

TERMS AND CONDITIONS FOR CUSTOMER(S)

1. Formation

- 1.1 A quotation or order submission (which expression, where the Buyer submits its Order via the Company's website, shall mean the "shopping basket" summary produced once the Buyer has indicated which Goods it requires and proposes to make the subject of an Order) shall constitute an offer by the Buyer to purchase the Goods in accordance with these Conditions. The Buyer is responsible for ensuring the terms of the Order and any applicable Specification submitted by the Buyer are complete and accurate.
- 1.2 The Order shall only be deemed to be accepted when the Company issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 1.3 Any samples, images, descriptive matter or advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures or displayed online, are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 1.4 Any Order accepted by the Company may only be cancelled or varied by the Buyer with the prior written consent of the Company and on terms that the Buyer shall indemnify the Company in full against all losses (including, without limitation, loss of profit), costs, damages, charges and expenses incurred (directly or indirectly) by the Company as a result of such cancellation or variation.
- 1.5 A quotation for the Goods given by the Company shall not constitute an offer. A quotation shall only be valid for a period of 10 Business Days from its issue.

2. Delivery and Non-Delivery

- 2.1 The Company shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**") at any time after the Company notifies the Buyer that the Goods are ready. Delivery is completed on the completion of the unloading of the Goods at the Delivery Location.
- 2.2 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 2.3 If the Company fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Buyer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 2.4 If the Buyer fails to take delivery of the Goods within three Business Days of the Company notifying the Buyer that the Goods are ready or would be ready for delivery save for the unreasonable actions of the Buyer, then, except where such failure or delay is caused by a Force Majeure Event or the Company's failure to comply with its obligations under the Contract:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Company notified the Buyer that the Goods were ready; and
- (b) the Company shall store the Goods until delivery takes place and charge the Buyer for all related costs and expenses (including insurance).

2.5 If 10 Business Days after the day on which the Company notified the Buyer that the Goods were ready for delivery (or would have been ready for delivery save for the unreasonable actions of the Buyer) the Buyer has not taken delivery of them, the Company may resell or otherwise dispose of part or all of the Goods and charge the Buyer for any shortfall below the price of the Goods (including any reasonable storage and selling costs).

2.6 The Company may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

3. Force Majeure

The Company shall not be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure results from an event or circumstance beyond the Company's reasonable control (a "**Force Majeure Event**"). If the period of delay or non-performance continues for one month, the Buyer may terminate this Contract by giving 30 days written notice to the Company.

4. Risk/Title

4.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery. Section 20(2) of the Sale of Goods Act 1979 shall not apply.

4.2 Title to the Goods shall not pass to the Buyer until the earlier of:

- (a) the Company receives payment in full (in cash or cleared funds) for the Goods supplied to the Buyer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment; and
- (b) the Buyer resells the Goods, in which case title to the Goods shall pass to the Buyer at the time specified in clause 4.4.

4.3 Until title to the Goods has passed to the Buyer, the Buyer shall:

- (a) store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Company's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify the Company immediately if it becomes subject to any of the events listed in clause 10.1; and
- (e) give the Company such information relating to the Goods as the Company may require from time to time.

4.4 Subject to clause 4.5, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Company receives payment for the Goods. However, if the Buyer resells the Goods before that time:

- (a) it does so as principal and not as the Company's agent; and
 - (b) title to the Goods shall pass from the Company to the Buyer immediately before the time at which resale by the Buyer occurs.
- 4.5 If before title to the Goods passes to the Buyer, the Buyer becomes subject to any of the events listed in clause 10.1, then, without limiting any other right or remedy the Company may have:
- (a) the Buyer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
 - (b) the Company may at any time:
 - (i) require the Buyer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
 - (ii) if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

5. Price

- 5.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Company's published price list in force as at the date of delivery.
- 5.2 The Company may, by giving notice to the Buyer at any time up to five Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - (c) any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate or accurate information or instructions.
- 5.3 The price of the Goods:
- (a) excludes amounts in respect of value added tax (VAT), which the Buyer shall additionally be liable to pay to the Company at the prevailing rate, subject to the receipt of a valid VAT invoice;
 - (b) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Buyer; and
 - (c) excludes any duties or taxes in relation to the importation of the Goods,

in each case, unless otherwise agreed in advance with the Company.

