you fail to collect the Goods in accordance with Condition 3.1 or to take delivery of the Goods when they are delivered in accordance with Condition 3.2 (as applicable), we shall be entitled to charge you for any resulting storage, insurance and/or transportation charges and/or any other costs and/or expenses incurred by us.
- 3.5 Without prejudice to Condition 3.4, any failure by you to collect the Goods in accordance with Condition 3.1 or to take delivery of the Goods when they are delivered in accordance with Condition 3.2 (as applicable) shall constitute a fundamental breach of the Contract and give us the right (at our option) to treat the Contract as discharged and sue you for damages.
- 3.6 Time for delivery of the Goods is not of the essence of the Contract and any delivery dates we give to you are non-binding estimates only.
- 3.7 We reserve the right for Delivery to occur in instalments. If we exercise this right, each instalment will be a separate contract on and subject to these Conditions.
- 3.8 You acknowledge and agree that if up to 5% more or less of the agreed quantity of the Goods are Delivered, we shall be deemed to have fulfilled our delivery obligations under the Contract and you will not be entitled to:
- (a) reject the Goods any of them; or
 - (b) require any change to the Total Contract Price as a consequence of the shortfall or excess.

4. Inspection on Delivery

- 4.1 You must inspect the Goods and notify us of any problems within 3 days of Delivery. At our request, you must return to us or allow us to inspect at your premises any allegedly damaged or non-conforming Goods.
- 4.2 Subject always to Conditions 3.8 and 4.3, if we find any Goods to be damaged, non-conforming or missing, we will (at our option and as your sole remedy) repair or replace or issue you with a refund or credit note for the Goods in question.
- 4.3 We shall not have any liability in respect of Goods damaged or lost in transit where the position as to delivery is as stated in Condition 3.1.

5. Retention of Title

- 5.1 Until we have received in full in cleared funds:
- (a) payment for the Goods; and
 - (b) all other sums which are or which become due to us from you legal and beneficial title to the Goods shall remain vested in us. In this Condition 5 the expression "Retained Goods" means Goods which are in your possession or control but legal and beneficial title to which remain vested in us.
- 5.2 Without prejudice to your rights under Condition 5.4, you will:
- (a) hold any Retained Goods on a fiduciary basis as our bailee;
 - (b) keep any Retained Goods insured on our behalf for their full price against all risks;
 - (c) store any Retained Goods separately from all your other goods and in such a way that they remain readily identifiable as our property;
 - (d) not destroy, deface or obscure any identifying mark or packaging on any Retained Goods;
 - (e) not, without our prior written consent, annex any Retained Goods to your premises; and
 - (f) ensure that any Retained Goods are kept in good condition.
- 5.3 You hereby grant us and our representatives an irrevocable licence at any time to enter without notice any premises where Retained Goods are being stored or kept in order to inspect them and identify them as our property.
- 5.4 You may use or re-sell Retained Goods in the ordinary course of your business provided that:
- (a) any sale must be at full market value;
 - (b) you will hold such part of the proceeds of sale as represents the amount owed by you to us in trust on our behalf and you will account to us accordingly; and
 - (c) any such sale will be a sale of our property on your own behalf and you will deal as principal when making such a sale.

- 5.5 Your powers of use and re-sale under Condition 5.4 will terminate automatically and immediately if any of the following occur:

- (a) you have a bankruptcy order made against you (or, if you are a partnership, any individual partner in you) or you make an arrangement or composition with your creditors or you otherwise take the benefit or any statutory provision for the time being in force for the relief of insolvent debtors or (being a body corporate) you convene a meeting of your creditors (whether formal or informal) or you enter into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or you have a receiver and/or manager, administrator or administrative receiver appointed of your undertaking or any part thereof or documents are filed with the court for the appointment of any administrator over you or notice of intention to appoint an administrator is given by you or your directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B to the Insolvency Act 1986), or a resolution is passed or petition presented to the court for your winding up or for the granting of an administrative order in respect of you or any proceedings are commenced relating to your insolvency or possible insolvency;
- (b) you suffer or allow any execution, whether legal or equitable, to be levied on your property or obtained against you or you fail to observe or perform any of your obligations under the Contract or any other contract between you and us or you are unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986 or you cease to trade;
- (c) you encumber or in any way charge any of the Retained Goods;
- (d) if you are an individual, a receiver is appointed under the Mental Health Act 1983, or you become a patient under any mental health legislation or otherwise become incapable of managing your affairs or upon your death; or
- (e) any similar event to any of those described above takes place in relation to you or any of your assets in any jurisdiction other than England or Wales.

