
GENERAL TERMS AND CONDITIONS OF SALE

INTRODUCTION

These Conditions set out the entire terms and conditions upon which CWE has agreed to supply goods and/or services to the Customer and shall apply to the exclusion of any other terms and conditions including any other terms and conditions which the Customer may purport to apply whether through the use of any standard form documents or otherwise.

1 DEFINITIONS AND INTERPRETATION

- 1.1 In these Conditions the following words have the following meanings: **Conditions** means these terms and conditions; **Contract** means a contract between the Customer and CWE for the sale and purchase of Goods and/or Services made subject to these Conditions which has come into force following the acceptance of an Order in accordance with Clause 2.3; **Customer** means the person or firm who purchases the Goods and/or Services from CWE; **CWE** means Crowle Wharf Engineers Limited registered in England and Wales with company number 00871934; **Force Majeure Event** means any circumstance beyond the control of CWE including any act of God, war, riot, terrorism, explosion, abnormal, extreme or unusual weather conditions, failure of sub-contractors or suppliers, inability or difficulties in obtaining raw materials or other supplies, loss of utilities, fire, flood, strike, lock out or industrial dispute and/or governmental or regulatory authority action; **Goods** means the goods as detailed in any Order; **Insolvency Event** means with respect to the Customer that: **(a)** any meeting of creditors of the Customer is held or any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) is proposed or entered into by or in relation to the Customer; **(b)** the Customer ceases or threatens to cease carrying on business or is or becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; **(c)** a nominee, supervisor, receiver, administrator, administrative receiver or liquidator is appointed in respect of the Customer or any encumbrancer takes possession of, or any distress, lien, execution or other process is levied or enforced (and is not discharged within seven days) upon, the assets of the Customer; **(d)** a petition is presented for the winding-up of the Customer or a resolution for its winding up is passed; **(e)** a notice of intention to appoint an administrator is filed with the court or served on any creditor of the Customer; **(f)** an application for an administration order in respect of the Customer Party is issued at court; **(g)** a meeting is convened for the purpose of considering a resolution for the winding up of the Customer or the making of an application for an administration order or the dissolution of the Customer; **(h)** any Main or Territorial proceedings are opened within the meaning of the EC Regulation on Insolvency Proceedings 2000 with respect to the Customer; and/or **(i)** any event analogous to any of the foregoing occurs to the Customer in any jurisdiction; **Order** means the Customer's order for any Goods and/or Services as may be set out in any purchase order issued by the Customer to CWE or in any other written request for Goods and/or Services which is issued by the Customer to CWE from time to time (but excluding in either case any terms and conditions which the Customer may purport to apply in any such purchase order or other written order); **Price** means the price payable by the Customer for the Goods and/or Services as set out in the applicable Order which has been accepted in accordance with Clause 2.3 or, where no price is detailed in the applicable Order, CWE's list price for the Goods and/or Services in question in force as at the date of delivery (subject in either case to adjustment in accordance with Clause 4.4 and/or 7.3); and **Services** means the services as detailed in any Order.
- 1.2 In these Conditions and each Contract: headings are inserted for convenience only and shall not affect construction or interpretation; references to Clauses are to the Clauses of these Conditions; words denoting the singular shall include the plural and vice versa; words denoting any gender shall include all genders; any reference to any law, statute, statutory provision, statutory instrument, directive, subordinate legislation, code of practice or guideline shall be construed as a reference to the same as may be amended, consolidated, modified, extended, re-enacted or replaced from time to time; and use of words such as "include", "including" and "in particular" shall not limit the generality of any preceding or following words which are not intended to be exhaustive.

2 BASIS OF CONTRACT

- 2.1 These Conditions apply to each Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which otherwise are implied by trade, custom, practice or course of dealing.
- 2.2 Each Order constitutes an offer by the Customer to purchase the Goods and/or Services in question in accordance with these Conditions. The Customer shall ensure that the terms of any Order submitted by it are complete, accurate and not misleading.
- 2.3 Each Order shall be deemed accepted on the earlier of: **(a)** CWE issuing a written acceptance of the Order (which may be issued by CWE by email); or **(b)** CWE commencing delivery of any Goods or performance of any Services. Once an Order has been accepted it cannot be cancelled by the Customer and must be paid for in full in accordance with these Conditions.
- 2.4 CWE shall be under no obligation to accept any Orders which may be submitted to it from time to time and shall be entitled to decline to accept any Orders without liability or the need to give reason.