6. Payment

- 6.1 The Company may invoice the Buyer for the Goods at any time after delivery and Goods delivered in instalments may be invoiced separately, provided that if delivery of Goods is postponed at the request or by the default of the Buyer then the Company may submit its invoice at any time after the Goods are

ready for delivery or would have been ready in the ordinary course but for the request or default on the part of the Buyer.

- 6.2 The Buyer shall pay for the Goods in advance of delivery, immediately following acceptance of the Order by the Company, to such bank account as nominated by the Company.
- 6.3 Where any Buyer has been provided with payment terms with the Company, then such Buyer shall pay the Contract price within 30 days of the date of invoice. The Company may (in its sole discretion) amend or withdraw such payment terms at any time without notice with immediate effect and upon such withdrawal all amounts due or accruing to the Company (under the Contract or otherwise) shall become immediately payable notwithstanding any other provision of these Conditions.
- 6.4 Payment shall only be deemed received by the Company from the Buyer upon receipt by the Company of cleared funds. Payment shall be made in full without any deduction, set off or abatement on any grounds. The Company may appropriate any payment made by the Buyer to any outstanding invoice.
- 6.5 Time for payment of the Contract price (including, without limitation, any costs or charges payable pursuant to this Contract) shall be of the essence. If the Buyer fails to make any payment due to the Company under the Contract by the due date for payment, then the Buyer shall pay interest on the overdue amount at the rate of 5% per annum above Barclays Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount. The Company reserves the right to claim interest under the Late Payment of Commercial Debt (Interest) Act 1998.

7. Quality

- 7.1 The Buyer warrants that on delivery the Goods shall:
- (a) conform in all material respects with their description and any applicable Specification;
 - (b) be free from material defects in design, material and workmanship; and
 - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 7.2 Subject to clause 7.3, if:
- (a) the Buyer gives notice in writing to the Company within:
 - (i) in respect of a patent defect, five days of delivery; or
 - (ii) in respect of a latent defect, a reasonable time of discovery,
 that some or all of the Goods do not comply with the warranty set out in clause 7.1 ;
 - (b) the Company is given an opportunity of examining such Goods; and
 - (c) the Buyer (if requested by the Company to do so) returns such Goods to the Company's place of business at the Buyer's cost,

the Company shall at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

- 7.3 The Company shall not be liable for the Goods' failure to comply with the warranty set out in clause 7.1 in any of the following events:

- (a) the Buyer makes any further use of such Goods after giving notice in accordance with clause 7.2;
 - (b) the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - (c) the defect arises as a result of the Company following any drawing, design or Specification supplied by the Buyer;
 - (d) the Buyer alters or repairs such Goods without the written consent of the Company;
 - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - (f) the Goods differ from their description or their Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 7.4 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Buyer, the Buyer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Company in connection with any claim made against the Company for actual or alleged infringement of a third party's IPR arising out of or in connection with the Company's use of the Specification. This clause 7.4 shall survive termination of the Contract.
- 7.5 The Company reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.
- 7.6 Except as provided in this clause 7, the Company shall have no liability to the Buyer in respect of the Good's failure to comply with the warranty set out in clause 7.1.
- 7.7 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 7.8 These Conditions shall apply to any repaired or replacement Goods supplied by the Company.
- 8. Liability**
- 8.1 The Company has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £2,000,000 per claim. The limit and exclusions in this cause 8 reflect the insurance cover of the Company, and the Buyer is responsible for making its own arrangements for the insurance of any excess loss.
- 8.2 The restrictions on liability in this cause 8 apply to every liability arising under or in connection with these Conditions including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.3 Nothing in these Conditions shall exclude or limit the liability of the Company for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - (d) defective products under the Consumer Protection Act 1987.
- 8.4 Subject to clause 8.3:
- (a) the Company shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract;
 - (b) any liability arising from changes to statutory or regulatory requirements following delivery of the Goods; and
 - (c) the Company's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the greater of:
 - (i) £2,000,000; and
 - (ii) 120% of the aggregate price of the Goods.
- 8.5 Unless the Buyer notifies the Company that it intends to make a claim in respect of an event within the notice period, the Company shall have no liability for that event. The notice period for an event shall start on the day on which the Buyer became, or ought reasonably to have become, aware of its having grounds to make a claim in respect of the event and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 9. Intellectual Property Rights**
- The Buyer shall not, under any circumstances, acquire any right in or licence to any of the IPR subsisting in, resulting from or relating to the Goods and shall not deface, remove or obliterate any trademarks or trade names on the Goods.
- 10. Termination**
- 10.1 Without prejudice to any of its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Buyer if:
- (a) the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of being notified in writing to do so;
 - (b) the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the Buyer's financial position deteriorates to such an extent that in the Company's opinion the Buyer's

capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

- 10.2 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.
- 10.3 On termination of the Contract for any reason the Buyer shall immediately pay to the Company all of amounts due to the Company (including any outstanding invoices and interest).
- 10.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

