SHARPAK AYLESHAM

STANDARD TERMS AND CONDITIONS FOR THE SALE OF GOODS



1. INTERPRETATION

1.1 In these conditions:
"Buyer" means the person who enters into a Contract with the Seller.
"Conditions" means the standard conditions set out below and (unless otherwise stated) includes any special conditions agreed in writing between the Seller and the Buyer.
"Contract" means a contract for the sale and purchase of Goods between the Seller and the Buyer.
"Goods" means the goods and any services (including any installment of the Goods or any part of them) described in the Contract.
"Price" means the price of the Goods.
"Seller" means Sharpak Aylesham Limited.

2. BASIS OF THE SALE

2.1 These Conditions shall govern any Contract to the exclusion of any other terms and conditions.
2.2 No variation to these Conditions shall be binding unless confirmed in writing by a Director of the Seller.
2.3 The Seller's employees or agents are not authorised to make any representation concerning the Goods unless authorised by a Director of the Seller.

3. ORDERS AND SPECIFICATIONS

3.1 No order submitted by the Buyer shall bind the Seller until confirmed in writing by an authorised representative of the Seller.
3.2 The Seller may charge on a part cost basis or otherwise for sketches, plates, dies, moulds, tooling or samples delivered to the Buyer and the Buyer shall return any such item upon demand unless legal title has passed to it and shall keep confidential all design and other aspects of such items.
3.3 Charges for manufacture of or modifications to tooling at the Buyer's request shall be paid upon approval of samples.
3.4 Any specifications or other information in writing or otherwise provided by the Seller in respect of Goods shall only form part of the Contract where expressly stated and warranted or guaranteed by the Seller in writing.
3.5 Where Goods are to be manufactured by the Seller in accordance with a specification or using materials submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses of whatever nature incurred by the Seller in connection with such manufacture.
3.6 The Seller reserves the right to make any changes in the specification of the Goods which do not materially affect their quality or performance.
3.7 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of a Director of the Seller and the Buyer shall indemnify the Seller in full against all loss, damages, costs and expenses (including design, tooling or machinery costs) incurred by the Seller as a result of cancellation.
3.8 The Seller may dispose of any item, including tooling or machinery, used solely for production of Goods ordered by the Buyer in the event that no orders requiring use of such items are made by the Buyer in any period of 12 months.
3.9 The copyright in all drawings, samples and finished product belongs to the Seller and the Buyer shall not breach such copyright by disclosure to a third party, copying, reprinting or otherwise without the Seller's written consent.

4. PRICE OF THE GOODS

4.1 The Price shall be the price specified in the Seller's quotation unless otherwise varied by written agreement.
4.2 All Prices quoted are valid for 30 days only unless otherwise stated in the Contract.
4.3 By giving notice to the Buyer at any time before delivery, the Seller may increase the Price to reflect any increase in the cost of the Contract to the Seller due to any factor beyond the Seller's control.
4.4 Unless otherwise stated delivery costs and related insurance are not included in the Price.
4.5 The Price is exclusive of Value Added Tax.
4.6 The Seller may charge the cost of pallets and returnable containers to the Buyer in addition to the Price, but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.

5. TERMS OF PAYMENT

5.1 The Seller may upon delivery invoice the Buyer for the Price including any installment.
5.2 The Buyer shall pay the amount of the Seller's invoice within 30 days of the seller's invoice date. Time to be of the essence.
5.3 If the Buyer fails to make payment for the whole or any installment of the Goods on the due date the Seller (without prejudice to any other remedy available to it) may:-
5.3.1 Cancel the Contract and suspend any further deliveries to the Buyer;
5.3.2 Invoice the Buyer immediately for all costs incurred to date in respect of work. in progress for the Buyer;
5.3.3 Appropriate any payments made by the Buyer to such of the Goods (or to goods supplied under any separate contract) as the Seller may think fit;
5.3.4 Charge the Buyer interest (both before and after any judgment) on the amount unpaid at the rate of 5 per cent per annum above Bank of England base rate from time to time until payment in full is made, and;
5.3.5 Exercise a lien for the amount outstanding under the Contract over any property of the Buyer in the possession of the Seller.
5.4 Payment shall be made with no deduction, set-off, withholding or other charge of any kind whatsoever, regardless of any dispute, discussion or litigation between the Buyer and the Seller. The Buyer's default in payment of any invoice on due date automatically makes any and all outstanding amounts, even those not yet due, immediately payable. Any unpaid invoice disqualifies the right to discount, credit or refund on the turnover of the relevant year, if any.

6. DELIVERY

6.1 Unless otherwise stated in the Contract delivery of the Goods shall be deemed to have been made upon completion of off-loading at the place of delivery nominated by the Buyer in writing.

6.2 Time for delivery shall not be fundamental to the Contract unless otherwise agreed by the Seller in writing.

6.3 The Seller reserves the right to deliver up to 10 per cent more or 10 per cent less than the quantity of Goods ordered as proper performance of the Contract and any surplus or deficiency shall be charged or allowed at the Contract rate.

6.4 Where the Goods are to be delivered in installments, each delivery shall constitute a separate contract and failure by the Seller to deliver anyone or more of the installments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.5 If the Seller fails to deliver the Goods on or after the agreed delivery date for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar replacement goods over the price of the Goods.

6.6 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions then, without prejudice to any other remedy available to the Seller, the Seller may:

6.6.1 Store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

6.6.2 After one month from the due delivery date sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Buyer for any shortfall below the Price.

6.7 If the Contract provides for stock holding by the Seller on behalf of the Buyer, where no movement of stock has been required by the Buyer for over one month the Seller may require the Buyer to take immediate delivery of and make full payment for all outstanding stock, and in the event of such payment becoming overdue the Seller may scrap or otherwise deal with the stock at its discretion and the Buyer shall indemnify the Seller against any loss suffered.

