

# Conditions for the Supply of Goods and Associated Services by Ervin Amasteel

## 1.

(a) In these conditions, “the Company” means Ervin Amasteel and “the Customer” means the individual, firm, company or other party with whom the Company contracts “Supply” includes (but is not limited to) any supply under a contract of sale “International Supply Contract” means such a contract as is described in Section 26(3) of the Unfair Contract Terms Act 1977.

(b) No order in pursuance of any quotation or otherwise shall be binding on the Company unless and until such order is accepted by the Company. Any contract made between the Company and the Customer (herein called “the Contract”) shall be subject to these conditions and save as after mentioned no representative or agent of the Company has authority to agree any terms or make any representations inconsistent with them or to enter into any contract except on the basis of them, any such term representation or contract will bind the Company only if in writing and signed by a director.

(c) Unless otherwise agreed in writing by the Company, these conditions shall override any terms and conditions stipulated or referred to by the Customer in his order or pre-contract negotiations.

(d) Any description contained in the Company’s catalogues, samples, price lists or other advertising material is intended merely to present a general picture of the Company’s products and shall not form a representation or be part of the Contract.

(e) In the event that the Company has not given a written acknowledgement of the Customer’s order these conditions, provided the Customer shall have had prior notice of them, shall nonetheless apply to the Contract

(f) The Company reserves the right to correct any clerical or typographical errors made by its employees at any time.

## 2.

Where goods are made to the Customer’s specification, instructions or design, the Customer undertakes full responsibility for the suitability and accuracy of the specification, instructions or design and undertakes to indemnify the Company against any infringement of any patent, registered design, trade mark, trade name or copyright and any loss, damage or expense which it may incur by reason of such infringement in any country.

## 3.

(a) Subject to any agreement to the contrary the Company’s quotations are provisional and may be altered to take account of any changes taking place between the date of quotation and the Company’s acceptance of the Customer’s order in the price of raw materials, rates of wages and other costs of production or in the Customers specification, instructions or design or in the event that the Customer orders part only of the quantity referred to in any quotation.

(b) The Company shall be entitled to increase its prices at any time to take account of any increase in the cost to the Company of purchasing any goods or materials or manufacturing working on or supplying any goods (including any such increase arising from any error or inadequacy in any specification, instructions or design provided by the Customer or any modification carried out by the Company at the Customer’s request) and such increased prices ruling at the date of despatch by the Company shall be substituted for the previous Contract price. All prices quoted are exclusive of VAT and the Customer shall pay any and all taxes, duties and other government charges payable in respect of the goods.

## 4.

(a) Unless otherwise agreed in writing by the Company

(i) the Customer shall take delivery of the goods or any instalment thereof at the Company's premises within 14 days after receiving notification from the Company that such goods are ready and

(ii) if the Company agrees to deliver goods elsewhere the Customer shall when so required by the Company forthwith give to the Company all necessary instructions; the company shall be entitled to add to the Contract price a reasonable charge for packaging and delivery and off-loading shall be at the Customer's risk and expense.

(b) If the contract is an international supply contract it shall be deemed to incorporate Incoterms (1980 Edition) save that in the event of any inconsistency between Incoterms and any express term of the Contract the latter shall prevail. In the case of goods to be sent by sea the Company shall be under no obligation to give the Customer the notice specified in section 32(3) of the Sale of Goods Act 1979.

(c) The risk in goods which the Company agrees to supply shall, where the goods are to be shipped abroad, pass to the Customer on shipment or (in the case of F.A.S contracts) on delivery alongside the ship and subject thereto, or to any agreement in writing by the Company, shall pass to the Customer on the relevant date as defined in sub-paragraph 5(a) hereof or the date (if earlier) on which the goods being ready for delivery, delivery is postponed at the Customer's request. All other goods shall be at the Customer's sole risk at all times and the Company shall not be liable for any loss of or damage sustained by any goods left with the Company howsoever caused and whether or not attributable to negligence on the part of the company or negligence or wilful default on the part of any servant or agent of the Company.

(d) Should the Company be delayed in or prevented from making delivery of the goods due to war, governmental or parliamentary restrictions, strike, lock-outs, fire, floods, explosions, labour disturbances, trade disputes, damage to or destruction of goods, breakdown of machinery, shortages of labour or of raw materials or Act of God or due to any other cause whatsoever beyond the reasonable control of the Company the Company shall be at liberty to cancel, suspend or where possible part perform the order placed by the Customer without incurring any liability for any loss or damage arising therefrom. In the event that part performance is possible then the Customer shall pay for the part delivered the same proportion of the price as the part delivered bears to the whole of the goods agreed to be sold without prejudice to the Customer's liability to accept delivery of the remainder, where the Company has not cancelled the Order, of the goods as and when the Company is in a position to deliver the same or any further part thereof.

(e) While the Company will endeavour to deliver the goods by any date or within any period agreed upon such dates and periods are estimates only given in good faith and the Company will not be liable for any failure to deliver by such a date or within such a period. Moreover, the Company shall be entitled to defer delivery until any monies due from the Customer have been received.

## 5.

(a) For the purposes of this paragraph the goods shall mean the whole or any instalment of the goods which the Company has agreed to supply or to which the Company has agreed to carry out work and the relevant date shall be the date on which (i) the Customer takes delivery of the goods at the Company's premises or (ii) the Company despatches the goods or (iii) the Customer defaults in its obligations under sub-paragraph 4(a) hereof whichever shall first occur.

(b) Unless otherwise specified in writing by the Company payment shall be made by the Customer net cash not later than 30 days after the relevant date. Time for payment shall be of the essence of the Contract. Without prejudice to any other rights of the Company interest will be payable on all overdue accounts at Barclays Bank PLC base rate plus 4% and for the purposes of paragraphs 6 and 8 hereof the full purchase price of the goods shall include any interest payable hereunder.

