

STANDARD TERMS AND CONDITIONS FOR THE SALE OF GOODS & SERVICES

1 INTERPRETATION

1.1 In these terms and conditions the following words have the following meanings:

“**Buyer**” the person(s) or company whose order for the Goods/Services is accepted by the Company.

“**Delivery Point**” the place where delivery of the Goods is to take place under **condition 4**.

“**Goods**” any goods which the Company is to supply to the Buyer (including any of them or any part of them).

“**Company**” Plumtree Group Limited or any of its subsidiaries, affiliates or associates.

“**Contract**” any contract between the Company and the Buyer for the sale and purchase of Goods and supply of services.

“**Services**” any services which the Company is to supply to the Buyer.

2 FORMATION AND INCORPORATION

2.1 Subject to any variation under **condition 2.4**, the Contract will be on these terms and conditions set out below to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order or similar document).

2.2 Each order for Goods/Services by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase Goods subject to these terms and conditions.

2.3 No terms or conditions endorsed upon, delivered with or contained in the Buyer’s purchase order, specification or similar document will form part of this Contract simply as a result of a reference to such document being referred to in this Contract.

2.4 Any variation to these terms and conditions and any representations about the Goods/Services shall have no effect unless expressly agreed in writing.

2.5 Acceptance of delivery of the Goods/Services shall be deemed to be conclusive evidence of the Buyer’s acceptance of these terms and conditions.

2.6 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.

2.7 Any quotation is valid for a period of 30 days only from its date provided the Company has not previously withdrawn it.

3 DESCRIPTION

3.1 All drawings, descriptive matter, specifications and advertising issued by the Company are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of the Contract.

3.2 The Company may make any changes to the specification, design, materials or finishes of the Goods which are required to conform with any applicable safety or other statutory requirements.

4 DELIVERY

4.1 Delivery of the Goods shall be made ex-works (Incoterms 2000).

4.2 The Buyer will take delivery of the Goods within 7 days of the Company giving it notice that the Goods are ready for delivery.

4.3 Delivery of the Goods shall be accepted at any time of day.

4.4 Any dates specified by the Company for delivery of the Goods are approximate only and may not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.

4.5 Subject to the other provisions of these terms and conditions the Company will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company’s negligence) nor unless such delay exceeds 180 days will any delay entitle the Buyer to terminate or rescind the Contract.

4.6 The Buyer must accept delivery of the Goods and pay for them in full unless the delay in delivery exceeds 60 days.

4.7 If the buyer fails to take delivery of any of the Goods when they are ready for delivery or to provide any instructions, documents, licences or authorisations required to enable the Goods to be delivered on time (except because of the Company’s fault) the Company may:

4.7.1 Store or arrange for the storage of the Goods until actual delivery or sale and charge the Buyer for all related costs and expenses (including, without limitation, storage and insurance); and/or

4.7.2 Following written notice to the Buyer, sell any of the Goods at the best price reasonably obtainable in the circumstances and charge the Buyer for any shortfall below the price under the Contract.

5 NON-DELIVERY

5.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company’s place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

5.2 The Company shall not be liable for any late/non-delivery of Goods/Services even if caused by the Company’s negligence.

5.3 Any liability of the Company for the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

6 FORCE MAJEURE

6.1 The Company shall not be liable to the Buyer in any manner or be deemed to be in breach of this Contract (subject to **condition 11**) because of any delay in performing or a failure to perform any of the Company’s obligations under this Contract if the delay or failure was due to any cause beyond the Company’s reasonable control.

6.2 Without prejudice to the generality of **condition 6.1** the following shall be included as causes beyond the Company’s reasonable control:

6.2.1 Governmental actions, war or threat of war, national emergency, riot, civil disturbance, sabotage or requisition;

6.2.2 Act of God, fire, explosion, flood, epidemic or accident;

6.2.3 Import or export regulations or embargoes;

6.2.4 Labour disputes not including disputes involving the Company’s work-force; or

6.2.5 Inability to obtain or delay in obtaining supplies of adequate or suitable material, fuel, parts, machinery or labour.

7 RISK/OWNERSHIP

7.1 Risk of damage to or loss of Goods shall pass to the Buyer upon delivery.

7.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

7.2.1 The Goods/Services; and

7.2.2 All other sums which are or which become due to the Company from the Buyer on any account.

7.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:

7.3.1 Hold the Goods on trust as the Company’s bailee;

7.3.2 Store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company’s property;

7.3.3 Not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;

7.3.4 Maintain the Goods in satisfactory condition insured on the Company’s behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company; and

7.3.5 Hold the proceedings of the insurance referred to in condition 7.3.4 on trust for the Company and not mix them with any other money, not pay the proceeds into an overdrawn bank account.