7. RISK AND TITLE

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery in accordance with 6.1 above.
7.2 Legal title to the Goods shall not pass to the Buyer until the Seller has received full payment of the price of the Goods in cash or cleared funds and all other goods or services agreed to be sold or supplied by the Seller to the Buyer for which payment is then due.
7.3 Sketches, plates, dies, moulds, tooling and samples shall remain the property of the Seller unless otherwise stated in the Contract.
7.4 Until such time as legal title in the Goods passes to the Buyer it shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected, insured with a reputable insurance company and identified as the Seller's property. Until legal title passes the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall forthwith account to the Seller for the proceeds (of whatever nature) of disposal of the Goods.
7.5 At any time where the Buyer is in default of the terms for payment for Goods or a circumstance stated in 9.1 - 9.4 below arises the Seller shall be entitled to require the Buyer to deliver up the Goods to the Seller immediately and if the Buyer fails to do so, to enter upon the place of storage and repossess the Goods.
7.6 The Buyer shall not pledge or charge by way of security for any indebtedness any Goods where legal title remains vested in the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall without prejudice to any other remedy of the Seller) immediately become due and payable.
7.7 Where property of the Buyer is held by the Seller it shall be held at the Buyer's risk.
7.8 Each sub-clause of this clause 7 is separate and distinct and shall be severable in the event that any such sub-clause is deemed to be unenforceable.

8. LIABILITY

8.1 The Seller shall not be liable in respect of any defect in the Goods arising from any drawing, design, specification or materials supplied by the Buyer, any shortcoming in Goods which accord with samples produced to and approved by the Buyer or any loss suffered due to an alteration to the Goods by the Buyer without the authority of the Seller or otherwise than in accordance with its instructions.
8.2 All warranties, conditions or other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law.
8.3 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with any specification shall be notified to the Seller within 3 working days from the date of delivery and the Seller shall be given full opportunity to inspect such defective goods. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure.
8.4 Without prejudice to 8.3 above the Seller shall have no liability in respect of any defects in bar codes supplied to the Buyer unless the defect is notified to the Seller prior to packing and despatch of relevant bar code items to end users.
8.5 Where the Buyer makes a valid claim in respect of any defect or inadequacy in the Goods in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or refund the Price but the Seller shall have no further liability to the Buyer.
8.6 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer in respect of a claim of whatever nature for any consequential loss (including loss of profit) damage, costs, expenses or other claims for consequential compensation whatsoever.
8.7 The Seller shall not be liable to the Buyer for any delay or failure in performing its obligations in relation to the Goods if the delay or failure was due to any cause beyond the Seller's reasonable control including, without limitation, strikes, lock outs or other industrial actions or difficulties in obtaining raw materials, labour, parts or machinery.

9. INSOLVENCY OF BUYER

If either:-
9.1 The Buyer makes any voluntary arrangement with its creditors or enters into bankruptcy, administration, receivership, liquidation or an analogous procedure (otherwise than for the purposes of a solvent amalgamation or reconstruction) or
9.2 An encumbrancer takes possession of assets of the Buyer; or
9.3 The Buyer ceases, or threatens to cease, to carry on business; or
9.4 The Seller reasonably apprehends that any of the events mentioned above is about to occur then, without prejudice to any other right or remedy, available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer and, if the Goods have been manufactured or delivered but not paid for, all monies outstanding under the Contract shall become immediately due and payable.

10. EXPORT TERMS

Where the Goods are exported from the United Kingdom the Buyer shall be responsible for complying with any local legislation or regulations governing the importation of the Goods and for the payment of all applicable duties, taxes and other levies of whatever nature.

11. PROCESSING OF PERSONAL DATA

The personal data ("Data") communicated in connection with a Contract are intended for its performance or to meet legal or contractual obligations, in compliance with relevant regulations and in particular with European Regulation No. 2016/679 as currently in force. Each party to the Contract undertakes to (i) take appropriate technical and organisational measures to protect received Data, (ii) keep them for the duration of the business relationships and, beyond, for a period compliant with applicable regulations and (iii) process them in accordance with relevant regulations. Any natural person has a right of access, opposition, rectification and deletion with regard to his or her Data; this right is exercised with the Managing Director for the Seller.

12. ANTI BRIBERY

The Buyer undertakes (i) not to pay any amount in the form of salaries, commissions, fees or otherwise to employees, officers or directors of the Seller and/or its affiliated companies, or to any person designated by them, and not to offer them gifts such as any goods or services of significant value, and (ii) to maintain relevant procedures to prevent and detect the commission of acts of corruption or influence peddling by its employees, officers or directors, or by intermediaries, such as agents, consultants, advisors, distributors or any other business partner. Each party shall immediately inform the other of any conflict of interest or event brought to its attention that could result in an undue financial or any other kind of advantage in connection with the commercial relationships.

13. NOTICES

13.1 Notices served in respect of the Contract shall be in writing and addressed to the registered office or the principle place of business of the notified party.
13.2 Notices may be delivered personally, by registered post or by facsimile message.
13.3 Notices shall be deemed served upon delivery where delivered personally, at the time recorded by the relevant postal agent where delivered by registered post and at the time shown on the sender's written message sent confirmation where delivered by facsimile message.

14. GENERAL

14.1 The Seller may perform any of its obligations or exercise any of its rights under the contract by itself or through any other member of its group or by any subcontractor.
14.2 No waiver by the Seller of any breach of the Contract by the Buyer shall represent a waiver of any subsequent breach.
14.3 The Contract shall be governed by the laws of England and the parties hereby submit to the exclusive jurisdiction of the Courts of England and Wales.

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