

## **ASSOCIATED PERFORATORS AND WEAVERS LIMITED CONDITIONS OF SALE**

### **DEFINITIONS**

#### **1. In the Conditions:-**

- (i) "Approved Account Customer" means a customer approved and communicated by the Company's credit control department;
- (ii) "Company" means Associated Perforators & Weavers Limited;
- (iii) "Contract" means the contract for the provision of the Goods and/or Services set out in the Order, entered into between the Company and the Customer in accordance with these terms and conditions of sale;
- (iv) "Customer" means the purchaser of Goods and/or Services from the Company.
- (v) "Customer Order" means an order for Goods and/or Services placed by the Customer following receipt by the Customer of the quotation provided by the Company;
- (vi) "Director" means a director of the Company;
- (vii) "Goods" means the articles, equipment or goods, set out in the Order, which the Company shall provide to the Customer;
- (viii) "Order" means the Customer Order placed by the Customer and acknowledged by the Company;
- (ix) "Order Acknowledgement" means the acknowledgement of the Customer Order provided by the Company to the Customer;
- (x) "Price" means the total order value set out in the Order Acknowledgement;
- (xi) "Services" means the services set out in the Order, which the Company shall provide to the Customer.

### **GENERAL**

- 2. All Customer Orders shall be deemed to be an offer by the Customer to purchase the Goods and/or Services pursuant to these terms and conditions.
- 3. All Contracts are made subject to these terms and conditions provided that any special conditions of the Company in any quotation and subsequent Order Acknowledgement shall prevail to the extent that they are inconsistent with these terms and conditions.
- 4. No terms or conditions submitted by the Customer to the Company, irrespective of their date shall prevail over these terms and conditions.
- 5. Any representations made by any officer, the Customer shall not rely upon employee or agent of the Company unless such representation is incorporated into the Contract as set out in the Order.

### **QUOTATIONS**

- 6. A quotation provided by the Company for the provision of Goods and/or Services does not constitute an offer by the Company to sell or supply Goods provided by the Company and every Customer Order shall be deemed to be an offer by the Customer to the Company and does not and shall not bind the Company unless and until the Company gives to the Customer a written Order Acknowledgement.
- 7. Quotations shall be valid for a period of 28 days from the date of posting and may be withdrawn or varied at any time prior to the issue by the Company to the Customer of the Order Acknowledgement.
- 8. In the event that the Company varies a quotation at any time in accordance with the above Condition 7, the varied quotation shall be deemed to be a new quotation and shall be valid for a period of 28 days from the date of posting such variation.
- 9. No variation or purported variation of a term of this Contract shall bind the Company unless first agreed in writing and signed by a Director on behalf of the Company.
- 10. After a written Order Acknowledgement has been given by the Company, the Customer may not cancel the Contract or any part thereof without the prior written consent of the Company. The Company shall be entitled to invoice the Customer for all and any loss occasioned by the Company as a result of the cancellation of the Contract by the Customer, including administrative and other expenses.

### **TECHNICAL SPECIFICATIONS**

- 11. (a) All descriptive and technical specifications, drawings, illustrations, photographs, catalogues, particulars of weights, dimensions and general literature provided by the Company relating to the Goods and/or Services are approximate and intended only to present a general guide and shall not be incorporated in or form part of this Contract unless otherwise expressly agreed in writing signed on behalf of the Company by a Director.
- (b) All documentation referred to in Condition 11(a) above shall remain the property of the Company together with all copyright and any other intellectual property rights contained, or incorporated in it. It shall be returned together with any copies thereof to the Company on request and shall be treated by the Customer as confidential information.
- 12. In the event that the Customer has provided the specification for the Goods and/or Services as set out in the Order, the Customer shall be responsible to the Company for ensuring the accuracy of such specification and for providing to the Company any necessary information concerning the Goods and/or Services within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
- 13. The Company shall be entitled at any time to make such changes in the specification for the Goods and/or Services as set out in the Order as are necessary to ensure that the Goods and/or Services conform with any applicable statutory requirements.