- 5.6 Upon termination of your powers of use and re-sale under Condition 5.4:

- (a) you will immediately place all Retained Goods at our disposal and will be deemed irrevocably to authorise us and our representatives to enter at any time with or without vehicles and with or without giving you prior notice any premises where Retained Goods are being stored and to remove Retained Goods from there;
- (b) we will be entitled to cancel all or any part of any orders for goods placed with us by you which have not yet been delivered (whether or not accepted and whether or not under the Contract) without any liability to you; and
- (c) we will be entitled to deal directly with your customers on our own account and if we do this any proceeds of sale received by us will belong to us absolutely.

- 5.7 For the avoidance of doubt, you acknowledge and agree that we will be entitled to recover from you payment for Retained Goods even if legal and beneficial title to them has not passed from us to you.

- 5.8 Without prejudice to the automatic and immediate termination of your powers of use and re-sale, you must promptly notify us if, at any time, any of the events detailed in Condition 5.5 occur, or you have reason to believe that any such event may occur.

6. Price and Payment

- 6.1 The price for the Goods is set out in the Order Acknowledgement, where applicable, or in our standard price list in force at the time of formation of the Contract. We shall be entitled to increase the Price between formation of the Contract and delivery of the Goods due to a material increase in the cost of materials, labour in the manufacturing and supply of the Goods. The price for the Goods is exclusive of value added tax, and of any other any other applicable taxes, duties or tariffs, all of which are payable by you in addition, but inclusive of packaging, delivery, transportation and insurance costs where delivery is to be made to a United Kingdom mainland address.
- 6.2 Subject to Conditions 6.3 and 6.4, the Total Contract Price is due in full in cleared funds in pounds sterling and without set-off, deduction or counterclaim within 30 days from the end of the month of the invoice date and/or within the terms of any specifically agreed account terms if different. Time of payment is of the essence of the Contract.
- 6.3 We reserve the right to require advance payment or security for payment at any time should we have any concerns regarding your financial circumstances.
- 6.4 Payment of the Total Contract Price shall become immediately due and payable on demand:
- (a) if there is any breach by you of the Contract;
 - (b) if any of the events detailed in Condition 5.5, occur; or
 - (c) on termination of the Contract by us under Condition 10.2.
- 6.5 If payment of the Total Contract Price (or any part of it) is not made on or before the due date, we will be entitled:
- (a) to charge you interest on the overdue amount, such interest to be payable immediately on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 5% per annum above the base rate for the time being of Royal Bank of Scotland Plc. Such interest shall accrue on a daily basis and be compounded quarterly; and
 - (b) to suspend work on the Contract and/or any deliveries to you until we receive payment in full in cleared funds of the outstanding monies.
- 6.6 As an alternative to exercising our right under Condition 6.5(a), we reserve the right to claim interest and compensation in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 if payment of the Total Contract Price (or any part of it) is not made on or before the due date.

7. Warranty

- 7.1 Subject to Condition 7.6, we warrant to you that for a period of 90 days from the date of Delivery (the "Warranty Period") the Goods will:
- (a) be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
 - (b) be free from material defects in design and workmanship.
- 7.2 We will not be liable for any breach of any of the warranties in Condition 7.1 unless:
- (a) you notify us of the alleged defect promptly within 14 days of the date of discovery and in any event before expiry of the Warranty Period; and
 - (b) at our request you return to us or allow us to inspect at your premises the allegedly defective Goods.
- 7.3 Subject to Conditions 7.2, 7.4 and 9.1, if we find any Goods do not conform to any of the warranties in Condition 7.1, we will (at our option and as your sole remedy) repair or replace or issue you with a refund or credit note for the Goods in question.
- 7.4 We will not have any liability to you for any breach of the warranty/any of the warranties in Condition 7.1 if:
- (a) we believe that the Goods in question were damaged during transit; or
 - (b) the defect in question was caused or aggravated by your act or omission or the act or omission of your representative or customer, including improper use, handling, installation or storage or any modification to or alteration of the Goods; or
 - (c) the defect in question was caused by normal wear and tear; or
 - (d) you continue to use the Goods in question after discovering the defect.
- 7.5 Any Goods which we repair or replace under Condition 7.3 will be warranted on the terms set out in Condition 7.1 for the remainder of the Warranty Period.
- 7.6 The warranty/warranties in Condition 7.1 shall not apply to any Goods not manufactured by us, in respect of which the only warranty given in relation to quality and fitness for purpose shall be the benefit of any warranty provided to us by the manufacturer of the Goods, to the extent the same may be transferable to you.

