

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS

1. Interpretation

1.1 In these Conditions:

- (a) "Business Day" means a day other than a Saturday, Sunday or public holiday in England and Wales, when banks in London are open for business.
- (b) "Business Hours" means the period from 9.00 am to 5.30 pm on any Business Day.
- (c) "Company" means Kwan Yick (U.K.) Limited (registered in England and Wales with company number 02166876) whose registered office is at Unit B New Venture Buildings Caswell Way, Reevesland Industrial Estate, Newport, Gwent NP19 4PW .
- (d) "Conditions" means the terms and Conditions set out in this document as amended from time to time in accordance with clause 2.2.
- (e) "Contract" means the contract between the Company and the Customer for the sale and purchase of the Goods in accordance with these Conditions.
- (f) "Customer" means the person from whom any order is received. "Delivery Location" has the meaning given in clause 4.1.
- (g) "Goods" means the goods the subject matter of the Contract listed on the attached invoice.
- (h) "Force Majeure Event" means an event, circumstance or cause beyond a party's reasonable control.
- (i) "Order" means the Customer's order for the Goods, as set out in the Customer's purchase order form, the Customer's written acceptance of the Company's quotation or the Customer's written acceptance of the Company's quotation, or overleaf, as the case may be.
- (j) "Warranty Period" has the meaning given in clause 6.3.

1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.3 A reference to a party includes its personal representatives, successors and permitted assigns.

1.4 A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

1.5 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

1.6 A reference to **writing** or **written** excludes fax but not email.

2. Basis of Contract

2.1 The Company shall sell and the Customer shall purchase the Goods in accordance with these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.2 No variation to these Conditions shall be binding unless agreed to in writing by an authorised representative of the Company.

2.3 The Order shall only be deemed to be accepted by the Company on the earlier of the Company: (i) issuing a written acceptance of the Order (if any); or (ii) taking any steps to fulfil the Order; at which point the Contract shall come into existence.

2.4 The quantity, quality and description or specification of the Goods shall be as set out in the Order.

2.5 The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements and, where the Goods are supplied to the Customer's specification, which do not materially affect their quality or performance.

2.6 The price for the Goods shall be the Company's quoted price as set out on the Order or otherwise notified to the Customer in writing by the Company.

2.7 The Company reserves the right, by giving notice to the Customer at any time before delivery to increase the price of the Goods to reflect any increase in the cost to the Company of the Goods which is due to any factor beyond its control (such as, without limitation, any foreign exchange fluctuation, currency regulations, alteration of duties or increase in cost of materials), any change in delivery dates, quantities or specifications for the Goods which are requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.

2.9 All prices quoted are exclusive of value added tax (**VAT**), which the Customer shall be liable to pay in addition to the Company at the prevailing rate, subject to the receipt of a valid VAT invoice.

3. Payment

3.1 The Customer shall pay each invoice submitted by the Company: (a) within twenty-eight days after delivery or the date of the Company's invoice (whichever is the earlier); and (b) in full and in cleared funds to a bank account nominated in writing by the Company; and time for payment shall be of the essence of the Contract.

3.2 The Company may at its discretion invoice the Customer for the Goods prior to, on, or at any time after completion of delivery of the Goods.

3.3 If the Customer fails to make payment due to the Company under the Contract by the due date, then without limiting the Company's remedies under clause 8: (a) the Customer shall pay the Company interest on any amount due and owing until the date of payment (whether before or after any judgment) which shall accrue each day at the rate of four percent per annum above the base lending rate of Barclays Bank plc from time to time in force; and (b) all subsequent invoices for Goods shall be due and payable on delivery or the date of the invoice (whichever is the earlier) until all sums due to the Company have been paid in full.

3.4 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

4. Delivery and Risk

4.1 Delivery of the Goods shall be made by the Company delivering the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**). The Customer may also collect the Goods from the Company's premises at Unit B, New Venture Buildings, Caswell Way, Reevesland Industrial Estate, Newport NP19 4PW or such other Delivery Location within five Business Days of the Company notifying the Customer that the Goods are ready.