### **PRICE**

- 14. The Company reserves the right to alter the Price in respect of the Goods and/or the Services by reference to the price ruling at the date of despatch of the Goods and/or the date of performance of the Services if any variations in the costs of materials and/or labour and/or any other factor shall in the opinion of the Company make such alterations necessary or expedient.
- 15. The cost of any variation or modification of the Contract requested by the Customer and agreed by the Company in writing (details of such cost being provided by the Company to the Customer) shall be borne by the Customer.
- 16. Unless otherwise expressly so stated all prices are:-
  - (a) exclusive of value added tax which shall be applied in accordance with the legislation in force at the tax point date;
  - (b) exclusive of carriage delivery and packaging costs.

## **DELIVERY**

17. (a) Delivery of the Goods and/or performance of the Services shall be carried out at a place agreed between the Company and the Customer. If no place for delivery of the Goods is agreed, delivery shall be deemed to have taken place at the Company's address upon notification to the Customer that the Goods are ready for collection or despatch.
- (b) Any dates or periods for the delivery of the Goods and/or performance of the Services are best estimates and approximate only. Whilst the Company will use reasonable endeavours to comply with such dates or periods any such dates or periods shall not take effect as a term of the contract or constitute an obligation binding on the Company.
- (c) Where the Company is unable to effect delivery and/or performance without further information or details from the Customer and there is a delay on the part of the Customer providing such information or details, the Company may give notice extending any period for delivery and/or performance without prejudice to any other right or remedy available to it.
- (d) Where the Customer is to collect Goods from the Company, the Company reserves the right to charge for storage if such Goods are not collected within seven days of notifying the Customer that such Goods are available for collection.
- (e) Subject to and in accordance with Condition 17(d), if the Goods are not collected by the Customer within 21 days of such notification the Company shall without prejudice to any other right or remedy available to it, be entitled to suspend further performance of the Contract as being wrongfully repudiated by the Customer and forthwith terminate the Contract or treat the Contract as terminated without liability for any loss whether direct or indirect suffered by the Customer by reason of such termination.
- (f) Without prejudice to the provision of Condition 17(b) and subject to Condition 17(g) below, if the Company is prevented (having used reasonable endeavours to prevent such cause affecting performance of the Contract) from delivering Goods and/or performing Services at the time provided for delivery and/or performance by reason of any cause outside its reasonable control (including but not limited to fire, explosion, plant breakdown, labour strikes or lock outs (other than by the Company's employees) or non-availability of transport or materials) then the period for delivery and/or performance shall be deemed extended accordingly and the Customer shall have no right to terminate the contract by reason of such delay.
- (g) If the delivery and/or performance date has been exceeded by 12 weeks, then the Customer may give notice to the Company to terminate the unfulfilled part of the Contract but the Company shall have no liability to the Customer for any loss or damage (whether direct or indirect) arising there from.
- (h) If so requested by the Customer in writing, the Company may defer delivery and/or performance to a date agreed by the Company and the Customer, and in this event the Company shall be entitled to charge the Customer for any costs incurred by it as a result of the said deferment.
- (i) The Company shall be entitled to terminate the Contract or withhold delivery of any Goods and/or performance of any Service in the event that the Customer breaches the Contract.
- (j) The Customer shall not refuse prevent or hinder delivery and/or performance and failure by the Company to effect delivery and/or performance by reason of any of the aforesaid shall not affect the obligation of the Customer to pay the Price.
- (k) The Company shall, without prejudice to any other right or remedy available to it be entitled to sell to a third party all or any Goods in respect of which the Customer has refused, prevented, hindered or cancelled delivery and in the event that the reason for refusing, preventing, hindering or canceling delivery and/or performance subsequently ceases to apply the Company shall only be bound to redeliver Goods and/or re-perform Services subject to the availability of the original or replacement Goods and/or the availability of suitable labour.
- (l) Subject to Condition 17(m) below, in the event of short delivery of Goods or Goods damaged in transit which is caused by the Company the Customer must, in order to claim from the Company a reduction in the Price to reflect such short delivery or damage, provide to the Company written notification of the shortage and damage within seven days of the date of delivery of the Goods to the Customer.
- (m) If the Company delivers an excess and/or deficiency in weight, volume and/or measurement of Goods ordered it shall not be liable to the Customer save that at the request of the Customer (where possible) it shall either remedy the quantity delivered, or, adjust the Price accordingly.
- (n) The Company may effect Delivery by installments in which case these Conditions shall apply to each installment as though a separate Contract and any failure or defect in any one delivery will not entitle the Customer to repudiate the Contract as a whole.
- (o) If the Company fails to deliver the Goods for any reason (other than any cause beyond its reasonable control or the Customer's fault) and the Company is accordingly liable to the Customer, the Company's liability shall be strictly limited to the excess (if any) over the Price, of the cost to the Customer (in the cheapest available market) of purchasing similar goods to replace those not delivered. No claims for other and/or consequential loss or damage shall be allowed in connection with any such non-delivery.

