

## FIRST MILE TERMS AND CONDITIONS

### 1. Application of Conditions

- 1.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any quotation or offer of the Seller which is accepted by the Buyer, or any order of the Buyer which is accepted by the Seller,
- 1.2 These Conditions 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. Interpretation

#### 2.1 In these Conditions:-

- "Business Day"** means any day other than a Saturday, Sunday or bank holiday;
- "the Buyer"** means the person who accepts a quotation or offer of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller;
- "the Contract"** means the contract for the purchase and sale of the Goods under these conditions;
- "these Conditions"** means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller;
- "the Delivery Date"** means the date on which the Goods are to be delivered as stipulated in the Buyer's order and accepted by the Seller;
- "the Goods"** means sacks and tape which the Seller is to supply in accordance with these Conditions;
- "month"** means a calendar month;
- "the Seller"** means First Mile Limited, a company registered in England under 4928476 and includes all employees and agents of First Mile Limited.
- "writing"** includes any communications effected by telex, facsimile transmission, electronic mail or any comparable means.

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

2.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

### **3. Basis of Sale**

- 3.1 The Seller's employees or agents are not authorised to make any representations concerning the Goods 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.
- 3.2 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.
- 3.3 Sales literature, price lists and other documents issued by the Seller in relation to the Goods are subject to alteration without notice and do not constitute offers to sell the Goods which are capable of acceptance. An order placed by the Buyer may not be withdrawn cancelled or altered prior to acceptance by the Seller and no contract for the sale of the Goods shall be binding on the Seller unless the Seller has issued a quotation which is expressed to be an offer to sell the goods or has accepted an order placed by the Buyer by whichever is the earlier of:-  
the Seller's written acceptance;  
delivery of the Goods; or  
the Seller's invoice.
- 3.4 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 Seller shall be subject to correction without any liability on the part of the Seller.

### **4. Orders and Specifications**

- 4.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's authorised representative.
- 4.2 The specification for the Goods shall be those set out in the Seller's sales documentation unless varied expressly in the Buyer's order (if accepted by the Seller). The Goods will only be supplied in the minimum units (or multiples) stated in the Seller's price list or in multiples of the sales order as specified. Orders received for quantities other than these will be adjusted accordingly, illustrations, photographs or descriptions whether in catalogues, brochures, price lists or other documents issued by the Seller are intended as a guide only and shall not be binding on the Seller.
- 4.3 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory or regulatory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
- 4.4 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller on the terms that the Buyer shall indemnify the Seller 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 Seller as a result of cancellation.

## 5. Price

- 5.1 The price of the Goods shall be the price listed in First Mile price list current at the date of acceptance of the Buyer's order or such other price as may be agreed in writing by the Seller and the Buyer.
- 5.2 Where the Seller has quoted a price for the Goods other than in accordance with the Seller's published price list the price quoted shall be valid for 10 days only or such lesser time as the Seller may specify.
- 5.3 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods 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, materials 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.
- 5.4 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 inclusive of the Seller's charges for packaging and transport, but exclude an annual £75 + vat charge for Duty of Care if less than one order per year is made.
- 5.5 The price is exclusive of any applicable value added tax excise, sales or taxes or levies of a similar nature which are imposed or charged by any competent fiscal authority in respect of the Goods, which the Buyer shall be additionally liable to pay to the Seller.

## 6. Payment

- 6.1 Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, 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.
- 6.2 The Buyer shall pay the price of the Goods (less any discount or credit allowed by the Seller, but without any other deduction credit or set off) on the date of the receipt of the Seller's invoice or otherwise in accordance with such credit term as may have been agreed between the Buyer and the Seller. Payment shall be made on the due date. The time for the payment of the price shall be of the essence of the Contract.
- 6.3 All payments shall be made to the Seller as indicated on the form of acceptance or invoice issued by the Seller.
- 6.4 The Seller is not obliged to accept orders from any customer or buyer who has not supplied the Seller with references satisfactory to the Seller; if at any time the Seller is not satisfied as to the creditworthiness of the Buyer it may give notice in writing to the Buyer that no further credit will be allowed to the Buyer in which event no further goods will be delivered to the Buyer other than against cash payment and notwithstanding Clause 6.2 of these conditions, all amounts owing by the Buyer to the Seller shall be immediately payable in cash.

**7. Delivery**

- 7.1 Delivery of the Goods shall be made by the Seller delivering the Goods to the place in the United Kingdom specified in the Buyer's order and/or the Seller's acceptance as the location to which the Goods are to be delivered by the Seller or, if no place of delivery is so specified, by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection.
- 7.2 The Delivery Date is approximate only and time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the Delivery Date upon giving reasonable notice to the Buyer.