4.2 Delivery of the Goods is completed on the completion of unloading, or where the Goods are collected by the Customer, loading of the Goods at the Delivery Location.

4.3 Risk of damage to or loss of the Goods shall pass to the Customer at the time of delivery of the Goods or, if the Customer wrongfully fails to take delivery of the Goods in accordance with these Conditions, at the time when the Company has tendered delivery of the Goods.

4.4 In the event that parties have agreed for the Customer to collect the Goods from the Company's premises or a Delivery Location and if the Customer fails to take delivery of the Goods within five Business Days of the Company notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Company's failure to comply with its obligations under the Contract in respect of the Goods: (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Company notified the Customer that the Goods were ready; and (b) the Company shall store the Goods until actual delivery takes place and charge the Customer for all related costs and expenses (including insurance).

4.5 If five Business Days after the day on which the Company notified the Customer that the Goods were ready for delivery the Customer has not taken actual delivery of them, the Company may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.6 Any delivery dates given are estimates only and are not binding on the Company. Time for delivery shall not be of the essence. The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

5. Retention of Title

5.1 Notwithstanding delivery of the Goods, the property in the Goods shall not pass to the Customer until the earlier of: (a) the Company receiving in cash, or cleared funds, payment in full of all moneys then due to it by the Customer; or (b) the Customer reselling the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 5.3(b).

5.2 Until such time as property in the Goods passes to the Customer, the Customer shall: (a) hold the Goods as the Company's fiduciary agent and bailee; (b) keep the Goods separate from those of the Customer and any third party; (c) protect and insure the Goods and identify the Goods as the Company's goods in a manner obvious to any third party.

5.3 Until such time as property in the Goods passes to the Customer the Customer shall: (a) be entitled to resell or use the Goods in the ordinary course of its business in which case title to the Good shall pass from the Company to the Customer immediately before the time at which resale by the Customer occurs; (b) account to the Company for the price of the Goods payable by the Customer to the Company from the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds; and (c) keep such proceeds separate from any moneys or property of the Customer and any third party and, in the case of tangible proceeds, properly stored, protected and insured.

5.4 Until such time as property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been sold) the Company shall be entitled at any time to require the Customer to deliver up the Goods to the Company and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

5.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Customer does so, all moneys owing by the Customer to the Company shall, without prejudice to any other right or remedy of the Company, forthwith become due and owing.

- 5.6 If required by the Company, the Customer shall vest in the Company any right it may have to recover the Goods or sue for the price of the Goods sold by it to any third party.
5.7 The parties agree that the Company may, without prejudice to any other right or remedy it may have, maintain an action for the price of the Goods notwithstanding that title has not passed to the Customer.

Quality

6. Samples are only submitted as indicative of the class of Goods without any guarantee as to size colour, taste or quality of the Goods. They shall not form part of the Contract nor have any contractual force.
6.1 The Customer shall satisfy itself as to the suitability of the Goods and the purposes to which they are to be put.
6.2 The Company warrants that on delivery and until the expiry date set out on the packaging of the Goods or, in the absence of any such date a period of 120 days from the date of delivery (the "Warranty Period"), the Goods shall: (a) conform in all material respect with their description or specification set out in the Order; and (b) be free from material defects; and (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
6.3 Subject to clause 6.5: if
6.4 (a) at any time during the Warranty Period the Customer has any claim or complaint that the Goods do not comply with the warranty set out in clause 6.3;
(b) the Company is given a reasonable opportunity of examining such Goods; and
(c) the Company (if asked to do so by the Supplier) returns (or procures the return of) such Goods to the Company's place of business (at the Customer's cost), the Company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
6.5 The Company shall not be liable for the Goods' failure to comply with the warranty set out in clause 6.3 if (a) the Customer does not give notice of any physical damage to or the alleged defect of the Goods as soon as possible and in any event within forty-eight hours of delivery of the Goods or, in the case of any latent defect, of the complaint arising; (b) in respect of any physical damage to or alleged defect of the Goods on delivery, the Customer has failed to accompany their claim or complaint with photographs of the alleged damaged or defected Goods whilst the Goods remain on the delivery vehicle; (c) the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage or use of the Goods (or if there are none) good trade practice regarding the same; (d) the defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal storage or working conditions; or (e) the Goods differ from their description or applicable specification as a result of changes made to ensure they comply with applicable safety or other statutory requirements.
6.6 The purpose of clause 6.5(a) and (b), which the parties agree is a condition of the Contract, is to enable the Company to notify its suppliers of any issues with the Goods and to that end the Customer shall use its best endeavours to assist the Company in making any claim or complaint against any suppliers of the Goods.
6.7 Save as otherwise mentioned or prohibited by law the Company shall have no liability to the Customer by reason of any representation (whether forming part of this Contract or not) implied warranty or condition or other term, any duty of common law or statute, or under any express term of the Contract for any loss, damage, consequential loss or damage (whether loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (whether caused by the negligence, misrepresentation, restitution or otherwise of the Company, its employees or agents or otherwise) which arises out of or in connection with the sale or supply of the Goods or their use or resale by the Customer.

