

WESTFLEX LIMITED - TERMS AND CONDITIONS OF BUSINESS

1 Definitions

"Acknowledgement of Order" means the Company's written acknowledgement of the Customer's order.

"The Company" means Westflex Limited (Company Number: 4137275) whose registered office is at 3 The Norwich Business Park, Whiting Road, Norwich, NR4 6DJ.

"The Customer" means the party or parties with whom the Company is contracting for the supply of Goods.

"The Goods" means all products, materials and any other equipment which the Company agrees to supply to the Customer and where relevant includes any work carried out on the Goods or on behalf of the Customer.

"The Order" means an offer in accordance with these Terms and Conditions to purchase goods from the Company, which the Company may or may not choose to accept.

"The Contract" means each legally binding contract between the Company and the Customer entered into subject to these Terms and Conditions which comes into being only by means of acceptance of the Customer's Order by way of the Company's standard Acknowledgement of Order form, such acceptance being entirely at the discretion of the Company.

"In Writing" and "Written" mean communication in a permanent written form, that is by hard-copy or fax but not E-mail.

2 Applicability

Unless otherwise expressly agreed by the Company in writing, these conditions shall apply to all contracts for the sale of Goods entered into by the Company. No employee or agent of the Company acting on his own shall have power to alter or in any way vary these conditions.

3 Orders

3.1 Any orders received by the Company in pursuance of a quotation or otherwise and whether made orally or in writing shall be deemed to be an offer to contract and no binding and valid contract shall be effected until the Company provides an Acknowledgement of

Order the terms of which shall override any other terms.

3.2 All brochures, catalogues, price lists, samples, particulars of dimensions and other advertising or descriptive material submitted to the Customer are intended to be approximate only and, unless expressly incorporated in these conditions, shall not form part of the contract with the Customer.

3.3 It is the responsibility of the Customer to ensure that the specifications contained in any Acknowledgement of Order sent by the Company to the Customer are accurate. The Company will not accept any liability to the Customer to the extent that the Goods comply with such specifications.

4 Prices

4.1 The price of the Goods is as specified on the Acknowledgement of Order sent to the Customer by the Company.

4.2 Save where expressly stated all prices quoted are in POUNDS STERLING and are exclusive of Value Added Tax.

4.3 The Company reserves the right by notice given at any time before despatch, to increase the price of the Goods ordered if there is any increase in the cost of such Goods to the Company by virtue of foreign exchange fluctuations, currency regulations, alterations of

duties or imposts, increase in the cost of raw materials, labour or transport or any other causes (whether or not of the same nature as the foregoing beyond the control of the Company. If the Customer is of the opinion that any such increase in price is unreasonable it may,

by written notice given within ten days of the date of receipt of the Company's notice, cancel the balance of this Contract not despatched to the Customer by such date.

5 Payment

5.1 Unless otherwise agreed in writing all prices are net and shall not be subject to any discount and accounts shall be due for payment no later than 30 (thirty) days from the date of the invoice.

5.2 Interest, at the rate of 4% above the base rate of HSBC Bank plc from time to time shall be due on any overdue invoiced amounts from the date of invoice until payment.

5.3 If and so long as the Customer is in arrears with any payments due, the Company may at its sole discretion suspend further deliveries under any contract with the Customer.

5.4 The Company reserves the right to recover from the Customer all direct expenses reasonably incurred by the Company in the collection of any overdue amounts.

5.5 Without prejudice to any other rights of the Company, the Company reserves the right to require payment in full before delivery or before making other Goods or carrying out any services whatsoever for the Customer.

6 Delivery

6.1 Where no specific instructions about the manner in which the Goods are to be delivered to the Customer are given the Company reserves the right in its absolute discretion to choose the means of carriage to the Customer. Where the Customer issues such instructions they must be given by the Customer at the time of the Order and where such instructions are given the Company reserves the right to charge for delivery.

6.2 Where the Company is to deliver Goods delivery will be made to the address specified in the Company's Acknowledgement of Order or as near to the place where the Customer requires delivery to be made as, in the absolute discretion of the Company, a safe, made up road permits.

6.3 Where the Customer orders a quantity of Goods some or all of which are to be delivered to the Customer on the future date(s) specified in the Contract at the request of the Customer, then for the avoidance of doubt the Customer shall be liable for the full amount of the Goods ordered and which shall be paid on the date(s) specified in the Contract. If the Customer has not requested delivery of the Goods within 1 (one) month of the date(s) specified for delivery in the Contract the Company shall be entitled to invoice for the Goods ordered but not so delivered together with a charge for storage of the Goods from the date(s) as specified for delivery until accepted by the Customer.