3 GOODS AND SERVICES

- 3.1 CWE warrants that all Goods supplied and Services performed by it shall: **(a)** correspond in all material respects with any specification provided by CWE; and **(b)** be free from material defects in design, material and workmanship and fit for any purpose held out by CWE from delivery (in respect of the Goods) or completion of the performance (in respect of the Services) for a period of 6 months (unless agreed otherwise by the parties in writing).
- 3.2 CWE may vary the specification for any Goods and/or Services prior to delivery/performance if necessary in order to comply with any applicable statutory or regulatory requirement or for any other reason provided that in that case, the variation in question does not result in any material adverse change to the specification in existence at the Customer's Order for the Goods and/or Services in question was accepted.
- 3.3 Each Contract represents the entire agreement between the parties relating to the supply of the Goods and/or Services in question and the Customer acknowledges that it will not rely on and has not relied on any statement, promise or representation made by or on the behalf of CWE which is not set out in writing in the applicable Contract.
- 3.4 Any samples, drawings, measurements, descriptions, advertising, photographs, catalogues, websites or similar which may be provided by CWE concerning any Goods or Services are produced and provided solely for the purpose of giving an approximate idea of the Goods/Services described and such information and items shall not form part of any Contract nor have any contractual force.

4 DELIVERY AND PERFORMANCE

- 4.1 Where pursuant to any Contract: **(a)** CWE has agreed to make delivery to the Customer, CWE shall deliver the Goods to the location as specified in the applicable Order on or around any delivery date as detailed in the Order or, if no delivery date is detailed in the Order, on the date as specified by CWE (although time of such delivery shall not be of the essence and the Customer shall have no right to terminate any Contract by virtue of any delays in delivery of 90 or fewer days); or **(b)** the Customer is to collect the Goods from CWE then the Customer shall collect such Goods from the location advised by CWE during the usual working hours of CWE within 7 days of the date on which CWE advises the Customer that such Goods are ready for collection (and time for collection of such Goods shall be of the essence) and such collection shall constitute "delivery" for the purposes of these Conditions.
- 4.2 In the event that the Customer fails to: **(a)** accept delivery of any Order when CWE first attempts to make delivery; or **(b)** collect any Order within the time period required under Clause 4.1 then in either case: **(c)** risk of loss or damage occurring to the relevant Goods shall be deemed to pass to the Customer at the time when CWE first attempted to make delivery or upon the expiry of the time period specified in Clause 4.1 (as applicable); and **(d)** the Customer shall indemnify CWE in full on demand for all costs and expenses incurred by CWE in storing the Goods in question and attempting re-delivery.
- 4.3 CWE may deliver Goods in instalments, the Price of which shall be invoiced and paid for separately. Any such instalment shall constitute a separate Contract and any delay in delivery or defect in one instalment shall not entitle the Customer to cancel any other instalment.
- 4.4 CWE may deliver up to more or less than 5% of the volume of Goods comprised within any Order and the Customer shall not be entitled to reject any delivery on the basis of any difference in volume within such tolerances. In such circumstances the Price of the relevant Order shall be adjusted on a pro-rata basis to reflect the actual volume of Goods Delivered.
- 4.5 CWE shall use reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services and the Customer shall have no right to terminate any Contract by virtue of any delays in performance of 90 or fewer days.
- 4.6 The Customer shall provide CWE's employees, sub-contractors and/or agents with such access to the Customer's premises and other facilities as may reasonably be required by CWE for the purposes of providing the Goods or Services and ensure that such premises are cleared and prepared before the Services are due to commence/the Goods are due to be delivered.
- 4.7 The Customer shall not make any modification to the Goods or their packaging, nor alter, remove or tamper with any trade marks used on or in relation to the Goods and/or Services.
- 4.8 All intellectual property rights in or arising out of or in connection with the Services shall be owned by CWE. CWE shall be free to utilise any skill and/or know-how that it may develop or acquire in the performance of the Services.

