

## 1. DEFINITIONS

In these terms and conditions, the following words shall have the following meanings:- "the Company" shall mean SMILE GB (illustration only) "the Goods" shall mean the products, articles, services or things to be supplied under the contract. "the Buyer" shall mean the corporate entity firm, person or partnership or sole trader referred to in the Company's quotation and/or acknowledgment of order.

## 2. MAKING THE CONTRACT

- 2.1 The Company's technicians are not authorised representatives and are not authorised to accept, confirm or vary any order nor to make any representation or promise on the Company's behalf.
- 2.2 The quotation which comprises an invitation to treat is open for a period of 30 (thirty) days only from the date thereof (or such other period specified in the quotation), provided that the Company has not previously withdrawn it.
- 2.3 Any order issued by the Buyer is subject to acceptance by the Company and a contract will only be formed;
  - 2.3.1 when the Company has accepted the Buyer's offer to buy in writing; or where no such written acceptance has been issued but where the Company has otherwise accepted the Buyer's offer to buy and in either case the Contract will then incorporate these Contract Conditions to the exclusion of any conditions stipulated by the Buyer.
- 2.4 Any order made by the Buyer orally must be confirmed in writing by way of prescription.
- 2.5 All orders are placed under these terms and conditions alone save only where varied by Supplementary Conditions of Supply.
- 2.6 These terms and conditions exclude any other terms and conditions inconsistent therewith which a Buyer may seek to impose even though such other terms and conditions may be submitted in a later document and/or purport to exclude or supersede any terms or conditions inconsistent with them or may be contained in any offer, acceptance or counter-offer made by the Buyer
- 2.7 No variation of these terms and conditions are permitted unless expressly accepted by an authorised representative of the Company in writing.

## 3. CANCELLATION

No cancellation by the Buyer is permitted except where expressly agreed by an authorised representative of the Company in writing and then only terms stipulated by the Company in writing

## 4. PRICE

- 4.1 All prices specified are those ruling at the date of quotation or if no quotation as per the price list
- 4.2 Unless otherwise stated all prices quoted are net, exclusive of VAT.
- 4.3 The Company reserves the right at any time prior to delivery of the Goods to adjust the price to take account of any increase in the cost of raw materials, labour, services or any currency fluctuations affecting the cost of imported materials provided always that the Company notifies the Buyer of any such adjustment in writing prior to dispatch of the Goods.

## 5. TERMS OF PAYMENT AND TERMINATION

- 5.1 All sums become due and payable under these terms and conditions not later than the end of the month following the month in which the goods were dispatched unless otherwise specified in writing.
- 5.2 Time for payment shall be of the essence.
- 5.3 The Company reserves the right to charge interest at 5% (five per cent) per annum above the Bank of England Base Lending Rate on all overdue accounts such interest being deemed to accrue on a day to day basis from the due date for payment under Clause 5.1. Furthermore the company reserves the right to charge 10% (ten per cent) on overdue accounts after 60 days.
- 5.4 The Buyer shall have no right of set off, statutory or otherwise
- 5.5 If the Buyer (being a Company) has a petition presented for its winding up or passes a resolution for voluntary winding up otherwise than for the purpose of a bona fide amalgamation or reconstruction or compounds with its creditors or has a receiver or administrative receiver appointed of all or any part of its assets or (being an individual) becomes bankrupt or insolvent or enters into any arrangement with his creditors or commits a material or serious breach of these Conditions (and in the case of such a breach being remediable fails to remedy it within 7 (seven) days of receiving notice to do so) the Company will be entitled to terminate immediately should it wish to do so.
- 5.6 The Company reserves the right at any time at its discretion to demand security for payment before continuing with or delivering any order.

## 6. DELIVERY

- 6.1 All terms quoted for delivery shall be delivered to the Buyer's address appearing in the quotation or such other address as agreed between the Company and the Buyer.
- 6.2 Time of delivery is not of the essence.
- 6.3 The Company shall not be liable for any loss whatsoever or howsoever arising caused by its non-delivery or by the failure to make Goods ready for collection on the due date.
- 6.4 The Company reserves the right to make delivery by installments and to tender a separate invoice in respect of each installment.
- 6.5 When delivery is to be made by installments or the Company exercises its right to deliver by installments under Clause 6.4 or if there be delay in the delivery of any one or more installments for whatever reason this will not entitle the Buyer to treat the Contract as repudiated or to damages.
- 6.6 Deviations in quantity of the Goods delivered from that stated in the Contract shall not give the Buyer any right to reject the Goods or to claim damages and the Buyer shall be obliged to accept and pay at the contract rate for the quantity of the Goods delivered. In the event that the Goods supplied are in excess of that stated in the Contract then the Buyer has the option to retain the Goods and to pay for those at the Contract rate or to return the excess Goods.

