

# PARTWELL TERMS AND CONDITIONS OF SALE ISSUE 2

## 1. DEFINITIONS

1.1 In these conditions the following words shall have the following meanings:

"the Buyer" means the person firm or company with whom any contract to sell goods is made by the Company; "the Company" means Partwell Limited; "the Company's premises" means Bridge Works Stanley St Blackburn BB1 3BW; "the Goods" means the articles or things or any of them described in the order details between the Company and the Buyer for the sale or supply of goods by the Company (including any installment) together with any packaging; "the Order Details" means those set out on the Company's order confirmation. "Writing" includes telex, cable, facsimile transmission and/or other comparable means of communication.

## 2. GENERAL

2.1 These conditions shall be deemed to be incorporated into every contract entered into by the Company to sell goods and shall notwithstanding any statement to the contrary contained in any of the Buyers communications prevail over any conflicting or inconsistent terms and conditions contained in any order, telex, letter, or form of contract sent by the Buyer to the Company or any other communication between the Buyer and the Company whatsoever and whatever their respective dates unless or to the extent that any variation of these conditions shall be expressly agreed in writing and signed by one of the Company's directors.

2.2 No order placed with the Company shall be binding until confirmed by the Company by the issue of Order Details.

2.3 All dealings between the Company and the Buyer are confidential. The Buyer may not disclose information concerning contracts with the Company (unless required by law) to any third party without the consent of the Company.

2.4 Any reference in these conditions to any provisions of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

2.5 The headings in these conditions are for convenience only and shall not affect their interpretation.

2.6 A quotation by the Company does not constitute an offer and the Company reserves the right to withdraw or revise the same prior to the Company's acceptance of the Buyer's order by the issue of Order Details.

2.7 All goods supplied by the Company shall be in accordance with the specification or description (if any) expressly listed or set out in the Order Details. No other specification, descriptive material, written, or oral representation, correspondence or statement, promotional or sales literature shall form part of or be incorporated by reference into the agreement between the Company and the Buyer.

## 3. PRICES

3.1 Subject to the following provisions of this condition the price for the Goods shall be as stated in the Order Details.

3.2 Unless stated to the contrary in the Order Details and subject to the provisions of clause 3.3, the Company's price quoted does not include delivery.

3.3 Except as otherwise expressly stated in the Order Details:-

3.3.1 All prices are stated exclusive of VAT;

3.3.2 The Buyer shall pay forthwith against the invoice the Company's reasonable charges for any unusual delivery arrangements or special packaging arrangements made at the Buyer's request.

3.4 The Company reserves the right to increase its prices stated in the Order Details if in its discretion the Company considers the same to be justified by any material increase in the price of raw materials used in the manufacture of the Goods.

## 4. DELIVERY

4.1 Any delivery dates specified in the Order Details are given in good faith but unless expressly stated to be guaranteed are given for guidance only and time shall not be of the essence of any contract. The Company's only obligation shall be to deliver within a reasonable time taking into account the time the Company received all necessary information including manufacturing and delivery instructions to enable the Company to manufacture or deliver the Goods.

4.2 No stipulation as to time or period of delivery shall be of the essence of any contract between the Company and the Buyer.

4.3 The Company shall not under any circumstances be liable to compensate the Buyer for any indirect or consequential loss whatsoever (including but not limited to loss of profit or liability to third parties) arising by reason of the Company's failure to deliver the Goods after or within the time or period stipulated by the Buyer or that notified by the Company to the Buyer or within a reasonable time and whether or not such failure results from the Company's negligence.

4.4 The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

4.5 Where delivery of the Goods is made by the Company in bulk the Company reserves the right to deliver up to 5% (five per cent) more or 5% (five per cent) less than the quantity ordered but the price payable shall be in respect of the actual quantity delivered on a pro-rata basis.

4.6 Where the Goods are to be delivered in installments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the installments in accordance with these conditions or any claim by the Buyer in respect of any one or more installment shall not entitle the Buyer to treat the contract as a whole as repudiated.

4.7 If the Company fails to deliver the Goods for any reason other than any cause beyond the Company's reasonable control or the Buyer's fault and the Company is accordingly liable to the Buyer then the Company's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest market available) of similar Goods to replace those not delivered over the price of the Goods.

4.8 If the Buyer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may:

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

4.8.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the contract or charge the Buyer for any shortfall below the price under the contract.

