

# THOMSON PETTIE TERMS AND CONDITIONS OF SALE

## 1 Interpretation

The following definitions and rules of interpretation apply to the Contract (as hereinafter defined).

### 1.1 Definitions:

**"Business Day"** means a day other than a Saturday, Sunday or public holiday in Scotland, when banks in Edinburgh are open for business;

**"Company"** means the supplier of Goods and Services to the Purchaser, being the company who issues the Quotation and whose name and registered office address is set out therein;

**"Conditions"** means these terms and conditions as amended from time to time in accordance with Clause 14.8;

**"Contract"** means the contract between the Company and the Purchaser for the supply of Goods and/or Services in accordance with these Conditions;

**"Purchaser"** means the person or firm who purchases the Goods and/or Services from the Company;

**"Ex Works"** means that the Company delivers when it places the Goods at the disposal of the Purchaser at the Purchaser's premises or at another location agreed in writing between the parties and the Company does not need to load the Goods on any collecting vehicle, nor does it need to clear the Goods for export, where such clearance is applicable;

**"Force Majeure Event"** means any such delay or failure in performance of the Contract by the Company resulting from events, circumstances or causes beyond the Company's reasonable control, including but not limited to: war (whether declared or undeclared), riot, civil commotion, fire, flood, interruption of transportation, embargo, accident, explosion, inability to procure or shortage of materials or stock, prohibition on import or export of Goods or raw materials covered by this Contract, governmental orders, regulations, restrictions, priorities or rationing (including exchange control regulations and restrictions) or strikes (official or unofficial), working to rule or other labour troubles;

**"Goods"** means the goods (or any part of them) purchased by the Purchaser from the Company as set out in the Order;

**"NC Goods"** has the meaning given in Clause 10.5;

**"NC Query"** has the meaning given in Clause 10.5;

**"Order"** means the Purchaser's order for the supply of Goods, as set out in the Purchaser's purchase order form and forming the Purchaser's written acceptance of the Company's quotation;

**"Quotation"** means the quotation given by the Company in response to a Purchaser enquiry and which sets out the Goods to be purchased by the Purchaser and the prices thereof; and

**"Services"** means the services supplied by the Company to the Purchaser as set out in the Order.

### 1.2 A reference to:

1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2 a party includes its successors and permitted assignees;

1.2.3 a statute or statutory provision is a reference to it as amended or re-enacted and includes all subordinate legislation made under that statute or statutory provision; and

1.2.4 writing or written includes fax and email.

1.3 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2 Basis of Contract

2.1 A Quotation given by the Company:

2.1.1 shall not constitute an offer by the Company;

2.1.2 may be valid only for a specific time period, such period to be set out on the Quotation and commencing with the date of issue of the Quotation; and

2.1.3 shall state the price for such Goods, Services and accessories and in such quantities as are specified therein only.

2.2 The Order constitutes an offer by the Purchaser to purchase the Goods and/or Services on the terms stated in the Quotation and subject to these Conditions.

2.3 The Order shall only be deemed to be accepted when the Company issues written acknowledgement of the Order, at which point and on which date the Contract shall come into existence.

2.4 The Company reserves the right to refuse an Order, unless the Quotation is stated to be open for a specific period and is not withdrawn by the Company during such period.

2.5 Notwithstanding the provisions of Clause 2.3, the Company shall have an absolute right to refuse to accept any Order if that Order does reflect the relevant Quotation in all respects, including (but not limited to) the price, specification and quantity of Goods and/or Services.

2.6 These Conditions apply to the Contract to the exclusion of any other terms that the Purchaser seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing and these Conditions shall prevail to the exclusion of the Purchaser's Conditions of Purchase, if any.

## 3 Prices

3.1 The price payable by the Purchaser for the Goods and/or Services shall be the price stated on the Order.

3.2 All prices for Goods set out in the Order are the price Ex Works unless otherwise stated and exclude any delivery costs thereof.