6.4 In the case of delivery by instalments, the Company reserves the right to cease delivery of further instalments and/or terminate the Contract in the event that the Customer fails to pay any outstanding invoices for Goods delivered and/or storage charges.

6.5 Delivery dates specified in writing or verbally are approximate only and shall not be of the essence. The Company shall use all reasonable endeavours to perform its obligations and deliver within the time specified but such times are estimates only. The Company shall not be liable for any expenses, losses or damages (including, for the avoidance of doubt, consequential loss, economic loss or loss of profit) caused by late performance or delay in delivery and this shall not entitle the Customer to rescind the Contract.

7 Force Majeure and Performance.

The Company shall be under no liability if it is unable to carry out the Contract for any reason beyond its control including without prejudice to the generality of the foregoing, Act of God, fire, inclement or exceptional weather conditions, official or unofficial industrial action, hostilities, shortage of labour, materials, power or other supplies, governmental order or intervention or any other cause whatsoever beyond the Company's control or of an unexpected or exceptional nature.

8 Termination of Contract

The Company shall be entitled without prejudice to its other rights and remedies either to terminate wholly or in part any Contract with the Customer or to suspend any further deliveries and recover all expenses, losses and damages incurred by the Company on the

occurrence of any of the following events:-

8.1 If any debt is due and payable by the Customer to the Company but remains unpaid;

8.2 If the Customer has failed to take delivery of any Goods under any contract between the Customer and the Company otherwise than in accordance with the Customer's contractual rights;

8.3 If the Customer has failed to provide a payment on account or other security of whatsoever kind required by any contract between the Company and the Customer;

8.4 If the Customer has a bankruptcy petition presented against him or a bankruptcy order is made, if a petition is presented or an order is made or a resolution is passed for the winding up of the Customer, if a petition is presented or an order is made for the Customer to be placed in administration, if a receiver or an administrative receiver is appointed over any of the Customer's assets, if the Customer enters into any composition or arrangement with its creditors or if any of the Customer's property is taken in execution of process of law; or

8.5 If the Customer is in breach of any terms and conditions of any contract with the Company (including these conditions) and shall fail to remedy the same within 14 (fourteen) days of notice specifying the breach and requiring remedy.

9 Title to Goods

9.1 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions the title in the Goods shall remain with the Company until such time as the Company has received in cash or by way of cleared funds all sums owing to it in respect of

such Goods and all other Goods agreed to be sold by the Company to the Customer for which payment is then due and shall hold the Goods in a separate and identifiable form as bailee and in a fiduciary capacity.

9.2 Until such time as the Customer shall have paid to the Company all sums owing to it as aforesaid the title to the proceeds of sale of such Goods and any items purchased with the said proceeds of sale shall be vested solely in the Company.

9.3 If payment in full remains outstanding after the date payment is required hereunder then the Company or its agents or representatives shall be entitled to enter on to the Customer's premises if necessary in order to effect recovery and/or sale of the Goods. The Company will account to the Customer for the balance of any proceeds of sale after payment of the sums owing to the Company and after payment of a sum representing the cost to the Company of enforcing its rights hereunder.

9.4 If the Goods delivered hereunder shall become part of or mixed with either goods belonging to the Customer or goods produced by the Customer then the Company's rights declared in 9.1 to 9.3 hereof shall apply to those goods referred to in this sub-clause.

9.5 All materials used and products made but not delivered to the Customer by the Company and all designs, patterns, photography or inventions created in the course of discharge by the Company of the Customer's instructions or otherwise (subject to 18) hereof shall together with any copyright patent, trademarks, industrial design or intellectual property rights therein belong to the Company notwithstanding 9.1 to 9.4 hereof.

10 Responsibility for Contract Goods

The Customer shall be responsible for the safe care of Goods delivered hereunder upon delivery and is advised to insure the same from the time of the delivery accordingly. The Company accepts no responsibility for the same from the time of delivery.

11 Return of Goods

Any claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified to the Company in writing within 3 (three) days from the

date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Customer does not notify the Company accordingly, the Customer shall not

be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

12 Alterations, Defects, Loss and Damage

The Company agrees to repair or (at its discretion) replace or (at its discretion) issue a credit note in respect of Goods which are found to be defective within 7 (seven) days of delivery provided that:-

12.1 notice in writing of the defect complained of shall be given to the Company upon its appearance; and

12.2 such defect shall be found to the Company's reasonable satisfaction to have arisen from the Company's faulty design, workmanship or material; and

12.3 the defective Goods shall be returned to the Company's factory if so requested by the Company.