5 WARRANTY CLAIMS

- 5.1 The Customer shall: **(a)** conduct a thorough visual inspection of any Goods on delivery and any Services on completion of performance and shall notify CWE in writing of any apparent failure of the Goods and/or Services to comply with the warranty set out at Clause 3.1 on delivery/completion of performance within seven days of the date of delivery/completion of performance (as applicable); and/or **(b)** shall notify CWE in writing of any failure of any Goods and/or Services to comply with the warranty set out at Clause 3.1 which arises after the date of delivery/completion of performance (as applicable) within seven days of the date of which the Customer first became aware of the failure in question.
- 5.2 In the event of the Customer making any claim under the warranty set out at Clause 3.1 which CWE (acting reasonably) considers to be valid then CWE shall (at its discretion) as soon as reasonably practicable either replace the Goods (or the affected part of the Goods) / re-perform the Services (or the affected part of the Services) or refund to the Customer the Price actually paid by it to CWE for the Goods and/or Services. Any such replacements shall be subject to the warranty set out at Clause 3.1.
- 5.3 The Customer shall on request: **(a)** permit CWE to access any premises where any Goods and/or Services which are the subject of a warranty claim are located/where performed for the purposes of inspecting and testing those Goods and/or Services; and/or (in respect of Goods only) **(b)** promptly return to CWE (at the Customer's expense) any Goods which are the subject of a warranty claim.
- 5.4 The Customer shall on demand reimburse CWE for any reasonable costs and expenses which are incurred by it in investigating any warranty claim made by the Customer which is subsequently found to be invalid for any reason.
- 5.5 Compliance by CWE with its obligations under Clause 5.2 shall represent the Customer's sole and exclusive remedy (and CWE's only liability) in respect of any failure of the Goods and/or Services to comply with the warranty set out at Clause 3.1 (subject at all times to Clause 9.1).
- 5.6 The terms implied by sections 13 – 15 of the Sale of Goods Act 1979 and 3 – 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from any Contract.

6 EXCLUSIONS FROM WARRANTY CLAIMS

- 6.1 CWE shall have no liability or responsibility to the Customer (whether under any Contract or otherwise) in respect of any failure of the Goods or Services to comply with the warranty set out at Clause 3.1: **(a)** which is not notified by the Customer to CWE in accordance with Clause 5.1; **(b)** if the Customer fails to comply with its obligations under Clause 5.3; **(c)** if the Customer makes any further use of the Goods and/or Services, or sells on the Goods after becoming aware of any failure of the Goods to comply with the warranty set out at Clause 3.1; **(d)** which is attributable to any failure by the Customer to follow CWE's oral or written instructions as to the storage, handling and use of the Goods

or Services (as applicable) and/or any failure by the Customer to follow good trade practice regarding the same; **(e)** if the Customer alters the Goods and/or Services (or permits any third party to do so) without the written consent of CWE; **(f)** where any failure of the Goods and/or Services arises as a result of fair wear and tear, wilful damage, negligence, or abnormal or incorrect storage/use or working conditions; **(g)** where any Goods and/or Services differ from their specification as a result of changes made to ensure that the Goods comply with any applicable legal or regulatory requirements; **(h)** where such defect arises from or in connection with any drawing, design or specification and/or goods or materials (including for the avoidance of doubt any physical materials) supplied by or on the behalf of the Customer; and/or **(i)** where any Goods and/or Services have been produced in compliance with any sample or test Goods and/or Services previously approved by the Customer.