7.4 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

7.5 The Buyer 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 Buyer’s right to possession has terminated, to recover them.

8 PRICE

8.1 The price for the Goods/Services shall be the price as provided in the quotation.

8.2 The price for the Goods/Services is inclusive of any value added tax which the Buyer shall pay in addition when it is due to pay for the Goods/Services.

8.3 The price for the Goods is given on an ex-works basis and where the Delivery Point is other than at the Company’s premises the Buyer shall pay the Company’s charges for transport, packaging, loading, unloading and insurance in addition when it is due to pay for the Goods.

9 PAYMENT

9.1 Payment will be made by the Buyer at the time of delivery of Goods (whether full or part) except for approved credit accounts when payment is due within 30 days from the date of invoice.

9.2 Time for payment shall be of the essence.

9.3 No payment shall be deemed to have been received until the Company has received cleared funds.

9.4 All payments payable to the Company under this Contract shall become due immediately upon termination of this Contract despite any other provision.

9.5 The Buyer shall make all payments due under this Contract without any deduction whether by way of set-off, counterclaim or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

9.6 If the Buyer fails to make any payment under this Contract on the due date then (without prejudice to its other rights and remedies) the Company may charge the Buyer interest (both before and after judgment) on the amount unpaid at the annual rate of 2% above Barclay’s Bank Plc base rate from time to time until payment is made in full (a part of a month being treated as a full month for the purpose of calculating interest).

10 QUALITY

10.1 The Company warrants that (subject to the other provisions of these terms and conditions) upon delivery of the Goods will, and for such period as provided by the manufacturer of Goods, be of satisfactory quality within the meaning of the Sale of Goods Act 1994.

10.2 The Company shall not be liable for a breach of the warranty in **condition 10.1** if:

10.2.1 The defect arises because the Buyer 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; or

10.2.2 The Buyer alters or repairs such Goods without the written consent of the Company; or

10.2.3 The defect in such Goods arises from any design defect in any drawing, design or specification supplied or approved by the Buyer.

10.2.4 The Buyer does not inform the Company about any defects within 21 days of delivery of Goods.

10.3 If the Buyer makes a valid claim against the Company based on a defect in the quality of the Goods, the Company in consultation with the manufacturer of Goods shall at its sole option repair or replace such Goods (or the defective part) or refund the price of such Goods.

10.4 If the Company complies with **condition 10.3** it shall have no further liability for a breach of the warranty in this clause in respect of the quality such Goods.

10.5 Any Goods replaced will belong to the Company and any repaired or replacement Goods will be guaranteed on these terms and conditions for the unexpired portion of the warranty period provided by the manufacturer of Goods.

11 LIMITATION OF LIABILITY

11.1 The following provisions and the provisions of **condition 10** set out the entire liability of the Company (including liability for the acts or omissions of its employees, agents and subcontractors) to the Buyer in respect of:

11.1.1 Any breach of these terms and conditions; and

11.1.2 Any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

11.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are excluded from the Contract.

11.3 Nothing in these terms and conditions excludes or limits the liability of the Company for death or personal injury caused by the Company’s negligence or fraudulent misrepresentation.

11.3 Subject to **conditions 11.2 and 0**:

11.3.1 The Company’s total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to contract price; and

11.3.2 The Company shall not be liable to the Buyer by reason of any representation or any implied warranty, condition or other term or any duty at law or under the express terms of this Contract for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (whether or not caused by the negligence of the Company, its employees, agents or sub-contractors) which arise out of or in connection with the Contract.

12 TERMINATION

12.1 In the event the Buyer wishes to cancel the order the Buyer must immediately notify the Company in writing. The date of cancellation will be the date that written notification is received.

12.2 The Contract will terminate immediately upon a bankruptcy order made against the Buyer or a resolution is passed or a petition presented to any court for the winding-up of the Buyer.

12.3 The termination of the Contract howsoever arising shall be without prejudice to the rights and duties of either the Buyer or the Company accrued prior to termination.

13 GENERAL

13.1 Each right or remedy of the Company under this Contract is without prejudice to any other right or remedy of the Company whether under this Contract or not.

13.2 Any provision of this Contract which is held by any competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or in part) shall to the extent of such invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the other provisions of this Contract and the remainder of such provisions shall not be affected.

13.3 Failure by the Company to enforce or partially enforce any provision of this Contract will not be construed as a waiver of any rights under this Contract.

13.4 The Company may assign, license or sub-contract all or any part of its rights or obligations under this Contract without the Buyer’s consent.

13.5 This Contract is personal to the Buyer who may not assign, license or sub-contract all or any of its rights or obligations under this Contract without the Company’s prior written consent.

13.6 The formation, construction, performance, validity and all aspects of this Contract are governed by English law and the parties submit to the exclusive jurisdiction of the English Courts.