

# GUTTERMASTER LIMITED

## TERMS AND CONDITIONS OF SALE

### 1. Definitions

"The Seller" means Guttermaster Limited.

"The Purchaser" means the person, firm or company to be supplied with the Goods by the Seller.

"Goods" means the goods, materials, services and/or other items to be supplied pursuant to the contract.

"The Contract" means the contract for sale and purchase made between the Seller and the Purchaser to which these conditions apply.

### 2. Scope

These conditions apply to all sales of Goods by the Seller and shall prevail over and apply to the exclusion of any inconsistent terms or conditions contained or referred to in the Purchaser's order in any correspondence or elsewhere or implied by trade custom practice or course of dealing unless specifically agreed to in writing by the seller.

### 3. Quotations

A quotation or tender by the Seller does not constitute an offer and the Seller reserves the right to withdraw or amend the same at anytime prior to the Seller's acceptance of the Purchaser's order.

### 4. Prices

(a) The prices payable for the Goods shall be those charged by the Seller at the time of despatch. The Seller shall have the right at anytime to revise the price to take account of increases in costs including (without limitation) costs of any goods or materials carriage, labour or overheads, the increase or imposition of any tax, duty or other levy and any variation in exchange rate. Unless otherwise stated the price is exclusive of value added tax.

(b) If the price exceeds £15,000 then it is a condition precedent to the Contract that the Contract be signed on behalf of the Seller by two of its Directors. In the event that the said Contract is not signed it shall be void, of no effect and neither party shall have any claim whatsoever against the other.

(c) Any special packaging requested by the Purchaser shall be the subject of an additional charge.

### 5. Orders

Where the Purchaser submits an order by facsimile transmission and this order is accepted by the Seller, any subsequent order submitted bearing the same order number by fax, post or other method shall be deemed to be identical unless notified in writing otherwise.

### 6. Terms of Payment

All prices are quoted nett. Unless specifically stated overleaf payment of invoices shall be made without any deduction or set-off in cash so as to be received by the Seller within thirty days of the date thereof. In the event that payment is not made by the Customer on or before the due date for payment any and all other invoices submitted by the Seller to the Purchaser shall immediately become due and payable. Interest shall be payable on the amount outstanding at the rate of two percent per month to run from the due date for payment thereof until receipt by the Seller of the full amount whether or not after judgement.

### 7. Delivery

(a) Time for delivery is given as accurately as possible but it is not guaranteed. The Purchaser shall have no right to damages or to cancel the order for failure for any cause to meet any delivery time stated.

(b) If the Purchaser refuses or fails to take delivery of Goods tendered in accordance with the Contract the Seller shall be entitled to immediate payment in full for the Goods so tendered. The Seller shall be entitled to

store at risk of the Purchaser any Goods which the Purchaser refuses or of which he fails to take delivery and the Purchaser shall in addition to the price pay all costs of such storage and any additional costs of carriage incurred as a result of such refusal or failure. Refusal by the Purchaser to take delivery will relieve the Seller from the obligation to make further deliveries without prejudice to the Seller's right to recover damages for such refusal. The Seller shall be entitled after the expiration of 28 days from the date on which the price became payable to dispose of the Goods in such manner as it may determine.

(c) The Goods shall unless delivered by the Seller's own transport or by a carrier on behalf of the Seller be deemed to have been delivered and the risks therein to have passed to the Purchaser upon transfer to a carrier named by the Purchaser or 2 days after the Seller notifies the Purchaser that the Goods are available for collection whichever is the earlier.

(d) Where the Goods are to be delivered by the Seller's own transport or by carrier on behalf of the Seller the risk therein shall pass to the Purchaser upon delivery.

### 8. Title

(a) Title to the Goods or any part thereof shall pass to the Purchaser only upon the happening of any one of the following events :

(i) the Purchaser has paid to the Seller all sums due from it to the Seller under this Contract and under all other contracts between the Seller and the Purchaser including any sums due under contracts made after the Contract whether the same are immediately payable :

(ii) when the Seller serves on the Purchaser notice in writing specifying that title in the Goods are such part thereof has passed.

(b) The Seller may recover Goods in respect of which title has not passed to the Purchaser at anytime and the Purchaser hereby licenses the Seller, its officers, employees and agents to enter upon any premises of the Purchaser or upon any place of delivery for the purpose either of satisfying itself that condition 8(c) below is being complied with by the Purchaser or of recovering any Goods in respect of which title has not passed to the Purchaser. This right shall continue to subsist notwithstanding the termination of the Contract through the happening of any of the events specified in condition 16 or otherwise and without prejudice to any accrued rights of the Seller thereunder.

(c) The Purchaser shall ensure that Goods in respect of which title has not passed are stored separately from other goods and that they are clearly identifiable as belonging to the Purchaser. If the Goods are combined by the Purchaser with other items or materials or utilised or consumed in the production of other items or materials the Seller shall retain title to the Goods if they remain capable of removal or separation from the resulting items. Until title to the Goods has passed to the Purchaser pursuant to this condition it shall possess the Goods as a bailee of the Seller on the terms of this Contract. If the Company so requires the Purchaser will return the Goods in good condition and will meet any cost of the Seller incurred in recovering or repairing the Goods in the event of the Purchaser's failure to comply with this sub-condition.

(d) Without prejudice to the foregoing sub-conditions and in the event that the Purchaser shall in the course of its business dispose of the Goods to a customer being a bona-fide Purchaser without notice of the Seller's rights then the Purchaser shall have a fiduciary duty to the Seller to accounts to the Seller for the proceeds (which shall be kept separate and identifiable from the Purchaser's own monies) but may retain therefrom any excess of such proceeds over the amount outstanding under this or any other contract between them.