7 PRICE AND PAYMENT

- 7.1 Any quotations which are provided by CWE do not constitute an offer which is capable of acceptance by the Customer and may be withdrawn by CWE without liability at any-time. Any quotations not withdrawn earlier by CWE shall automatically lapse 30 days after the date of issue.
- 7.2 All Prices are stated exclusive of the costs and expense of packaging, insuring and transporting the Goods to the Customer which shall be paid for by the Customer in addition.
- 7.3 CWE shall be entitled at any-time prior to invoicing the Customer for the Price of an Order to increase that Price to reflect any increase to CWE's costs of sourcing, manufacturing and supplying the Goods and/or Services in question.
- 7.4 All Prices are stated exclusive of VAT which shall be paid by the Customer in addition at the rate from time to time in force (subject to the provision of a VAT invoice by CWE).
- 7.5 Unless CWE has agreed to grant the Customer credit terms (or should the Customer have exceeded any credit limit set by CWE from time to time), the Customer shall pay the Price of each Order to CWE in full in cleared funds prior to the date of delivery.
- 7.6 Where CWE has agreed to grant the Customer credit terms then unless otherwise agreed in writing, CWE may invoice the Customer for the Price of each Order at any-time on or after completion of delivery and the Customer shall pay all such invoices in full in cleared funds within 30 days of the date of invoice.
- 7.7 Time of payment shall be of the essence.
- 7.8 CWE shall be entitled to suspend, vary or withdraw any credit terms granted by it to the Customer at any-time on notice.
- 7.9 In the event that the Customer fails to pay any sum due from it under any Contract (including the Price) by the due date for payment then without prejudice to any other rights or remedies available to it (whether under the applicable Contract or otherwise) CWE shall be entitled to charge interest on such amount together with the cost of recovery in each case, in accordance with the Late Payment of Commercial Debt (Interest) Act 1998.
- 7.10 The Price together with any other amounts which may be due to be paid by the Customer to CWE under any Contract shall be paid by the Customer in full in cleared funds without set-off, withholding, deduction or counterclaim.
- 7.11 All sums payable by the Customer to CWE under any Contract (including the Price) shall become immediately due and payable by the Customer upon termination of the Contract in question.

8 RISK AND TITLE

- 8.1 Risk of loss or damage occurring to Goods shall pass from CWE to the Customer upon completion of delivery of the Goods in question (where delivery is made by CWE) or upon despatch (where delivery is made using a third party courier) or in either case, as otherwise provided for under Clause 4.2.
- 8.2 Ownership of any Goods delivered to the Customer shall not pass from CWE to the Customer unless and until CWE has received from the Customer in full in cleared funds: **(a)** the Price of the Goods in question; and **(b)** any other payment which is due to be paid by the Customer to CWE under any other Contracts in force from time to time.
- 8.3 Until title to any Goods has passed to the Customer, the Customer shall: **(a)** hold those Goods on a fiduciary basis as CWE's bailee; **(b)** store those Goods separately from any other items held by the Customer so that they remain readily identifiable as CWE's property; **(c)** not remove, deface or obscure any markings on the Goods or their packaging which identifies the Goods as CWE's property; and **(d)** maintain those Goods in a safe and satisfactory condition and keep them insured at the Customer's sole expense against all insurable risks for their full Price with CWE's interest noted on such policy of insurance or such insurance being held in the joint names of CWE and the Customer. The Customer shall provide confirmation that such insurance cover is in place and all premiums have been paid up-to date at the request of CWE from time to time. The Customer shall hold any proceeds from such insurance relating to the Goods on trust for CWE upon receipt of the same. Any insurance proceeds received by the Customer shall not affect the obligation of the Customer to pay the Price (and any applicable interest under Clause 7.9) in full in accordance with Clause 7.6 but such payment liability shall be reduced by the amount (if any) of any insurance proceeds already received by the Customer and paid to CWE. Subject to the foregoing, the Customer may resell on an arm's length basis or use any Goods in the ordinary course of its business.
- 8.4 The Customer's right of possession of any Goods in respect of which title has not passed to it shall immediately end in the event that the Customer suffers any Insolvency Event and the Customer shall notify CWE immediately should it suffer any Insolvency Event and shall also inform any receiver, manager, administrative receiver or similar who may be appointed with respect to any assets of the Customer that those Goods belong to CWE and are not assets belonging to the Customer.
- 8.5 The Customer shall allow CWE or its authorised representatives on request access to any premises where any Goods, in respect of which title has not passed to the Customer, may be stored (or in the case of any premises not under the control of the Customer, shall procure that such access is granted for CWE or its authorised representatives) for the purposes of inspecting those Goods and verifying the compliance by the Customer with its obligations under Clause 8.3 and/or where the Customer's right of possession of those goods has ended, for the purposes of recovering those Goods.