3.3 All prices are subject to the addition of Value Added Tax at the appropriate rate.

3.4 In the event of variation or suspension of the work on the Purchaser's instructions or by reason of lack of instructions from the Purchaser, the price shall be adjusted to reflect any resulting costs.

## 4 Services

4.1 The Company shall use all reasonable endeavours to meet any performance dates for the Services specified in the Quotation, the Order or the acceptance of the Order but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

4.2 The Company warrants to the Purchaser that the Services will be provided using reasonable care and skill.

4.3 Where the Services include installation of the Goods, the Purchaser will obtain all necessary consents and permissions for the installation of the Goods and will be solely responsible for any reinstatement or redecoration together with the cost thereof which is

necessary following on the installation, removal, inspection, testing, adjusting or repair of the Goods.

## 5 Payments

5.1 An invoice in respect of each supply of Goods shall be issued:

5.1.1 if specified by the Company at the time of issue of the Quotation, as soon as practicable after the Company issues acknowledgement of the Order; and

5.1.2 in all other cases, as soon as practicable after delivery of the Goods.

5.2 Unless otherwise agreed in writing, payment for the Goods is due in full within the payment period specified on the invoice, such payment period commencing on the date of issue of the invoice. The Company shall be entitled to charge interest on overdue accounts at a rate of 3% per annum above the Bank of Scotland Plc base rate(s) prevailing while the account is overdue and the Company shall be entitled to suspend any further deliveries (without notice) of any of the Purchaser's orders or to cancel such orders if any payment from the Purchaser to the Company becomes overdue.

5.3 Where the Contract is to be or may be fulfilled in separate instalments, deliveries or parts, payment for each such instalment, delivery or part shall be made as if the same constituted a separate contract.

5.4 Purchasers who wish to open a credit account with the Company must furnish two trade references in terms satisfactory to the Company and any credit arrangements shall be subject to the Company being, and continuing to be, satisfied as to the Purchaser's credit worthiness.

## 6 Packing

6.1 Where it is necessary to despatch Goods, including rates, drums, cases, pallets, stillages or skids or such other packing, a charge will be made for this.

6.2 Unless otherwise specified this amount will be credited in full on the return of such crates, drums, cases, skids, stillages and pallets, etc. in good condition carriage paid by the Purchaser within 20 Business Days of the date of the issue of the Company's invoice for the relevant delivery. No charge is made for any other form of packaging and no credit will be allowed for its return.

6.3 The Company shall ensure it states clearly on the delivery note any requirement for the Purchaser to return any packaging material to the Company.

6.4 Returns of packaging materials shall be at the Purchaser's expense.

## 7 Samples

7.1 Any sample submitted with the Company's Quotation at the Purchaser's request, unless otherwise agreed, must be returned within 20 Business Days of receipt and may be charged if not so returned.

7.2 The Company reserves the right to charge the Purchaser for refurbishing any such sample, should such be necessary to render samples, where returned, to a resalable condition.

## 8 Delivery

8.1 Any date by which the Goods or Services are required or promised to be delivered or performed by the Company, including in the Order, shall be for reference only and shall not be binding on the Company and time of delivery shall not be of the essence in the Contract.

8.2 Any times quoted by the Company for despatch, repair or replacement are to be treated as estimates only and the Company shall not be liable for failure to despatch, repair or replace Goods within such time.

8.3 The Company shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the type and quantity of the Goods, special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

8.4 Unless otherwise stated in the Quotation and Order, delivery shall be Ex Works to the location set out in the Order.

8.5 Where the Quotation and Order state that the delivery is by collection by the Purchaser:

8.5.1 the Purchaser shall collect the Goods from the Company's premises or such other location as may be agreed with the Purchaser before delivery;

8.5.2 if the Purchaser fails to collect the Goods within [three] Business Days of the Company notifying the Purchaser that the Goods are ready, then:

8.5.2.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the [third] Business Day following the day on which the Company notified the Purchaser that the Goods were ready;

8.5.2.2 the Company shall store the Goods until delivery takes place, and charge the Purchaser for all related costs and expenses (including insurance); and

8.5.2.3 if a further ten Business Days after the Company notified the Purchaser that the Goods were ready for delivery the Purchaser has not collected them, the Company may resell or otherwise dispose of part or all of the Goods.