4.9 When it is necessary for the Buyer to supply any labels or identification, or supply particulars in respect of the Goods or do any other act to enable or facilitate the Company to effect delivery then such labels, identification and particulars must be furnished or act performed within a reasonable time to enable the Company to deliver by any delivery date stated in the Order Details.

4.10 The weights, lengths and/or quantities of any consignment of Goods as ascertained by the Company from the Company's premises shall be prima facie evidence of the weight/quantity received by the Buyer on delivery.

## 5. PAYMENT

5.1 Subject only to an agreement in writing to the contrary between the Company and the Buyer the Company shall be entitled to invoice the Buyer for the price of the Goods (or any installment) on or at any time after delivery of the Goods unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods in which events the Company shall be entitled to invoice the Buyer for the price at any time after the Company has notified the Buyer that the Goods are ready for collection or (as the case may be) has tendered delivery of the Goods.

5.2 Payment of the invoiced price shall be made within 30 days.

5.3 All periods of credit shall nevertheless cease and the whole of the amounts invoiced and all other amounts due

under any contract between the Company and the Buyer shall become immediately due and payable if any of the events mentioned in clause 7.3 arise.

5.4 Time of payment shall be of the essence of every contract.

5.5 The Company shall be entitled to charge interest at the rate of 3.5% (three and one half per cent) over the base rate from time to time of Midland Bank plc on all overdue amounts until actual payment in full irrespective of whether payment has been formally demanded or judgment entered.

## 6. RISK

6.1 The risk in the Goods shall pass to the Buyer:-

6.1.1 in the case of Goods to be delivered at the Company's premises at the time the Company notifies the Buyer that the Goods are available for collection;

6.1.2 in the case of Goods to be delivered otherwise than at the Company's premises at the time of delivery or if the Buyer wrongfully fails to take delivery of the Goods at the time when the Company has tendered delivery of the Goods.

## 7. RETENTION OF TITLE

7.1 Subject to the power given to the Buyer by this condition, sole and absolute ownership in the Goods shall remain vested in the Company until the Company has received in cash or cleared funds payment in full of all amounts relating to Goods supplied by the Company to the buyer under this contract and all other Goods agreed to be sold by the Company to the buyer for which payment is then due have been paid in full and the Company retains the right of disposal of the Goods until ownership passes under this condition.

7.2 Until ownership in the Goods or the Products passes to the Buyer, it shall hold them as bailee in a fiduciary capacity to the Company, and:-

7.2.1 shall store the Goods separate from those of the Buyer and third parties and clearly marked or otherwise identifiable as the Company's property; and

7.2.2 shall upon request, promptly inform the Company of the location of the Goods or the Products;

7.2.3 shall insure the Goods or the Products; and

7.2.4 shall accept the Company's right to dispose of the Goods; and

7.2.5 shall not prior to permitted use or sale remove any labels which identify the Goods as the property of the Company but the Buyer may resell or use the Goods in the ordinary course of business.

7.3 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Company may at any time require the Buyer to deliver up the Goods to the Company and if the Buyer fails to do so forthwith the Company may enter upon any premises of the Buyer or any third party where the Goods are sold and repossess the Goods. If the Buyer ceases or threatens to cease to carry on trading or passes or calls a meeting to pass a resolution for winding up or if a receiver is appointed of any of the Buyer's assets or of a winding up petition is presented, then the Buyer shall forthwith cease to use or otherwise dispose of the Goods not then used, disposed of or sold shall upon demand forthwith deliver up to the Company any of the Company's Goods in the Buyer's possession or under its control.

7.4 Immediately on making such a demand as in clause 7.3 the Company or its agents shall be entitled without incurring any liability to the Buyer to enter the Buyer's premises or any other premises where the Company's Goods are located to inspect the Buyer's stocks and to remove and resell such of the Company's Goods as to be found there. The Buyer's liability to the Company in respect of any goods so removed shall be limited to the amount of any costs or expenses incurred in such removal and resale.

7.5 Nothing in this condition shall give the Buyer the right to return the Goods without the Company's consent or shall prevent the Seller from suing for the price of the Goods once payment is due notwithstanding the fact that title had not passed.

