

**Terms and Conditions**

STANDARD CONDITIONS OF PURCHASE AND APPLICABLE TO ALL ORDERS AND CONTRACTS ON THE BACK OF SALES INVOICE AND DELIVERY NOTE.

**1) Definition**

- (a) The Company means Jafco Tools Ltd.
- (b) The Customer means the Company or person which or who has contracted with the Company for the purchase of goods.
- (c) The Contract means the Contract constituted by the Company's acceptance of an order.

**2) Special Terms**

Subject to any special terms to which the Company may agree in writing, every Contract constituted by the Company's acceptance of an order will be subject to these terms and conditions to the exclusion of all terms and conditions (standard or otherwise) which the Customer may seek to impose. The placing of an order will be deemed to constitute acceptance of this term.

**3) Purchase Of Goods**

- (a) Nothing in these terms or the Company's current price list shall be deemed to constitute an offer, and the Company reserves the right to refuse any order.
- (b) All orders are accepted subject to the availability of the goods concerned.
- (c) A quotation by the Company does not constitute an offer but remains open to an offer within 30 days. An offer or order to purchase goods the subject of a quotation is not deemed to be accepted without written confirmation from the Company.

**4) Prices**

- (a) List prices are subject to alteration at any time without notice and all orders are accepted on condition that they are charged at prices ruling at the date of despatch.
- (b) Contract orders at agreed firm prices must be confirmed by the Company in writing at the time the orders are accepted.
- (c) Prices are subject to the addition of Valued Added Tax at the rates in force at the date of supply.
- (d) Jafco Tools Ltd may at any time require the Purchaser to make payment in advance of delivery.

**5) Payment**

- (a) Payment for goods is due no later than the end of the month following the date of invoice. After that date the invoice will be overdue.
- (b) Without prejudice to any other rights of the Company interest will be charged at the rate of 21/2% per month from the due date on accounts which remain unpaid 30 days after the date they bear, and interest will continue to accrue after judgement in any court at the higher of this rate or the rate specified by the court.
- (c) The Company shall not be entitled to withhold payment of any sums due to the Company by reason of any dispute relating to any goods or deliveries.
- (d) If the Customer fails to make payment by the due date, then without prejudice to any other rights of the Company: -
  - (i) the Company shall be entitled to suspend all deliveries under the Contract with the Customer, and in such event the Customer shall not be released from its obligations to the Company, under the Contract or any other Contract.
  - (ii) the Company shall also be entitled to treat the Contract and/or any other Contract with the Customer as having been terminated by the Customer and to claim damages for breach of Contract.
- (e) Jafco Tools Ltd shall not be bound by any oral quotation given, unless confirmed in writing. Goods will be invoiced at the price ruling at the date of despatch and a carriage contribution may be payable based on rates then applicable Jafco Tools Ltd reserves the right to vary prices without notice. Discounts do not apply unless by arrangement with Jafco Tools Ltd.

**6) Delivery Dates**

- (a) Any dates quoted for the manufacture or delivery of goods are intended to be estimates only, but the Company will use reasonable efforts to deliver on dates promised. In no event shall time be of the essence of the Contract as regards delivery and the Customer shall not be entitled to refuse to accept goods because of late delivery.
- (b) So long as any circumstances whatsoever beyond the Company's control prevent or delay manufacture or delivery, the Company shall not be bound to manufacture or make delivery of any goods which it may have contracted to manufacture, sell or supply.
- (c) The Company shall not be liable in any matter whatsoever for failure or delay in manufacture or delivery howsoever such a failure or delay shall have been caused and provided that the Company shall have made reasonable efforts to deliver the goods ordered.
- (d) The Company shall have the option to effect delivery by instalments and to issue a separate invoice in respect of each instalment.

**7) Delivery and Carriage**

Delivery shall be deemed to have taken place: -

- (a) In the case of carriage arranged by the Company by its own transport or otherwise, when goods are taken from the vehicle at the delivery point in the United Kingdom specified in writing by the Customer and agreed by the Company prior to despatch.
- (b) In the case of carriage arranged by the Customer by its own transport or otherwise when the goods are loaded onto the vehicle used.
- (c) Requests for deliveries to contract sites will be facilitated as much as possible with the co-operation of our carriers. Please ensure that there is assistance available off-loading. Information on date of delivery is given in good faith. Jafco Tools Ltd cannot accept responsibility for delays in delivery however caused.
- (d) If goods are damaged in transit the carriers note must be endorsed accordingly and Jafco Tools Ltd notified of the damage within 7 days. Failure to notify will invalidate any claim.