## 6.

(a) If the Customer shall fail to make any payment when it becomes due or shall enter into any composition or any arrangement with his creditors or if being an incorporated company shall have a receiver appointed or shall pass a resolution for winding up or a Court shall make an order to that effect or if there shall be any breach by the Customer of any of the terms and conditions hereof the Company may defer or cancel any further deliveries and treat the Contract of which these conditions form part as determined but without prejudice to its right to the full purchase right for goods delivered and damages for any loss suffered in consequence of such determination.

(b) Cancellation by the Customer will only be accepted at the discretion of the Company and in any case on condition that any costs or expenses incurred by the Company up to the date of cancellation and all loss or damage resulting to the Company by reason of such cancellation will be paid by the Customer to the Company forthwith. Acceptance of such cancellation will only be binding on the Company if in writing.

(c) A charge will be made for any costs incurred by the Company due to suspension or deferment of any order by the Customer or in the event that the Customer defaults in collecting or giving instructions for the delivery of, any goods.

## 7.

(a) No claim for damage in transit, shortage of delivery or loss of goods will be entertained unless the Customer shall have given to the Company written notice of such damage shortage or loss with reasonable particulars thereof within 3 days of receipt of the goods or (in the case of total loss) of receipt of the invoice or other notification of despatch. The Company's liability, if any, shall be limited to replacing or (in its discretion) repairing such goods and it shall be a condition precedent to any such liability that the Customer shall if so requested have returned damaged goods to the Company within 14 days of such request. The Customer shall not be entitled to make any claim against the Company for consequential loss arising out of such damage shortage or loss as aforesaid.

(b) Save as otherwise provided in these conditions the Company's liability in respect of any defect in or failure of goods supplied or work done is limited to replacing or (In its discretion) repairing or paying for the repair or replacement of goods which within the guarantee period (e.g. 12 months) the Company gives to customers (specify hire period) of delivery to the Customer are found to be defective by reason of faulty or incorrect design workmanship parts or materials and in the event of any error in any weight, dimension, capacity, performance or other description which has formed a representation or is part of a contract the Company's liability in respect of any such error shall not exceed the price of the goods in respect of which the description is incorrect. Conditions precedent to the Company's liability hereunder shall be that as soon as reasonably practicable the Customer

(i) shall have given to the Company reasonable notice of the defect, failure or error

(ii) shall have either returned the goods to the Company or provided authority for the Company's servants or agents to inspect them, as the Company may request.

The Company shall have no other or further liability in respect of any direct or consequential loss or damage sustained by the Customer arising from or in connection with any such defect failure or error as aforesaid

(c) Where the Company agrees to repair or replace goods in accordance with the foregoing provisions of this paragraph any time specified for delivery under the Contract shall be extended for such period as the Company may reasonably require.

(d) Except for goods sold under an International Supply Contract all goods sold by the Company are supplied with the benefit of terms implied by Section 12 of the Sale of Goods Act 1979 Subject thereto, and whether or not the Contract is a contract of sale or an International Supply Contract, all other conditions, warranties and other terms express or implied, statutory or otherwise, are expressly excluded, save insofar as contained hereto or as otherwise expressly agreed by the Company in writing PROVIDED that if and insofar as any legislation or any order made thereunder shall make or have made it unlawful to exclude or purport to exclude from the Contract any term or shall have made unenforceable any attempt to exclude any such term, the foregoing provisions of this paragraph will not apply to any such term.

## **8.**

The following provisions shall apply to all goods which under the Contract the Company agrees to supply to the Customer. No failure by the Company to enforce strict compliance by the Customer with such provisions shall constitute a waiver thereof and no termination of the Contract shall prejudice, limit or extinguish the Company's rights under this paragraph.

(i) Upon delivery of the goods the Customer shall hold the goods solely as Bailee for the Company and the goods shall remain the property of the Company until such time as the Customer shall have paid to the Company the full purchase price thereof. Until such time the Company shall be entitled to recover the goods or any part thereof in the event of non-payment and for the purpose of exercising such rights the company its employees and agents with appropriate transport may enter upon the Customer's premises and any other location where the goods are situated.

(ii) The Customer is hereby licenced to sell on the goods and any products incorporating any of them but shall hold the whole of the proceeds of sale as trustee and agent for the Company. The Customer shall, immediately upon receipt of the proceeds of sale, remit to the Company the full purchase price of the goods less any part thereof which has already been paid.

(iii) If the Customer does not receive the proceeds of any such sale on the due date he shall within 7 days notify the Company and, if called upon to do so, assign to the Company any claim of any nature whatsoever against the person or persons to whom he has supplied the goods or any of them.

(iv) The Customer shall maintain all appropriate Insurance in respect of the goods from the date or dates on which the risk therein passes to him In the event of any loss or damage occurring while the goods remain the property of the Company the Customer shall forthwith remit to the Company the full purchase price of the goods lost or damaged less any part thereof which has already been paid and until such amount has been so remitted shall hold such amount as trustee and agent for the Company.

## **9.**

Save as hereinbefore provided and subject to (in the case of any non-International Supply Contract) the provisions of section 2(1) of the Unfair Contract Terms Act 1977 the Company shall not be liable to the Customer for any damage or for any defect or consequential loss incurred by the Customer in consequence of any negligence on the part of the Company or negligence or wilful default on the part of its servants or agents in or in connection with the supply of any goods or the design or manufacture thereof or in the carrying out or any work.

## **10.**

The proper law of all contracts with the Company shall be English law which shall govern in all respects the construction and effect of such contracts and of these conditions The Customer agrees that in the event of any dispute arising out of the Contract or the performance thereof he will submit to the jurisdiction of the English Courts.