**8. Non-Delivery**

- 8.1 If the Seller fails to deliver the Goods or any of them on the Delivery Date other than for reasons outside the Seller's reasonable control or the Buyer's or its carrier's fault:-
- if the Seller delivers the Goods at any time thereafter the Seller shall have no liability in respect of such late delivery;

**9. Inspection/Shortage**

- 9.1 The Buyer is under a duty whenever possible to inspect the Goods on delivery or on collection as the case may be.
- 9.2 Where the Goods cannot be examined the carriers note or such other note as appropriate shall be marked "not examined".
- 9.3 The Seller shall be under no liability for any damage or shortages that would be apparent on reasonable careful inspection if the terms of this clause are not complied with and, in any event will be under no liability if a written complaint is not delivered to the Seller within 2 days of delivery detailing the alleged damage or shortage.
- 9.4 Subject to condition 9.3, the Seller shall make good any shortage in the Goods and where appropriate replace any goods damaged in transit as soon as it is reasonable to do so, but otherwise shall be under no liability whatsoever arising from such shortage or damage.

**10. Risk and Retention of Title**

- 10.1 Risk of damage to or loss of 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 Seller has tendered delivery of the Goods.
- 10.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, legal and beneficial title of 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.

## 11. **Assignment**

- 11.1 The Seller may assign the Contract or any part of it to any person, firm or company.
- 11.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.

## 12. **Defective Goods**

- 12.1 If on delivery any of the Goods are defective in any material respect and either the Buyer lawfully refuses delivery of the defective Goods or, if they are signed for on delivery "condition and contents unknown" the Buyer gives written notice of such defect to the Seller within three business days of such delivery, the Seller shall at its option:-
  - replace the defective Goods within 2 days of receiving the Buyer's notice; or
  - refund to the Buyer the price for the goods which are defective;but the Seller shall have no further liability to the Buyer in respect thereof and the Buyer may not reject the Goods if delivery is not refused or notice given by the Buyer as aforesaid.
- 12.2 No Goods may be returned to the Seller without the prior agreement in writing of the Seller. Subject thereto any Goods returned which the Seller is satisfied were supplied subject to defects of quality or condition which would not be apparent on inspection shall either be replaced free of charge or, at the Seller's sole discretion the Seller shall refund or credit to the Buyer the price of such defective Goods but the Seller shall have no further liability to the Buyer.
- 12.3 Subject as expressly provided in these Conditions, and except where the Goods are sold under a consumer sale, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 12.4 Where the Goods are sold under a consumer sale the statutory rights of the Buyer are not affected by these Conditions.

## 13. **Buyer's Default**

- 13.1 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:-
  - cancel the order or suspend any further deliveries to or collections from the Buyer;
  - appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
  - charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of two per cent per annum above National Westminster 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).
- 13.2 This condition applies if:-

the Buyer fails to perform or observe any of its obligations hereunder or is otherwise in breach of the Contract; or

the Buyer becomes subject to an administration order or makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation; or

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

the Buyer ceases, or threatens to cease, to carry on business; or

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.

13.3 If Condition 13.2 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 under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

#### 14. **Limitation of Liability**

14.1 Subject to condition 7, condition 8 and condition 13, the following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

any breach of these conditions;

any use made (including but not limited to modifications) or resale by the Buyer 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.

14.2 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.

14.3 Nothing in these conditions excludes or limits the liability of the Seller:

for death or personal injury caused by the Seller's negligence; or

for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability; or

for fraud or fraudulent misrepresentation.

14.4 Subject to condition 14.2 and condition 14.3:

the Seller'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 Seller shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, 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.

15. **Force Majeure**

15.1 In the event that either party is prevented from fulfilling its obligations under this Agreement by reason of any supervening event beyond its control including but not limited to war, national emergency, flood, earthquake, strike or lockout (subject to Sub-clause 17.2) the party shall not be deemed to be in breach of its obligations under this Agreement. The party shall immediately give notice of this to the other party and must take all reasonable steps to resume performance of its obligations.

16. **Waiver**

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.

17. **Severance**

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.

18. **Third Party Rights**

A person who is not a party to the Contract shall have no rights under the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

19. **Governing Law and Jurisdiction**

The Contract shall be governed by the laws of England and the parties agree to submit to the exclusive jurisdiction of the English courts.