**8) Risk**

- (a) The risk in the goods will pass to the Customer upon delivery.
- (b) The Customer shall inspect goods immediately and shall within 3 days of delivery, time being of the essence, give notice in writing to the Company and to the carrier of any claims on account of damage or total or partial loss of goods in transit. The Customer will be deemed to have inspected and accepted goods as satisfactory.
- (c) Notice on non-delivery must be given in writing by the Customer within 7 days of the date of invoice otherwise claims will not be accepted.
- (d) If the Customer shall fail to make such notification (whether by reason of its failure to carry out an inspection of the goods in sufficient time or for any other reason) the Company shall be under no liability whatsoever in respect of any loss of or damage to the goods howsoever occurring after they were handed to the carrier and the Customer shall remain liable to pay the full price for goods so lost or damaged.

**9) Retention of Title**

- (a) Full legal and beneficial title and ownership of the goods shall pass to the Customer once the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
  - (i) the contract; and
  - (ii) all other sums which are or which become due to the Company from the Customer under any other contract or account.
- (b) Until title and ownership of the Goods has passed to the Customer, the Customer shall:
  - (i) hold the goods on a fiduciary basis as the Company's bailee.

- (ii) store the goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the property of the Company.
- (iii) not destroy, deface or obscure any identifying mark or packaging on or relating to the goods; and
- (iv) maintain the goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of Company. On request the Customer shall produce the policy of insurance to Company; and
- (v) hold any proceeds of sale of the goods on behalf of the Company in such a way that they are kept in a separate account and remain readily identifiable as being held on trust for the Company.
- (c) The Customers right to possession of the goods shall terminate immediately if title and ownership of the goods has not already passed in accordance with condition 9 (a) and:
  - (i) the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation of the Customer; or
  - (ii) the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under any contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the insolvency Act 1986 or the Customer ceases to trade; or
  - (iii) the Customer encumbers or in any way charges any of the goods.
- (d) The Company shall be entitled to recover payment for the goods notwithstanding that legal and beneficial ownership and title of any goods has not passed from the Company.
- (e) The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

#### **10) Insolvency**

Upon the happening of any of the following events: -

- (a)(i) any default in paying any sum under any contract with the Company as and when it becomes due, or
- (ii) shall have distress or execution levied on any of its goods or property, or
- (iii) make or offer to make any arrangements or composition with creditors, or
- (iv) shall make any voluntary arrangement approved by the court.
- (b) If the Customer being a limited company, any resolution or petition to wind up the Customer (other than for the purpose of reconstruction or amalgamation without insolvency) shall be passed or presented, or if a Receiver shall be appointed over the whole or any part of the Customers business, or
- (c) the Customer shall commit any act of bankruptcy or have a petition presented against him; all sums owing by the Customer to the Company shall become immediately due and for the time being and the Company shall have the right forthwith to suspend all further manufacturing or other work carried out for the Customer and to withhold all further deliveries of goods or to determine any contract when subsisting between the Company and the Customer. Such determination shall give rise to no liability whatsoever on the Company's part but shall be without prejudice to the Company's rights to payment in respect of manufacturing or other work already carried out or goods already delivered.

#### **11) Liability**

- (a) The Company's total liability to the Customer in respect of defective goods (whether arising pursuant to the Contract or to Statute or Common Law) will be limited to the replacement of the goods concerned or (at the Company's option) the making of an allowance not exceeding the price paid for them, and the Company will not in any event be liable for any labour or other charges in connection with the installation or removal of defective or replacement goods. All liability of the Company to the Customer of whatsoever kind, and from whatever cause arising, beyond the foregoing limit is hereby excluded. Notwithstanding the foregoing.
  - (i) will be under no liability to the Customer (whether pursuant to any Contract or otherwise as aforesaid) in respect of any goods sold as imperfect or under any other similar description, nor in respect of any matter relating to the improper installation of goods.
  - (ii) Any guarantee which may have been applied by the Company to any goods will apply (but subject to the foregoing limit) only to goods purchased by the Customer on normal trading conditions at list price or at any price the subject of a quotation. Nothing in this clause shall apply to the terms implied by Section 12 of the Sale of Goods Act 1979. The Company shall not be obliged to consider grounds for return of goods or claims for compensation unless the claim and the reason for it are made in writing to the Company.
- (b) The Purchaser shall determine the suitability of the products for their intended use and shall not rely upon any representations made by or on behalf of Jafco Tools Ltd. The Purchaser must satisfy themselves that the goods are fit for the purpose for which the Purchaser intends to use them save as herein stated or expressed or implied statutory or other warranties, representations, whether as to fitness or otherwise, relating to the goods supplied by Jafco Tools Ltd it is hereby excluded
- (c) the Purchaser for any loss, damage, delay, injury or any consequential or special loss or damage sustained by the customer whatsoever, howsoever caused arising directly or indirectly out of or in connection with the performance or non- performance of Jafco Tools Ltd obligation, including but without prejudice to the generality of the foregoing, loss or damage or delay caused by any faulty or unsatisfactory goods sold.

