

## Terms and Conditions of Sale

### 1. Definitions

- 'Buyer'** means the person who is the purchaser of services and/or goods from the Company in accordance with the Conditions
- 'Conditions'** means these terms and conditions including future variations thereof
- 'the Company'** means Thomas Swan & Co. Ltd.
- 'Special Conditions'** means any additions or modifications to the Conditions agreed in writing by a director of the Company.

### 2. General

- a. Unless expressly agreed in writing, and signed by a director of the Company, all orders for goods and services are accepted only upon the terms of these Conditions, together with any Special Conditions and supplementary conditions attached. No conditions which the Buyer may in any way (whether by order, letter or otherwise howsoever) seek to impose or introduce shall be of any effect whatsoever.
- b. These Conditions supersede all prior representations or arrangements, and contain the entire agreement between the Company and the Buyer in connection with the goods or services (unless otherwise stated on the Company's order acknowledgement). The Company's order acknowledgement means any document issued by the Company indicating the terms on which products or services are supplied.
- c. Subject to the provisions of these Conditions, terms defined in the 2000 edition of Incoterms shall have the same meaning when used in these Conditions.

### 3. Delivery

- a. Any times quoted for dispatch or delivery are estimates only and are given in good faith, but are not guaranteed. In any event, the time for delivery shall be extended by a reasonable time if the Company is delayed by industrial dispute or any cause beyond its reasonable control.
- b. Delivery shall be made to the place and by the method specified on Company's order acknowledgment. The Buyer is responsible for off-loading.
- c. Packaging is included in the price and is not returnable unless otherwise stated on Company's order acknowledgement.
- d. Each delivery shall be treated as a separate contract and partial deliveries shall be permitted. Accordingly, failure to make any particular delivery, or any breach of contract in relation thereto, shall not affect any remaining deliveries.
- e. The Buyer shall take delivery of the products or services by any date quoted by the Company or requested by the Buyer or (if none) within a reasonable time. The Buyer shall be responsible for all storage and other costs relating to the Buyer's failure to comply with the contract.
- f. The Company undertakes to obtain any UK licence(s) required for the export of the products and services from the UK by the Company. The Buyer undertakes to comply with any such licence(s) and to obtain and comply with all other necessary licences, permits and consents.

### 4. Price and Payment

- a. Unless otherwise stated on Company's order acknowledgement, prices are 'ex-works' and exclusive of VAT and all other duties, fees and taxes.
- b. Payment shall be made in the currency stated on the Company's invoice by the 20<sup>th</sup> day of the month following delivery of the products or services, unless otherwise stated on the Company's order requirements.
- c. Time of payment is of the essence of the contract. The Company may, at its sole discretion and without prejudice to any other remedy, charge interest at 5% per annum above HSBC plc's base rate for the time being (to accrue from day to day) on any sum owed to the Company under the contract which is not paid on the date specified in Clause 3b until the date of actual payment. The Buyer may not withhold payment or make any set off on any account.
- d. In the circumstances described in Clause 7d, all unpaid balances owing from the Buyer to the Company shall become a debt immediately due and payable to the Company irrespective of whether property in the products or services has passed to Buyer.

### 5. Seller's Warranty

- a. The Company warrants that the products or services are sold with good title and comply with the Company's current product data sheets.
- b. The Company does not warrant that the product or services are fit for any particular purpose or use by the Buyer and it is for the Buyer to satisfy itself that the products and services are so fit.
- c. The Buyer shall inspect the products or services as soon as practicable after delivery. The Buyer shall notify the

Company of any non-compliance with the contract within 30 days of receipt and upon expiration of that time, such right shall lapse. When delivery is made by carrier on the Company's behalf, or when products or services fail to comply with the Company's warranty, the Buyer shall give the Company reasonable opportunity to correct such failure. If the Company fails to correct such failure, the Company shall, at the Buyer's option, refund the invoiced value of the products or services, or replace the products or services, free of charge. Products which are alleged not to comply with the contract shall be preserved as far as possible for inspection by the Company.

- d. Notwithstanding Clause 5c, complaints concerning damaged containers shall be notified within 24 hours of receipt.

### 6. Force Majeure

- a. The Company shall not be liable for any failure to comply with the contract through circumstances over which the Company has no reasonable control.
- b. The Company may suspend or terminate its obligations under the contract if the Company's ability to manufacture, supply, deliver or acquire materials by the Company's normal means is materially impaired.

### 7. Risk and Title

- a. Risk in the products or services shall pass to the Buyer upon delivery.
- b. The Company shall retain ownership of the products and services in a fiduciary capacity as Buyer's bailee even after the Buyer has mixed them or processed them into other products until all monies owing to the Company are paid in full. In the event that the Buyer sells the products or services to a third party, the Buyer shall hold the proceeds of sale as the Company's trustee to the extent of the Company's interest therein.
- c. Until ownership of the products or services passes to the Buyer, the Buyer shall insure them at full replacement value. The Company shall be entitled to require the Buyer to redeliver (at the Buyer's cost) upon demand any products or services in the Buyer's possession in respect of which payment in full has not been made, or, at the Company's sole option to enter unimpeded the Buyer's premises to recover any such products or services without prejudice to the Company's other remedies.
- d. If the Buyer becomes insolvent or the subject of receivership or the Company has any other just cause for believing that the Buyer will not pay for the products or services on the due date, and so notifies the Buyer, the Company shall have the right to terminate the contract.

### 8. Limitation of Liability

- a. In no circumstances whatever shall the Company be liable (in contract, tort or otherwise) for any indirect or consequential losses (including goodwill, business or expected savings) loss of profits or any third party claims in connection with the products or services.
- b. The Company's total aggregate liability in connection with the products or services of the contract is limited to the net ex-works invoiced value of the delivery from which loss or damage arises.
- c. No action may be brought against the Company in connection with the products or services of the contract unless proceedings are issued within two years of the Company's invoice date.

### 9. Miscellaneous

- a. No failure by the Company to enforce any provision of this contract shall be construed as a waiver or release of its rights.
- b. If any provision of the contract is found to be invalid or unenforceable, it shall be deemed to have the maximum effect permitted by law, or if not shall be deemed deleted and shall not affect the enforceability of the Conditions as a whole.

### 10. Governing Law Jurisdiction

This contract shall in all aspects be construed and operate as an English contract in conformity with English Law. The Buyer agrees that the English courts shall have sole jurisdiction to decide any matters under this contract. The Company, at its sole option, may bring claims under any competent jurisdiction.