## 7. RISK AND PASSING OF PROPERTY

- 7.1 Risk in the Goods shall pass to the Buyer when the Goods are delivered to or sent by post or collected by the Buyer or its agent.
- 7.2 Notwithstanding risk in the Goods passing in accordance with Clause 7.1 title in the Goods shall not pass to the Buyer until whichever shall be the first to occur of the following:-
  - 7.2.1 payment being received by the Company for the Goods and no other amounts then being outstanding from the Buyer to the Company in respect of other Goods supplied by the Company.
  - 7.2.2 the Buyer selling the Goods in accordance with the provisions of these terms and conditions in which case title to the Goods shall be deemed to have passed to the Buyer immediately prior to delivery of the Goods to the Buyer's customer.
  - 7.2.3 the Company waiving its rights under this Clause 7.2 in respect of specified Goods whereupon title to the said Goods shall vest in the Buyer.
- 7.3 The Buyer is licensed by the Company to use or to agree to sell the Goods delivered to the Buyer in the ordinary course of its business.
- 7.4 Until title to the Goods passes;
  - 7.4.1 The Buyer will hold the Goods as fiduciary agent and bailee for the Company
  - 7.4.2 The Goods shall, subject to Clause 7.3 be kept separate and distinct from all other property of the Buyer and of third parties and in good and substantial repair and condition and be stored in such a way as to be clearly identifiable as belonging to the Company

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- 7.4.3 The Company may at any time revoke the power of sale and use contained in Clause 7.3 by notice to the Buyer if the Buyer is in default for longer than 14 (fourteen) days in the payment of any sum whatsoever due to the Company (whether in respect of the Goods or any other goods supplied at any time by it to the Buyer) (or if the Company has bona fide doubts as to the solvency of the Buyer).
- 7.4.4 The Buyer's power of sale and use contained in Clause 7.3 shall automatically cease if the Buyer has a petition presented for its winding up or passes a resolution for voluntary winding up otherwise than for the purposes of a bona fide amalgamation or reconstruction or compounds with its creditors or has a receiver or administrative receiver appointed of all or any part of its assets or becomes bankrupt or insolvent or enters into any arrangements with creditors or takes or suffers any similar action in consequence of debts or carries out or undergoes any analogous act or proceeding under foreign law.
- 7.4.5 Upon determination of the Buyer's power of sale and use pursuant to Clauses 7.4.3 or 7.4.4 the Buyer shall place any of the Goods in its possession or under its control and unsold at the disposal of the Company and the Company shall be entitled to enter upon any premises of the Buyer for the purpose of removing such Goods.
- 7.5 The Company shall at any time be entitled to appropriate any payment made by the Buyer in respect of any Goods in settlement of such invoices or accounts in respect of such Goods as the Company may in its absolute discretion think fit notwithstanding any purported appropriation to the contrary by the Buyer.
- 7.6 Each sub clause of this clause 7 is separate, severable, and distinct and, accordingly, in the event of any of them being for any reason whatever unenforceable according to its terms, the others shall remain in full force and effect.