8. Limitation of Liability

- 8.1 Subject to Condition 8.2:

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- (a) our total liability to you under and/or in connection with the Contract (whether arising in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise) shall not exceed the Total Contract Price;
 - (b) we will not be liable to you for:
 - (i) any economic loss including any loss of contracts, business, revenue, profits, goodwill, opportunity or anticipated savings; or
 - (ii) any indirect or consequential loss or damage of any kind; and
 - (c) save as expressly provided in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded.
- 8.2 Nothing in these Conditions limits or excludes our liability for any matter in respect of which it would be illegal or unlawful to do so.
- 8.3 We will have no liability for any delay or failure in performing our obligations under the Contract to the extent caused by your act or omission.
- 9. Your Designs and Materials**
- 9.1 If the Goods are manufactured to your design or specification and/or incorporate any materials supplied by you, we shall not have any liability to you under the Contract or otherwise for:
 - (a) any defects in the Goods; or
 - (b) any loss or damage suffered by you or any other person as a result of such defects to the extent the same result from our reliance on and/or use of your designs, specifications or materials.
- 9.2 You will indemnify us from and against any and all losses, damages, costs (including legal costs on a solicitor own client basis), expenses, claims, actions, proceedings and other liabilities suffered or incurred by us as a result of our reliance on and/or use of any designs, specifications and/or materials provided by you in connection with the Contract.
- 10. Termination**
- 10.1 Subject to Condition 11.2 you may only terminate the Contract by agreement in writing with us and subject to you paying us any and all costs, charges and expenses incurred by us in connection with the Contract up to the date of cancellation.
- 10.2 We may terminate the Contract immediately at any time if:
 - (a) you commit any material breach of the Contract and fail to remedy such breach (if capable of remedy) within 14 days of our written notice of the breach; or
 - (b) any of the events listed in Condition 5.5 occur.
- 10.3 Conditions 1, 4, 5, 6.5(a), 6.6, 7, 8, 9,11 and this Condition 10.3 will survive discharge or termination of the Contract.
- 11. General**
- 11.1 The Contract is personal to you and may not be assigned, transferred or otherwise disposed of by you in whole or in part.
- 11.2 We reserve the right to suspend or delay performance of the Contract without liability to you if we are prevented or delayed in performing our obligations due to circumstances beyond our reasonable control. You may terminate the Contract by written notice to us if such suspension or delay continues for more than 30 continuous days.
- 11.3 Any failure or delay by us in enforcing any of our rights under the Contract is not a waiver of such rights. A waiver must be in writing and signed by our duly authorised representative.
- 11.4 With the exception of statements made fraudulently, the Contract is the entire agreement between us and you in connection with its subject matter and neither we nor you have relied on a representation save for a representation set out in the Contract.
- 11.5 If any provision of the Contract is found by any court or other body with competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Contract will continue in full force and effect.
- 11.6 Any variation to the Contract must be in writing and signed by a duly authorised representative of us and you to be effective.
- 11.7 No term of the Contract is enforceable by any person other than us and you.
- 11.8 Any notices under the Contract must be in writing and delivered by hand or sent by first class post or facsimile to the last known address or facsimile number of the recipient. Notices will be deemed served when delivered personally, or three days after being posted by first class post or on completion of successful transmission if sent by facsimile.
- 11.9 We and you agree that the Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales and that the courts of England and Wales shall have exclusive jurisdiction to settle any such dispute or claim.