## 8. TERMINATION AND SUSPENSION

8.1 Where the Company is unable to manufacture, supply or deliver the Goods by its normal route or means of delivery owing to any of the following:-

8.1.1 the Buyer's failure to supply any necessary information; or

8.1.2 any other reason beyond the Company's reasonable control including (without prejudice to the generality of the foregoing expression) shortages or unavailability from normal sources or routes of supply of raw materials, breakdown of plant, reduction or unavailability of power at the manufacturing plant, strikes, lock-outs, act of Government, fire, flood, Queen's enemies, explosion, lightning, aircraft, civil commotion, acts of war, malicious mischief or theft.

Then the Company shall have the right on giving written notice to the Buyer and without incurring any liability to the Buyer to suspend further performance of this contract for a period (not exceeding 3 months) equal to the continuance of any such impediment preventing the Company from performing its obligations.

8.2 At the end of any period of suspension without performance of the contract under clause 8.1.1 the Company may terminate this contract by notice in writing to the Buyer or under clause 8.1.2 either party may terminate this contract by notice in writing to the other.

8.3 In the event that:-

8.3.1 the Buyer is in arrear in making any payment due to the Company under any contract; or

8.3.2 the Buyer's stated credit limit with the Company has been reached; or

8.3.3 the Company believes on reasonable grounds that any payment (whether or not any agreed credit limit has expired) will not be met by the Buyer when due

Then the Company may suspend further work and/or deliveries under any contract with the Buyer and require immediate payment of all amounts then due to the Company and further payment in advance before making any further deliveries under any contract (notwithstanding agreed credit terms). If any such payment or any part of it remains in arrear for 7 days after the Company has demanded it in writing then the Company shall have the further right to cancel that and/or any other contract without prejudice to any claim for damages it may have against the Buyer and without incurring any liability to the Buyer for failure to deliver.

8.4 When a contract is terminated or suspended under this condition then:-

8.4.1 the Company shall be entitled to charge the Buyer with any interest, insurance, transport, storage or other costs and charges arising from any such termination or suspension;

8.4.2 the Buyer shall forthwith pay for and where appropriate take delivery of all goods appropriated by the Company to the contract up to the date of any such termination or suspension and shall pay other sums then due under the contract, or a reasonable price for the work done, whichever is the greater.

8.5 Apart from the right conferred on the Buyer by clause 8.2 the Buyer shall have no right to suspend deliveries or otherwise to postpone performance of any contract by either party nor to terminate any contract for any reason other than the Company's repudiation of it.

## 9. INSPECTION AND CLAIMS

9.1 The Buyer shall procure that a thorough inspection of the Goods is made immediately upon delivery and in any event before they are resold or otherwise dealt with by or on behalf of the Buyer.

9.2 Claims in respect of defects or errors in quality or description or quantity reasonably discoverable on such an inspection shall be made within 14 days of delivery by fax backed up by hard copy written notice in the post and in the absence of such claim the Goods shall be deemed to have been delivered and accepted by the Buyer complete and satisfactorily.

9.3 It is the Buyer's entire responsibility to satisfy himself that the Goods are suitable for the purpose and/or conditions for which they are required subject to the provisions of clause 10.1 being applicable and met.

9.4 Where a complaint or claim has been made in respect of Goods proved to be or alleged to be defective then the Company may suspend delivery of any Goods which may have the same or similar defect or alleged defect until the validity of such complaint/claim has been finally determined and in such case any delivery date shall be postponed accordingly.

## 10. WARRANTIES

10.1 The Company warrants that except as otherwise herein specifically provided, the Goods will accord with the specification contained in the Order Details, will be of good material and workmanship and, where the Company has previously specifically so agreed in writing, will be reasonably fit for the purpose of which the Buyer has given appropriate written details prior to Order Details being issued. Except where the Buyer deals as a consumer this warranty is in substitution for all conditions and warranties (other than under section 12 of the Sale of Goods Act 1979), relating to the Goods whether express or implied by statute or custom of the trade or otherwise and whether as to quality, condition, performance, merchantability or fitness for any purpose or otherwise.

## 11. LIABILITY

11.1 Where the Goods are alleged to be defective the Buyer shall notify the Company pursuant to the provisions of clause 9 above and in any event as soon as practicable by fax followed by hard copy written notice in the post and where possible shall afford the Company an opportunity of examining the Goods before they are resold or otherwise dealt with and further:-

11.1.1 the Buyer shall give the Company a reasonable opportunity of correcting any remedial defects or errors at the Company's own cost; and

11.1.2 the Buyer shall at the Company's request and cost return them to the Company on the basis that the Company will thereafter reimburse to the Buyer the cost of such return provided that it is reasonable; and

11.1.3 if the Buyer agrees an allowance with the Company in respect of such matters then such allowance shall be accepted by the Buyer in full and final settlement of all claims in respect of any such matters.