## **CUSTOMERS PROPERTY**

18. The Customer shall be responsible for ensuring that any materials it supplies to the Company are suitable or fit for processing by the Company and in the event that any such materials (following processing by the Company) prove to be unsuitable or unfit for such processing, the Customer shall nevertheless pay to the Company the Price and shall be liable for any additional costs howsoever incurred by the Company in respect thereof.

19. The Customer acknowledges that wastage will occur in the manufacturing process and in the event that the Customer supplies its own materials to the Company for processing by the Company, the Customer shall, where necessary provide to the Company on its reasonable request material in excess of the amount of the finished product required. All punchings, off-cuts and other items of a similar nature whether of materials supplied by the Customer or the Company shall become or remain the property of the Company.

## **TERMS OF PAYMENT**

20. In the event that the Customer is an Approved Account Customer payment of the Price shall be made to the Company (together with carriage delivery and packing costs as agreed between the Company and the Customer, and value added tax there on) within 30 days from the date of delivery or installation of the Goods or provision of the Services by the Company.

21. Where the Customer is not an Approved Account Customer, delivery shall be conditional on receipt by the Company of payment.

22. All payments shall be made without regard to any equity, set-off or counterclaim. If the Company offers any discount then the same shall be applicable only if the Goods and/or Services are paid for within the specified period.

23. The Company shall be entitled to interest from the date upon which payment falls due. In such cases interest shall accrue daily at 4 per cent above Barclays Bank PLC base rate from time to time.

24. In the event that the Customer is in breach of the above terms of payment the Company shall, in the case of a Contract involving any outstanding services and/or deliveries be entitled to treat the Contract as repudiated, and may demand payment in full of all or any outstanding liabilities of the Customer and/or cancel all or any future Orders.

## **PASSING OF RISK**

**25.** Subject to Condition 17(a) risk of loss of and damage to the Goods shall pass to the Customer:-

- (a) (regardless of any failure to take or accept delivery) on delivery to the Customer or to a third party or carrier nominated by the Customer to take or accept delivery; or
- (b) where the Company gives notice to the Customer that the Goods are available for collection, on collection by the Customer or any third party nominated, or if earlier, on the later of the expiry of seven days from the date of such notice or the expiry of the time agreed for collection following service of such notice (if any);

## **WARRANTIES AND CLAIMS**

**26.** (a) The Customer shall as soon as practicable following delivery of the Goods and/or performance of the Services (but subject to Condition 26(d) below) satisfy itself, whether by testing samples or otherwise, as to the performance, merchantability quality fitness for purpose and compliance with description of the Goods and/or Services and the Customer shall be deemed and conclusively presumed to have done so.

(b) Any claim by the Customer which is based on any defect in the quality or condition of the Goods and/or Services or their failure to correspond with specifications shall (and in respect of Goods, whether or not delivery is refused by the Customer) be notified to the Company within 14 days from the date of delivery and/or performance or (where the defect or failure was not apparent on reasonable inspection) promptly after discovery of the defect or failure.