## 8. LEIN AND STOPPAGE

- 8.1 Until such time as the title in the Goods has passed to the Buyer the Company has the right to withhold delivery if the Buyer (being a Company) has a petition presented for its winding up or passes a resolution for voluntary winding up otherwise than for the purposes of a bona fide amalgamation or reconstruction or compounds with its creditors or has a receiver or administrative receiver appointed of all or any part of its assets or (being an individual) becomes bankrupt or insolvent or enters into any arrangements with creditors or takes or suffers any similar action in consequence of debts or carries out or undergoes any analogous act or proceedings under foreign law.
- 8.2 When the title in the Goods has passed to the Buyer and the time for payment has fallen due but payment has not been made, or if the Buyer (being a Company) has a petition presented for its winding up or passes a resolution for voluntary winding up otherwise than for the purposes of a bona fide amalgamation or reconstruction or compounds with its creditors or has a receiver or administrative receiver appointed of all or any part of its assets or (being an individual) becomes bankrupt or insolvent or enters into any arrangements with creditors or takes or suffers any similar action in consequence of debts or carries out or undergoes any analogous act or proceedings under foreign law then the Company has
  - 8.2.1 a lien on the Goods so long as the Company is in possession of them
  - 8.2.2 a right of stoppage in transit
  - 8.2.3 a right of resale
- 8.3 For the avoidance of doubt it is hereby declared that nothing in this Clause shall affect the rights given to the Company by §§ 38-48 of the Sales of Goods Act 1979 or any statutory provisions which replaces or re-enacts the same from time to time.

## 9. INSPECTION/SHORTAGES

- 9.1 The Buyer is under a duty wherever possible to inspect the Goods on delivery or on collection as the cases may be.
- 9.2 Where the Goods cannot be examined the carrier's note or such other note as appropriate shall be marked 'not examined'.
- 9.3 The Company shall be under no liability for the defects or shortages that would be apparent on careful inspection if the terms of this Clause are not complied with and in any event will be under no liability if a written complaint is not dispatched to the Company within 7 (seven) days of delivery detailing the alleged defect or shortage.
- 9.4 In all cases where defects or shortages are complained of the Company shall be under no liability in respect to the defects or shortages unless an opportunity to inspect the Goods is afforded to the Company before any use is made or any alternation of modification is made by the Buyer.
- 9.5 Subject to Clauses 9.3 and 9.4 the Company shall make good any shortage in the Goods and where appropriate replace any Goods damaged in transit as soon as it is reasonably able to do so but otherwise shall be under no liability whatsoever or howsoever arising from such shortage or damage.

## 10. WARRANTY

The Company warrants that it has title to and the unencumbered right to sell the Goods

## 11. LIABILITY

- 11.1 Introduction
- 11.1.1 Nothing in Clause 11 shall be deemed to exclude or restrict the Company's liability for death or personal injury resulting from negligence.
- 11.1.2 Each of the sub-clauses in Clause 11 is to be treated as separate and independent.
- 11.1.3 The Company is willing to undertake liability additional to that provided by sub-clause 11.4 provided that insurance cover for such higher sum is available and provided that an agreed additional price is paid by the Buyer and provided further that this additional liability is agreed in writing and signed by an authorised representative of the Company.
- 11.2 Exclusion
- 11.2.1 Clause 11.2 only covers defects caused by faulty design, manufacture, materials or workmanship. It does not cover defects caused by poor impressions, wear, abnormal use, misuse of neglect, inadequate stock rotation, unsuitable storage, Goods retained beyond their recommended storage period.
- 11.2.2 The Company agrees that if any defect covered by Clause 11.2 is discovered during the period of 4 (four) weeks commencing with the date of dispatch, the Company will either repair the goods at its own expense or, if it chooses to do so, replace them.

- 11.2.3 The Buyer cannot claim the benefit of this Clause unless
  - he informs the Company of the relevant defect in writing within 7 (seven) working days of discovering it; and
  - he returns the goods to the Company at his own expense
- 11.2.4 The risk of accidental loss whilst the Goods are being returned will be borne by the Buyer.
- 11.2.5 In consideration for receiving the benefit of this Clause the buyer agrees that, apart from those terms set out in Clause 9 and 10, no other terms, whether condition, warranties or in nominate terms express or implied statutory or otherwise shall form part of this Contract.
- 11.2.6 The buyer remedies in respect of any claim under the foregoing express warranty or any other claim in respect of the Goods or any workmanship in relation to them (whether or not involving negligence on the part of the Company) shall, in all cases, be limited to that set out in clause 11.2.2 and that the Company shall not in any circumstances be liable for any damages, compensation, costs, expenses, losses or other liabilities, whether direct or indirect, and any condition or warranty implied by law and any other remedy which would otherwise be available be excluded except to the extent that such exclusions is prohibited by any rule of law.
- 11.3 Exclusion of consequential loss
- 11.3.1 The Company shall not be liable for any consequential or indirect loss suffered by the Buyer whether the loss arises from breach of a duty in contract or tort in any other way (including loss arising from the Company's negligence). Non exhaustive illustrations of consequential or indirect loss would be loss of profits, loss of contracts, damage to property of the Buyer or anyone else; and personal injury to the buyer or anyone else (except so far as such injury is attributable to the Company's negligence)
- 11.4 Limitation
- 11.4.1 The Company's total liability for any one claim or for the total of all claims arising from any one act or default of the Company (whether arising from the Company's negligence or otherwise) shall not exceed £2,000 or such other sum as agreed in writing between the Company and the Buyer.