Limitation of Liability

7. References to liability in this clause 7 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence),
7.1 misrepresentation, restitution or otherwise.
7.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for: (a) death or personal injury caused by negligence; (b) fraud or fraudulent misrepresentation; (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or (d) defective products under the Consumer Protection Act 1987.
7.3 Subject to clause 7.2, the Company's total liability to the Customer shall not exceed 100% of the total price paid for the Goods under the Contract.
7.4 Subject to clause 7.2, the following types of loss are wholly excluded: (a) loss of profits; (b) loss of sales or business; (c) loss of agreements or contracts; (d) loss of anticipated savings; (e) loss of use or corruption of software, data or information; (f) loss of or damage to goodwill; and (g) indirect or consequential loss.
7.5 This clause 7 shall survive termination of the Contract.

Cancellation Suspension and Termination

8. Without limiting its other rights or remedies, the Company shall be entitled to suspend the provision of the Goods if any payment is not made on its due date by the Customer, or if the Company is otherwise entitled to terminate the Contract in accordance clause 8.3(a)-(e).
8.1 Save where the Company is in material breach of the Contract and, where capable of remedy, the Company has not remedied such breach within 30 days of being notified in writing to do so, the Customer shall not be entitled to cancel any Contract unless it shall have first paid to the Company such sum as is equal to the loss (including loss of profit), damage, costs and expenses that the Company would suffer if the Contract were cancelled.
8.2 The Company shall be entitled to terminate this Contract if:
8.3 (a) the Customer does not strictly comply with its obligations contained in this Contract;
(b) on seven days written notice for any reason whatsoever;
(c) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
(d) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
(e) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
8.4 Termination of the Contract shall be without prejudice to the rights of the Company and the obligations of the Customer.
8.5 On termination or suspension of the Contract pursuant to clause 8.1, 8.3(a) or 8.3(c) to (e) (inclusive) all sums payable including interest by the Customer will become immediately due and payable.
8.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

General

9. Any typographical, clerical or other error or omission in any sales literature, quotation, acceptance of offer, invoice or other document or information issued by the Company
9.1 shall be subject to correction without any liability on the part of the Company.
9.2 No waiver by the Company of any breach of the Contract shall be considered as a waiver of any subsequent breach of the same or any other provision.
9.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
9.4 In the case of a delivery of Goods to be made in instalments each delivery shall be treated as a separate contract.
9.5 The headings of these Conditions are for convenience only and shall not affect their interpretation.
9.6 The Contract constitutes the entire agreement between the parties. Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
9.7 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 9.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
9.8 Any notice given to a party under or in connection with the Contract shall be in writing and shall be: sent by email to the following addresses: Company accounts@kwanyick.com and Customer the address set out in the Order. Any notice shall be deemed to have been received if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume. This clause 9.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
9.9 The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
9.10 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
9.11 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.