(c) In the event that the Customer does not notify the Company of any defect in accordance with Condition 26 (b), the Customer shall not be entitled to reject the Goods and/or Services and the Company shall have no liability for such defect or failure, and the Customer shall be bound to pay the Price.

(d) (Notwithstanding the above Conditions 26(a) to(c)) subject to the Conditions set out below, in the event that the Company provides the specification and materials used by it in processing the Goods the Company warrants to the Customer that the Goods will be free from latent defects in accordance with industry standard in material and workmanship for a period of 6 months from the date of their initial use or 12 months from delivery, whichever is the first to expire.

(e) The above warranty is given by the Company subject to the following conditions:-

(i) The Company shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Customer.

(ii) The Company shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the Company's directions, misuse, or alteration or repair of the Goods prior to the Company's approval in writing of such alteration or repair.

(iii) The Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the Price has not been paid by the due date for payment.

(iv) The above warranty does not extend to parts, materials or equipment not manufactured by the Company in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is exercised by the Company on behalf of the customer.

(f) Subject as expressly provided in these terms and conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law. (g) Where any valid claim under the warranty in Condition 26 (d) is made by the Customer in respect of any of the Goods the Company shall either repair or replace the Goods (or the part in question) free of charge, or, at the Company's sole discretion refund to the Customer the Price (or a proportionate part of the Price), but the Company shall have no further liability to the Customer.

(h) The Company shall not be liable to the Customer for any consequential loss or damage (which shall include but not be limited to any loss of profit or loss of opportunity), cost, expenses or other claims for consequential loss whatsoever and howsoever caused which arise out of or in connection with the supply of the Goods and/or Services as set out in this Contract.

(i) Nothing in these terms and conditions shall operate or be construed as operating to exclude or restrict any liability of the Company for death or personal injury caused by the negligence of the Company or its employees.

## **INDEMNITY**

**27.** (a) The Customer shall indemnify the Company and keep it fully indemnified against all and any costs claims demands losses or liabilities of whatsoever nature brought or made against the Company relating to or connected with the Goods after the date upon which the risk in the Goods passes to the Customer whether in accordance with clause 25 of these Conditions or otherwise and including (but without prejudice to the generality of the foregoing) any of the aforesaid which are brought, made, suffered or incurred under or pursuant to any product liability consumer protection or similar laws.

(b) The Customer shall indemnify the Company and keep it fully and effectively indemnified against all and any cost and claims by third parties arising by reason of any breach of intellectual property rights, permits, trade marks, design rights, registered design, copyright or other intellectual property rights resulting from any specification provided by the Customer and any adaption, modifications or any other services requested by the Customer.

(c) In the event that the Customer is to collect Goods from the Company, the Customer shall indemnify the Company and keep it fully and effectively indemnified against any loss or liability of what so ever nature suffered or incurred by the Company as a result of the acts or omissions of the Customer or its employees (or agents) in the course of such collection.

## **FORCE MAJEURE**

**28.** Neither party shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform any of its obligations in relation to the Goods and/or Services if the delay or failure was beyond that party's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond either party's reasonable control:

- (a) Acts of god, explosion, flood, tempest, fire or accident;
- (b) War of threat of war, sabotage, insurrection, civil disturbance or requisition;
- (c) Strikes, lock-outs, or other industrial actions or trade disputes (other than those involving a party's own employees);
- (d) Difficulties in obtaining raw materials, labour, fuel, parts or machinery; and/or
- (e) Power failure or breakdown in machinery.