## 12. FORCE MAJEURE

- 12.1 The Company shall not be liable for any failure to deliver the Goods arising from circumstances outside the Company's control.
- 12.2 Non-exhaustive illustrations of such circumstances would be act of God, war, riot, explosion, abnormal weather conditions i.e. flood, strikes, lockouts, Government action or regulations (UK or otherwise), delay by suppliers, accidents and shortage of materials, labour or manufacturing facilities
- 12.3 Should the Company be prevented from delivering in the above circumstances, it shall give the Buyer written notice of this fact as soon as reasonably practicable after discovering it.
- 12.4 If the circumstances preventing delivery are still continuing 3 (three) months after the Buyer receives the Company's notice, then either party may give written notice to the other cancelling the Contract.
- 12.5 If the Contract is cancelled in this way, the Company will refund any payment which the Buyer has already made on account of the price (subject to deduction of any amount the Company is entitled to claim from the Buyer) but the Company will not be liable to compensate the Buyer for any further loss or damage caused by the failure to deliver.

## 13. PATENTS

The Buyer shall indemnify the Company against all actions, costs (including the cost of defending any legal proceedings) claims proceeding, accounts and damages in respect of any infringement or alleged infringement of any patent, registered design, copyright, trade mark or other industrial or intellectual property rights resulting from compliance by the Company with the Buyer's instructions, whether express or implied.

## 14. INDEMNITY

- 14.1 The Buyer agrees upon demand to indemnify the Company against all losses, damages, injury, costs and expenses of whatever nature suffered by the Company to the extent that the same are caused by or related to
  - 14.1.1 Designs, drawing or specifications given to the Company by the Buyer in respect of Goods produced by the Company for the Buyer; or
  - 14.1.2 Defective materials or products supplied by the Buyer to the Company and incorporated by the Company in Goods produced by the Company for the Buyer or
  - 14.1.3 The improper incorporation, assembly, use, processing, storage or handling of Goods by the Buyer.
15. SALES PROMOTION DOCUMENTATION
- Whilst the Company takes every precaution in the preparation of its catalogues, technical circulars, price lists and its other literature, these documents are for the Buyer's general guidance only and the particulars contained therein shall not constitute representations by the Company and the Company shall not be bound thereby.

## 16. NOTICES

Any notice to be given hereunder shall be in writing and shall be deemed to have been duly given if sent or delivered to the party concerned at its address specified overleaf or such other address as that party may from time to time notify in writing and shall be deemed to have been served, if sent by post 48 (forty eight) hours after posting.

## 17. ASSIGNMENT

Neither the Company nor the Buyer shall assign or transfer or purport to assign or transfer the Contract or the benefits thereof to any other person without the prior written consent of the other.

## 18. PROPER LAW AND JURISDICTION

The Contract shall be governed by and construed in accordance with English Law and all disputes arising in connection with the Contract shall be submitted to the jurisdiction of the English Courts.

## 19. HEADINGS

The headings of these conditions are for convenience only and shall have no effect upon the interpretation thereof.

## 20. HEALTH AND SAFETY

The Buyer agrees to pay due regard to any information or any revised information whenever supplied by the Company (and is deemed to have been given adequate information and to have read and understood it) relating to the use for which the Goods are designed or have been tested or concerning conditions necessary to ensure that they will be safe without risk to health at all times when they are being set, used, cleaned or maintained by any person at work or when they are being dismantled or disposed of, and the Buyer undertakes to take such steps as may be specified by the above information to ensure that, as far as reasonably practicable, the Goods will be safe and without risk to health at all times as mentioned above.

## 21. THIRD PARTY RIGHTS

A person who is not party to this agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.