### 9. Inspection

If any testing and/or inspection is required by the Purchaser it shall be carried out at the Seller's works or such other place or places as the Seller may appoint.

**10.**

(a) All technical advice data or information given by the Seller its employees or agents in respect of the Goods is made in good faith on the basis of test data and field experience and are provided for general guidance only. No such information advice or data shall form part of this Contract.

**11. Third Party Rights**

(a) The Purchaser shall indemnify the Seller against any and all claims costs demands and expenses incurred by or made against the Seller as a direct result of the carrying out of any work required to be done on or to the Goods in accordance with the requirements or specifications of the Purchaser involving any infringement or claims of infringement of any intellectual or industrial right vested in any third party.  
(b) In any case where the Goods are or are capable of becoming the subject of any industrial or intellectual property rights of any third party the Seller shall be obliged to transfer to the Purchaser only such title as it may have to the Goods.

**12. Insurance**

In any case where the Purchaser wishes the Seller to insure any specific consignment of Goods the Purchaser must so advise the Seller in writing within a reasonable time prior to delivery quoting the full value to be insured. The premium chargeable for such insurance shall be paid by the purchaser.

**13. Liability**

(a) The Seller shall not be liable to the Purchaser for  
(i) any discrepancy in quantity of Goods unless the Purchaser notifies the Seller of any claim for short delivery within 96 hours of receipt of the Goods.  
(ii) damage to or loss of the Goods or any part thereof in transit (where the Goods are carried by the Seller's own transport or by a carrier on behalf of the Seller) or non-delivery unless the Purchaser shall notify the Seller of any such claim within 96 hours of receipt of the Goods or the scheduled date for delivery whichever shall be the earlier.  
(iii) defects in the Goods caused by any act of neglect or default of the Purchaser or of any third party.  
(iv) other defects in the Goods unless notified to the Seller within 96 hours of receipt of the Goods by the Purchaser or where the defect would not be apparent on reasonable inspection within 1 month of delivery.  
(b) In the event of any shortage or non-delivery and/or defect in respect of which the Seller shall be at its option to make good any such shortage non-delivery and/or as appropriate replace or repair any Goods found to be damaged or defective. In no circumstances shall the Seller's aggregate liability to the Purchaser whether for negligence breach of contract misrepresentation or otherwise exceed the cost of the defective damaged or undelivered Goods determined by net price invoiced to the Purchaser in respect of any occurrence or series of occurrences.  
(c) Subject to the foregoing all conditions warranties and representations expressed or implied by statute common law or otherwise in relation to the Goods are hereby excluded and the Seller shall be under no liability to the Purchaser for any loss damage or injury direct or indirect resulting from faulty workmanship or otherwise howsoever arising and whether or not caused by the negligence of the Seller its employees or agents SAVE THAT the Seller shall accept liability for death or personal injury caused by the negligence of the Seller.  
(d) The Seller's prices are determined on the basis of the limits of liability set out in this Condition. The Purchaser may by written notice to the Seller request the Seller to agree to a higher limit of liability provided insurance cover can be obtained therefore. The Seller shall effect insurance up to such limit and the Purchaser shall pay upon demand the amount of any and all premiums. In no case shall the Purchaser be entitled to recover from the Seller more than the amount received from the insurers.

**14. Licenses and Consents**

If any license or consent of any government or other authority shall be required for the acquisition or use of the Goods by the Purchaser shall obtain the same at its own expense and if necessary or so required produce evidence of the same to the Seller on demand.

**15. Force Majeure**

(a) The Seller shall not be liable to the Purchaser for any loss or damage which may be suffered by the Purchaser as a direct or indirect result of the supply of the Goods by the Seller being prevented hindered delayed or rendered uneconomic by reason of any Force Majeure Circumstances.  
(b) In this Condition "Force Majeure Circumstances" shall mean any Act of God, riot, strike, lock out, trade dispute or labour disturbance, accident, breakdown of plant or machinery, fire, flood, difficult or increased expense in obtaining workmen materials or transport or other circumstances whatsoever outside the reasonable control of the Seller affecting the provision of the Goods or of raw materials therefore by the Seller's normal source of supply or of the manufacture of the Goods by the Seller's normal means or the delivery of the Goods by the Seller's normal route or means of delivery.  
(c) If due to Force Majeure Circumstances the Seller has insufficient stock to meet all its commitments the Seller may apportion available stock between its customers at its sole discretion.

**16. Insolvency**

If the Purchaser shall become bankrupt or under the provisions of Section 123 of the insolvency Act 1986 is deemed to be unable to pay its debts or compounds with creditors or in the event of a resolution being passed or proceedings commenced for the administration or liquidation of the Purchaser (other than for a voluntary winding up for the purpose of reconstruction or amalgamation) or if a Receiver or Manager is appointed of all or any part of its assets or undertaking the Seller shall be entitled to cancel the Contract in whole or in part by notice in writing without prejudice to any right or remedy accrued or accruing to the Seller.

**17. Waiver**

The failure by either party to the Contract to exercise or enforce any rights conferred by the Contract shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement at any time or times thereafter.

**18. Notices**

Any notice hereunder shall be in permanent readable form and shall be deemed properly addressed if addressed to the party concerned at its principal place of business or last known address. Any such notice shall be taken to be received by the addressee two working days following the date of despatch of the notice by post or when the notice is sent by hand or given by facsimile or other electronic medium simultaneously with the delivery or transmission.

**19. Headings**

The headings in these conditions are inserted for convenience only and shall not affect their construction.

**20. Law**

The Contract shall in all respects be governed by and constructed and interpreted in accordance with the laws of England and the parties hereby submit to the non-exclusive jurisdiction of the English courts.

Signed.....

Position.....

Date.....