## **RESERVATION OF TITLE**

**29.** (a) Notwithstanding delivery and/or the passing of risk in the Goods, or any provisions of the contract between the Customer and the Company in respect of the Goods, until receipt by the Company of payment from the Customer in full of (i) the Price and (ii) any other monies due and payable by the Customer to the Company:

- (i) The Goods shall remain the property of the Company and the Customer shall hold the same as bailee for the Company;
- (ii) The Customer shall insure the Goods against all normal commercial risks to their full replacement value with an insurance company of repute for the benefit of the Company and the Company shall be entitled to inspect and take copies of such insurance policy and the premium receipts for it upon giving the Customer not less than seven days notice;
- (iii) the Customer shall keep the Goods separate from its own goods and those of any third parties and shall properly store and protect the Goods and shall ensure that they are at all times identifiable as the Company's property and the Customer shall not be entitled to pledge or in anyway charge by way of security for any indebtedness any of the Goods which remain the property of the Company subject to this condition 29(a).
- (b) Until such time as the property in the Goods passes to the Customer, the Customer shall be entitled to use or otherwise deal with the Goods in the ordinary course of its business provided that any monies received by the Customer in respect of the Goods shall be held by the Customer as agent on behalf of the Company and, if the Company shall by notice so require, the Customer shall keep such monies in a separate account but without prejudice to the Company's right to trace the same if the Customer fails to keep such proceeds separate as aforesaid. The Company shall be entitled to inspect and take copies of the statements and other documents relating to any such account upon giving the Customer not less than seven days notice.
- (c) Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and the Company has no knowledge that the Goods have been resold or otherwise disposed of by the Customer) the Company shall be entitled by notice to the Customer served on or at any time after the occurrence of any of the events specified in Condition 30 below forthwith to terminate the Customer's power to use, resell or otherwise deal with the Goods.
- (d) At any time after payment of the Price falls due from the Customer to the Company, and such payment remains outstanding, the Company shall be entitled to require the Customer to deliver up the Goods to the Company and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and take possession of any Goods which remain the property of the Company and remove and dispose of them as the Company thinks fit.
- (e) The Customer shall be deemed to not have paid the Company for the Goods in the possession of the Customer at any time unless the Customer can prove to the satisfaction of the Company that payment for such Goods has been made by the Customer.

## **BREACH**

**30.** If the Customer:-

- (a) Makes default or commits any breach of its obligations to the Company hereunder; or
- (b) Is involved in any legal proceedings in which its solvency is in question; or
- (c) Being a company presents a petition or has a petition presented for its winding-up;
- (d) Convenes a meeting to pass a voluntary resolution for voluntary winding-up; or
- (e) An encumbrance takes possession of or a receiver or administrative receiver is appointed of all or any part of its assets or undertaking; or
- (f) An Administration Order is made in respect of it; or
- (g) It calls a meeting of or enters into any composition or arrangement with its creditors; or
- (h) Applies for an interim order under the insolvency Act 1986; or
- (i) Ceases or threatens to cease trade then in any such case the Company shall immediately become entitled (without prejudice to its other claims and rights under the Contract) to suspend further performance of the Contract until such time as the Company ceases to be subject to such matter, or (whether or not notice of such suspension shall have been given) to treat the Contract as wrongfully repudiated by the Customer and forthwith terminate the Contract or treat the Contract as terminated.

## **ASSIGNMENT AND SUBCONTRACTING**

- 31.** (a) The Contract of which these terms and conditions form part is personal to the Customer who may not, without the prior written consent of the Company, assign the Contract or any of the rights and obligations under it.
- (b) The Company reserves the right to subcontract as it considers appropriate.

## **SEVERANCE**

**32.** If any provision contained in these terms and conditions is held by any Court or other competent authority to be void or unenforceable in whole or in part, the Contract of which these Conditions form part shall continue to be valid as to the other provisions thereof and the remainder of the effective provisions.

## **NOTICES**

**33.** Any notice required to be given hereunder may be served by prepaid first class letter addressed to the last known place of business of the party upon whom service is being affected and such notice shall be deemed to have been served 48 hours after dispatch.

## **CONSTRUCTION**

**34.** The sub-headings do not form part of these Conditions.

## **GOVERNING LAW**

**35.** This Contract shall be governed by and construed in accordance with English law and the parties hereby irrevocably submit to the exclusive jurisdiction of the English courts.