#### **12) Set Offs**

The Customer shall not be entitled to withhold payment of any sums after it has become due by reason of any right of set off or counter-claim which the Customer may have or allege or for any other reason whatsoever.

#### **13) Postponement of delivery**

In the event the Customer requests a postponement in the manufacture or delivery of goods, the Customer will be liable to pay for the goods at the price ruling at the date on which they are eventually dispatched (notwithstanding the fact that the Company may have agreed a fixed price). The Customer shall also be liable to pay to the Company on demand a charge to be laid down by the Company in respect of the storage and handling of the goods during the period of postponement and to reimburse to the Company on demand any charges incurred by the Company in effecting storage with a third party. If the Customer does not specify a date for delivery of it when a specified date is reached the Customer then asks the Company to delay delivery of the goods, without fixing a date for delivery, the company shall not be bound to deliver the goods, and may treat such requests as breach of Contract.

#### **14) Returns**

The Company will not accept the return of any goods, unless such return has received prior approval. Subject to the foregoing, goods which are returned for credit owing to error on the part of the Customer (including returns arising from duplication of orders owing to failure of the Customer to mark orders as such) will be credited at 80% of the original price provided that the goods are in perfect condition; if they are not in perfect condition (as to which matter the Company will be the sole judge) they will be credited at their scrap value. Jafco Tools require notification of the error or fault within 10 working days to receipt.

#### **15) Catalogues**

ETC All drawings, illustrations, descriptions and specifications in the Company's catalogues, price lists and other advertising material are intended to give no more than a general idea of the goods manufactured by the Company and such information is not intended to be and shall not be relied upon as giving a precise description of any goods nor as being representation as to any matter contained therein, nor shall any of it form part of any Contract with the Customer.

#### **16) Debt Collection**

In the event that the Company shall employ a professional Debt Collection Agency or Solicitor to collect any monies due to the Company (whether or not a demand therefore shall have previously been made) the full costs incurred by the Company in doing so shall be paid by the Customer to the Company and be due 30 days after the Company shall have made a written demand therefore, interest shall be payable at the rate mentioned in clause 10 on such sums as are not paid by the due date.

**17) Waiver**

No waiver by the Company (expressed or implied) of any of these conditions in any Contract made with the Company shall prevent the Company from enforcing or relying on these conditions in any subsequent Contracts made with the Customer.

**18) Law**

These Terms & Conditions and the Contract shall be governed by English Law.

**19) Exports**

From UK Where goods are exported from the United Kingdom the following provisions of this clause shall apply to the contract in substitution for the provision of clause 8 hereof. Goods for export will unless otherwise agreed be quoted ex works to a United Kingdom Company's premises selected by the Company. Where goods are exported on FOB or CIF Terms, the costs and charges incurred by the Company shall form an addition to the price of the goods payable in the same manner and at the same time. The risk in goods sold on FOB and CIF terms shall pass when they cross the ships rail at the port of loading.

**20) Copyright**

a) Where the Company manufactures goods to a design provided or specified by the Customer (not being an existing design of the Company) the Customer shall indemnify the Company against all damages, costs, claims, losses and expenses paid or incurred by the Company (including all sums paid by the Company in settlement of any claim or action) in consequence of the infringement or alleged infringement of patent, trademark, registered design, copyright or other legal rights of a third party, and

(b) For the purpose of Section 12 of the Sale Of Goods Act 1979, the Company shall be bound to transfer only such title to the goods as it may have.

**21) Indemnity**

Customer shall indemnify the Company from and against all liability loss, damage, injury cost, expenses claim and demands arising from and cause other than negligence or breach of Contract by the Company.

**22) General**

(a) Any notice to be given under these conditions may be delivered, or be sent by prepaid post, sent first class, addressed to the party to be served at its registered office for the time being or (if not a Company) the address for that party last known to the party giving notice. Notices served by post shall (except where expressly provided otherwise) be deemed served on the second business day after the date of posting. 'Business Day' shall mean a day other than a Saturday and Sunday or an English Bank or Statutory Public Holiday.

b) In the event that any of these conditions shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity or unenforceability shall in no way impair or affect any of the other conditions hereof all of which remain in full force and effect.

(c) Clause headings are for ease of reference only and do not affect construction.