## 9 Passing of Property and Risk

9.1 The risk in the Goods supplied shall pass on completion of delivery of such Goods to the Purchaser.

9.2 Notwithstanding Clause 9.1, title to, and property in, the Goods, including full legal and beneficial ownership, shall not pass to the Purchaser until the Company receives (in cash or cleared funds) payment in full for all Goods delivered to the Purchaser under the Contract for which payment in full has not been paid.

9.3 Until title to the Goods has passed to the Purchaser, the Purchaser shall maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date of delivery and store the goods in such a way as to enable them to be identified from the other stock of the Purchaser.

9.4 Subject to Clause 13.3, the Purchaser may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Company receives payment for the Goods but, if the Purchaser resells the Goods before that time:

9.4.1 it does so as principal and not as the Company's agent; and

9.4.2 title to the Goods shall pass from the Company to the Purchaser immediately before the time at which resale by the Purchaser occurs.

## 10 Defects

10.1 The Company warrants that on delivery, the Goods shall:

10.1.1 conform in all material respects with any description of the Goods provided by the Company; and

10.1.2 be free from material defects in design, material and workmanship.

10.2 All descriptive and forwarding specifications, drawings and particulars of weights and dimensions issued by the Company are approximate only and are intended only to

- present a general idea of the Goods to which they refer and shall not form part of the Contract.
- 10.3 The Company shall not be liable for the Goods' failure to comply with the warranty in Clause 10.1 if:
- 10.3.1 the defect arises because the Purchaser failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- 10.3.2 the defect arises as a result of the Company following any drawing, design or goods specification supplied by the Purchaser;
- 10.3.3 the Purchaser alters or repairs such Goods without the written consent of the Company;
- 10.3.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- 10.3.5 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 10.4 This liability is accepted in place of and to the exclusion of any rights and remedies which the Purchaser may have either under statute or at common law, all of which the Purchaser will be deemed to have waived and discharged on the Purchaser placing an order with the Company.
- 10.5 If the Purchaser believes that some or all of the Goods delivered under the Contract do not conform with the warranty at Clause 10.1, the Purchaser should raise a non-conformance query (an "NC Query") with the Company within three Business Days from the date of delivery of the Goods in question (the "NC Goods").
- 10.6 On receipt of an NC Query, the Company will contact the Purchaser to arrange for inspection of the NC Goods, in the most appropriate manner and the Purchaser shall be obliged to co-operate with the Company's reasonable requests for assistance in arranging for such inspection, including by:
- 10.6.1 providing photographic or other evidence of the alleged defect;
- 10.6.2 arranging for the return of the NC Goods to the Company, the cost of such return to be borne by the Company; or
- 10.6.3 allowing the Company to enter the Purchaser's premises, either to collect and remove the NC Goods for inspection or to inspect the NC Goods there.
- 10.7 On receipt of the NC Goods, the Company will assess the NC Goods and determine whether those NC Goods conform or are defective.
- 10.8 If the Company determines (or deems) that the NC Goods are defective or do not conform, it will, at its discretion, either:
- 10.8.1 arrange for the NC Goods to be repaired and returned to the Purchaser at the Company's expense;
- 10.8.2 provide the Purchaser with replacements for the NC Goods; or
- 10.8.3 refund (including by way of credit) the Purchaser with a value equal to the price paid for the NC Goods; or
- 10.8.4 where such defect or non-conformance has been caused by one of the circumstances set out in Clauses 10.31 to 10.3.5 then the Company may request a Purchase Order before repairing, reworking or re-making the NC Goods at the Purchaser's expense.
- 10.9 Delivery of repaired or replaced NC Goods will be subject to these Conditions.
- 10.10 In no circumstances may NC Goods be returned other than at the request of the Company in accordance with Clause 10.6.2.
- 10.11 If the Company determines that any NC Goods returned pursuant to Clause 10.6.2 are not defective then the Company shall return those Goods to the Purchaser, at the Purchaser's cost.
- 11 Testing and Inspection**
- 11.1 If the Purchaser requires any testing or inspection of the Goods, such testing or inspection shall take place at the Company's premises prior to delivery of the Goods by the Company.
- 11.2 The Purchaser shall be given notice of the tests or inspections which will be carried out in its absence if it fails to attend such tests.