PROVIDED FURTHER that slight or minor deviations in the quality of the Goods or their quantity, shade, design, finish, size and packing shall not entitle the Customer to claim damages or to rescind the contract or to refuse to accept delivery of Goods.

13 Without prejudice to the above, the Company shall not in any case be liable for indirect, consequential or economic loss or damage or loss of profit arising from the performance, non-performance or defective performance of any contract by the Company.

14 To the extent allowed by law, the Company's liability under these conditions shall be to the exclusion of all other liability to the Customer whether contractual, tortious or otherwise for defects in the Goods or for any loss or damage to or caused by the Goods, and all other

conditions, warranties, stipulations or other statements whatsoever concerning the Goods, whether express or implied by statute, at common law or otherwise are hereby excluded. In particular (but without limitation to the foregoing) the Company gives no warranty regarding the fitness for purpose, performance, use, nature or, satisfactory quality of the Goods, whether express or implied by statute, by common law or otherwise.

15 Without prejudice to the above the Company shall not be liable for any loss or damage occurring to originals, transparencies or other articles belonging to the Customer whilst in the possession of the Company, or in transit, (unless such loss or damage is attributable wholly to the negligence of the Company or its employees).

16 If any exclusion or limitation or other clause in these conditions is found to be invalid, unlawful or unenforceable such part shall be severed from the remainder of these conditions which shall continue to be valid, lawful and enforceable to the fullest extent permitted by law.

17 Export

17.1 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 16 shall (subject to any special terms agreed in writing between the Customer and the Company) apply notwithstanding any other provision of these Conditions.

17.2 The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.

17.3 Unless otherwise agreed in Writing between the Customer and the Company the Goods shall be delivered to the air or sea port of shipment and the Company shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

18 Indemnity

18.1 It is the responsibility of the Customer to ensure that the Goods (and any specifications supplied by the Customer) comply with all statutes, legislation, regulations and rules, including without prejudice to the foregoing any rules issued from time to time by the Advertising

Standards Authority and do not infringe any third party's property or other rights and the Customer agrees to indemnify the Company against all costs, claims, expenses and liabilities incurred by the Company as a result of the failure of the Customer to comply with such responsibility.

18.2 The Company shall not be required to supply or provide any Goods which may be in breach of any such statutes, regulations, legislation or rules or infringe any third party's property or other right and, if the Company, at its absolute discretion, declines to carry out or complete any contract on such grounds, the Company shall not be liable to the Customer for any damage or consequential loss suffered by the Customer.

19 If any property of the Customer is used in connection with the Goods (including without prejudice to the above, any proofs provided by the Customer to the Company) such property will be supplied at the Customer's risk and the Customer shall indemnify the Company for any loss or claim suffered by the Company as a result of using such property.

20 The Customer shall indemnify the Company against all losses, damages, costs, claims and expenses the Company may incur in consequence of the Goods being involved in a claim under the Consumer Protection Act 1987 except to the extent that the alleged defect in the product was directly caused by an act or omission of the Company.

21 Mediation

Before resorting to arbitration pursuant to clause 22 the parties shall attempt to settle by negotiations between them in good faith all disputes or differences which arise between them out of or in connection with this Agreement. The parties further agree that (provided both parties consider that such negotiations would be assisted thereby), they will appoint a mediator by mutual agreement, or failing mutual agreement) will apply to the president of the London Chamber of Commerce for the time being to appoint a mediator, to assist them in such negotiations. Both parties agree to co-operate fully with such mediator, provide such

assistance as is necessary to enable the mediator to discharge his duties, and to bear equally between them the fees and expenses of the mediator.

22 Arbitration

Any dispute arising under or in connection with these Conditions or the sale of the Goods shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the chairman of the Chartered Institute of Arbitrators for the time being, such arbitrator to have all the powers conferred on arbitrators by the Arbitration Act 1996.

23 Third Party Rights

These Conditions do not confer upon any third party any rights which would otherwise exist under the Contracts (Rights of Third Parties) Act 1999 and as such the provisions of that Act are excluded from these Conditions but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

24 Jurisdiction

All Contracts to which these conditions apply shall in all respects be governed by and construed in accordance with the Laws of England and Wales and be subject to the sole jurisdiction of the English courts.