11.2 The Company's liability (if any) to the Buyer in respect of the Goods shall in all circumstances be limited at the Company's option either to give a refund of the amount paid by the Buyer to the Company, or a reasonable credit or allowance for those of the Goods proved to be defective or replacing them at the agreed point of delivery.

11.3 The Company shall not under any circumstances be liable to compensate the Buyer for any indirect or consequential loss whatsoever (including but not limited to loss of profit or liability to third parties).

11.4 For the avoidance of doubt:-

11.4.1 the Company shall not be liable for any adverse effects resulting from the application to the Goods of any process, operation or treatment unless the intended application has been approved in writing by the Company prior to Order Details being issued by the Company;

11.4.2 no liability shall be accepted by the Company for Goods processed in any way or cut unless the prior written agreement of the Company has been obtained prior to Order Details being issued by the Company;

11.4.3 Goods may only be returned by the Buyer if so previously agreed by the Company in which case the Company's certificate as to the quantity of returned Goods shall be final and binding.

11.4.4 the Company shall accept no responsibility for any defects in the Goods which arise directly or indirectly by virtue of any inherent defects in any materials supplied by the Buyer, by virtue of any errors in specifications or designs supplied by the Buyer or by virtue of any failure of materials supplied by the Buyer to conform to the relevant labeling or British Standard requirement.

## 12. SET OFF

12.1 The Buyer shall not be entitled to set-off any claim against payment of any amounts owing to the Company.

## 13. WAIVER AND SEVERABILITY

13.1 Any concession, latitude, or waiver allowed by either party to the other at any time shall not prevent such party from subsequently exercising its full right under this contract in other respects.

13.2 Any provision of these conditions which is held invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provision hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

## 14. JURISDICTION AND COSTS

14.1 The validity, construction and performance of these conditions and any contract between the Company and the Buyer shall be subject to and be construed in accordance with English Law and the Buyer shall submit to the exclusive jurisdiction of the English Courts and specifically to the jurisdiction of the County or High Court (as may be appropriate) nearest to the Company's premises.

14.2 The Buyer shall be responsible for all costs and disbursements (on a full indemnity basis) incurred by the Company in enforcing its rights under these conditions against the Buyer.

## 15. INTERFERENCE

15.1 The Buyer shall not alter, obscure, remove, conceal, or otherwise interfere with any markings or other identification or source or origin placed by the Company on the Goods or on their labeling or packaging.

## 16. THIRD PARTY RIGHTS

16.1 If the Buyer uses or sells the Goods in such a manner so as to incur liability to any third party then such liability shall be the sole responsibility of the Buyer which shall indemnify the Company from and against any such liability.

16.2 The Buyer shall not make any representations, warranties or guarantees with reference to Goods supplied by the Company except such as are consistent with these conditions.

16.3 The Buyer shall indemnify the Company against all claims, costs, losses, damages and expenses for which the Company may suffer or be liable arising out of the affixing on the Goods any trade-mark or registered name or other intellectual property identification on the Buyer's instructions or (without prejudice to the generality of the foregoing) arising out of the use of intellectual property (including without limitation patent rights, brand or unregistered trade names/marks, registered trade-marks, copyright or registered designs) supplied by the Buyer or required by the Buyer to be used by the Company.

## 17. EXPORT TERMS

17.1 In these conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the contract is made. Unless the context otherwise requires any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meanings in these conditions but if there is any conflict between the provisions of Incoterms and these conditions, the latter shall prevail.

17.2 The Buyer shall be responsible for complying with any legislation or regulation governing the importation of the Goods into the Country or destination and for the payment of any duties thereon.

17.3 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Company's premises before shipment. The Company shall have no liability for any claim in respect of any defect in the Goods which would be apparent upon inspection and which is made after shipment or in respect of any damage during transit.

17.4 Where the Goods are sold for export from the United Kingdom the Buyer shall be responsible for the payment of any duties or taxes (arising from the export of the Goods from the United Kingdom into the country of destination) and shall indemnify and hold harmless the Company from and against any such liability to pay such duties or taxes and specifically shall be liable to pay to the Company such duties and taxes if so required by the Company pursuant to these conditions. **Partwell Group Bridge Works Stanley St Blackburn BB1 3BW**