11. General

- 11.1 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 11.2 **Assignment and other dealings.** The Company may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Company.
- 11.3 **Entire agreement.** This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Contract.
- 11.4 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 11.5 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 11.6 **Third party rights**
No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.
- 11.7 **Confidentiality.**
- (a) Each party undertakes that it shall not at any time, and for a period of two years after termination of this Contract, disclose to any person any Confidential Information of the other party or of any member of the group to which the other party belongs, except as permitted by clause 11.7(b). For the purposes of this clause 11.7, "group" means, in relation to a party, that party, any subsidiary or holding company from time to

time of that party, and any subsidiary from time to time of a holding company of that party.

- (b) Each party may disclose the other party's Confidential Information:
- (i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with this clause 11.7; and
- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Contract.

12. Export Sales

- 12.1 Notwithstanding any other provision within these Conditions, where Goods are sold for export outside the United Kingdom:
- (a) the Buyer is responsible for obtaining, at its own cost, such import licences and other consents in relation to the Goods as are required from time to time and, if required by the Company, the Buyer shall make those licences and consents available to the Company prior to the relevant shipment;
- (b) the Uniform Laws on International Sales Act 1967 shall not apply, and the Company shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979;
- (c) section 26 of the Unfair Contract Terms Act 1977 shall apply to the maximum extent permitted by law to exclude any liability arising directly or indirectly from the use of the Goods;
- (d) unless otherwise agreed in writing by the Company the currency will be pounds sterling (in such manner as agreed with the Company with any associated expense at the cost of the Buyer);
- (e) where the Company raises an invoice in another currency, then payment will be required such currency as the invoice (unless otherwise agreed in writing with the Company); and
- (f) the Buyer shall be responsible for the payment of any duties or taxes in relation to the importation of the Goods.
- 12.2 The United Nations Convention on the International Sale of Goods shall not apply to these Conditions. The international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (Incoterms) shall apply, but where they conflict with the Condition, these Conditions shall prevail.

13. Governing Law and Jurisdiction

- 13.1 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by

and construed in accordance with the law of England and Wales.

- 13.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

14. Notices

- 14.1 Any notice given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause 14, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier or by email.
- 14.2 A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
- 14.3 The provisions of this clause 14 shall not apply to the service of any proceedings or other documents in any legal action.

15. Interpretation

In these Conditions, unless the context requires otherwise, any reference to the singular shall include the plural and vice versa and:

"Business Day" a day (other than a Saturday, Sunday or public holiday) when banks in London are usually open for business;

"Buyer" means the person, firm or company who purchases the Goods from the Company;

"Company" means Supreme Imports Ltd (company number 05292196);

"Conditions" means the standard terms and conditions of sale set out herein;

"Confidential Information" means any information of a confidential nature concerning the business, affairs, customers, clients or suppliers of the other party or of any member of its group, including but not limited to information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers;

"Contract" means the contract between the Buyer and the Company for the sale and purchase of the Goods in accordance with these Conditions;

"Force Majeure Event" has the definition given to it in clause 3;

"Goods" means any goods supplied or to be supplied by the Company (as may be described on the Company's website, or in the Company's quotation or formal acceptance of an order, or in accordance with any Specification);

"IPR" means any intellectual property rights of any nature including without limit any and all inventions, patents, utility models, design rights, copyright, know how, trade secrets, confidential information, trademarks, service marks, trade names and goodwill which subsist or will subsist now or in the future in or associated with the Goods;

"Order" means an order placed by the Buyer with the Company for the Goods; and

"Specification" means any specification for the Goods provided by the Buyer, including (but not limited to) any related designs or labelling that is agreed in writing between the Buyer and the Company.