- 11.3 The Company shall issue a certificate of conformity if requested to do so by the Purchaser, on completion of such tests, confirming that the Goods conform with the Order.
- 11.4 Unless the Purchaser gives the Company written notice within 48 hours of any such tests or inspections that the Goods do not conform to the Contract, the Purchaser shall be deemed to have accepted that the Goods do conform and accordingly the liability of the Company under Clause 10 shall be excluded.
- 11.5 Unless otherwise agreed in writing, the cost of such testing or inspection of the Goods shall be set out in the Quotation and payable by the Purchaser.
- 12 Liability**
- 12.1 Nothing in these Conditions shall limit or exclude the Company's liability for:
- 12.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 12.1.2 fraud or fraudulent misrepresentation; or
- 12.1.3 any relevant term implied by legislation for which liability cannot be excluded.
- 12.2 Subject to Clause 12.1, the Company shall not be liable to the Purchaser, whether in contract, delict (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- 12.2.1 loss of profits;
- 12.2.2 loss of sales or business;
- 12.2.3 loss of agreements or contracts;
- 12.2.4 loss of anticipated savings;
- 12.2.5 loss of use or corruption of software, data or information;
- 12.2.6 loss of or damage to goodwill; and
- 12.2.7 any indirect or consequential loss.
- 12.3 Subject to Clause 12.1, the Company's total liability to the Purchaser, shall be limited to such liability for repair or replacement of NC Goods as is set out in Clause 10.
- 12.4 This Clause 12 shall survive termination of the Contract.
- 13 Termination**
- 13.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 13.1.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within five Business Days after receipt of notice in writing to do so;
- 13.1.2 the other party 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;
- 13.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 13.1.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 13.2 Without affecting any other right or remedy available to it, the Company shall be entitled, without liability on its part, to terminate the Contract or any unfulfilled part thereof, or at its option to suspend or make partial deliveries:
- 13.2.1 if the completion of the supply of the Goods by the Company is prevented, hindered or delayed whether directly or indirectly, by reason of:
- 13.2.1.1 the Purchaser failing to furnish necessary information or instructions; or
- 13.2.1.2 a Force Majeure Event.
- 13.3 If before title to the Goods passes to the Purchaser the Purchaser becomes subject to any of the events listed in Clause 13.1, then, without limiting any other right or remedy the Company may have:
- 13.3.1 the Purchaser's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
- 13.3.2 the Company may at any time:
- 13.3.2.1 require the Purchaser to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
- 13.3.2.2 if the Purchaser fails to do so promptly, enter any premises of the Purchaser or of any third party where the Goods are stored in order to recover them.
- 13.4 On termination of the Contract:
- 13.4.1 the Purchaser shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Purchaser immediately on receipt;
- 13.4.2 the Purchaser shall return any Goods which have not been fully paid for and, if the Purchaser fails to do so, then the Company may enter the Purchaser's premises and take possession of them; and
- 13.4.3 termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination.
- 13.5 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.
- 14 General**
- 14.1 The Company may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract. The Purchaser shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Company.
- 14.2 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to the address notified by that party for these purposes. Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; 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 or at the time recorded by the delivery service; or, if sent by fax or email, at 9.00 am on the next Business Day after transmission. This Clause 14.2 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 14.3 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 14.2 shall not affect the validity and enforceability of the rest of the Contract.
- 14.4 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.5 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 14.6 The 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.
- 14.7 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.
- 14.8 The Company shall be entitled to amend these Conditions from time to time but any amended versions of the Conditions shall apply only to Contracts concluded after the date of amendment.
- 14.9 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 construed in accordance with Scots law and each party irrevocably agrees that the Scottish courts shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.