9 LIMITATIONS AND EXCLUSIONS ON LIABILITY

- 9.1 Neither party seeks to limit or exclude in any way its liability for death or personal injury caused by negligence; for fraud or fraudulent misrepresentation; in respect of any breach of any condition implied under section 12 of the Sale of Goods Act 1979; and/or for any other matter or liability which cannot be lawfully limited or excluded. Each provision of each Contract shall be read as subject to this Clause 9.1 and no provision of any Contract is intended to nor shall be interpreted as seeking to limit or exclude any of the foregoing types of liability.
- 9.2 Subject at all times to Clause 9.3, the maximum liability of CWE to the Customer for all claims under any Contract howsoever arising (including under any indemnity) shall be limited in aggregate to the lower of the: Price actually paid by the Customer to CWE under the Contract in question; or the amount of any insurance proceeds actually paid to CWE in respect of the claim in question.
- 9.3 CWE shall not be liable (whether under the terms of any Contract under any indemnity or otherwise) for: loss of business; loss of use; loss of profit; loss of anticipated profit; loss of contracts; loss of revenues; loss or damage to goodwill or brand; loss of anticipated savings; loss of data or use of data; product recall costs; damage to reputation; and/or any consequential, special or indirect loss or damage in any case, regardless of whether or not CWE was aware or had been made aware (or ought reasonably to have been aware) at the time of the relevant Contract being formed of the risk that such loss or damage might occur.
- 9.4 CWE shall not be liable for any failure or delay in complying with any of its obligations under any Contract in the event that the failure or delay in question is attributable to any Force Majeure Event.

10 INSOLVENCY AND TERMINATION

- 10.1 If the Customer: **(a)** becomes subject to any Insolvency Event; **(b)** should CWE reasonably believe that the Customer is about to become subject to any Insolvency Event and notifies the Customer of such belief in writing; **(c)** and/or should any amount due to be paid by the Customer to CWE under any Contract be overdue then CWE may in any such case (and without prejudice to any other rights or remedies available to it whether under any Contract or otherwise) suspend without liability any or all further deliveries of Goods under any or all Contracts and/or terminate any outstanding Contracts in either case, without liability to the Customer.
- 10.2 CWE may terminate any or all outstanding Contracts in the event that the Customer is in breach of any of its obligations under any Contract and, in the case of a breach which is capable of remedy, the Customer fails to remedy the same within 14 days of receipt of notice from CWE requesting it to do so.
- 10.3 Termination or expiry of any Contract shall not affect the continuing in force or coming into force of any provision of a Contract which, whether expressly or by implication is to survive termination or expiry.

11 GENERAL

- 11.1 Any notices to be served on either party by the other shall be in writing and sent by pre-paid registered post to the registered office address of the other party or such other address as is notified in writing by that party from time to time. Such notice shall be deemed to have been received by the addressee 72 hours after posting provided applicable evidence of posting is retained and produced on request.
- 11.2 Whilst the parties may make operational communications via email, formal notice may not be served via email.
- 11.3 The parties are with respect to each other independent contractors and nothing in these Conditions or any Contract and no actions taken by the parties under any these Conditions or any Contract shall be deemed to constitute any agency, partnership, association, joint venture or other co-operative enterprise between the parties.
- 11.4 Each Contract represents the entire agreement between the parties relating to the supply of the Goods in question and supersedes all previous presentations made and/or agreements, negotiations and discussions between the parties relating to the same.
- 11.5 Save only to the extent as may be specifically provided for otherwise under these Conditions, no variation or amendment of any Contract shall be binding unless made in writing and signed by or on the behalf of each of the parties.
- 11.6 The Customer may not assign or transfer any of its rights and/or obligations under any Contract without the prior written consent of CWE. CWE may assign or transfer any or all of its rights and/or obligations under any Contract on notice to the Customer.
- 11.7 CWE may sub-contract the performance of any of its obligations under any Contract without the prior consent of the Customer but shall remain primarily liable to the Customer for the acts and omissions of any of its sub-contractors as if those were the acts or omissions of CWE itself under the applicable Contract.
- 11.8 Any Supplier group companies shall be entitled to rely upon the benefit of any Contract and to enforce any Contract pursuant to the Contracts (Rights of Third Parties) Act 1999. Subject to the foregoing, a person who is not a Party to a Contract shall have no right to enforce any term of that Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 11.9 If any provision of these Conditions or of any Contract is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, the remaining provisions shall remain in full force and effect.
- 11.10 The failure to exercise or delay in exercising any right or remedy under these Conditions or any Contract shall not be regarded as a waiver of such right or remedy, or a waiver of other rights or remedies. No single or partial exercise of any right or remedy under these Conditions or any Contract shall prevent any further exercise of the right or remedy or any other right or remedy.
- 11.11 These Conditions and each Contract shall be governed by English law and, save in respect of the enforcement of any judgment, the parties agree to submit to the exclusive jurisdiction of the English courts.