

UNITRUCK LIMITED
TERMS AND CONDITIONS OF SALE**1. INTERPRETATION**

- 1.1 In these conditions: unless the context requires otherwise any reference to the singular shall include the plural and vice versa. "the Buyer" means the person, firm or company to whom Unitruck is to supply Goods pursuant to a Contract; "the Conditions" means the standard terms and conditions of sale set out below. "the Contract" means the contract for the sale of Goods by Unitruck to the Buyer which incorporates these Conditions; "Goods" means any goods supplied or to be supplied by Unitruck (as may be described in Unitruck's quote or acknowledgement of order); "Insolvency" means in relation to the Buyer any of the following (as relevant): the appointment of any nominee, sequestrator, trustee, supervisor, administrator, administrative receiver, receiver or liquidator pursuant to the Insolvency Act 1986 or the entry into any compromise or arrangement with its creditors or if it commits any act of bankruptcy or if an order is made or effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction of a solvent company) or the appointment of a manager or receiver to the Law of Property Act 1925 or the occurrence or sufferance of anything equivalent under any jurisdiction other than England or Wales; and "Insolvent" shall be construed accordingly. "IPRs" means any intellectual property rights of any nature including without limit any and all inventions, patents, utility models, design rights, copy right, know-how, trade secrets, confidential information, trade marks, service marks (whether registered or not), trade names and goodwill; "Order" means any order placed by the Buyer with Unitruck for the Goods; "Unitruck" means Unitruck Limited and its successors and assigns;
- 1.2 The headings in these Conditions do not affect their interpretation.
- 1.3 These Conditions alone shall govern and be incorporated in every contract for the sale of Goods made by or on behalf of Unitruck with the Buyer. They shall apply in place of and prevail over any terms or conditions (whether or not in conflict or inconsistent with these Conditions) contained or referred to in any documentation submitted by the Buyer or in correspondence or elsewhere or implied by trade custom, practice or course of dealings.
- 1.4 Acceptance by the Buyer of delivery of the Goods shall (without prejudice to condition 2 or any other manner in which acceptance of these Conditions may be evidenced) be deemed to constitute unqualified acceptance of these Conditions.
- 1.5 A variation of these Conditions is valid only if it is in writing and signed by a director or duly authorised representative of Unitruck.

2. FORMATION

- 2.1 All Orders shall be deemed to be an offer and shall only be deemed accepted by Unitruck upon delivery of the Goods.
- 2.2 Unitruck may modify the specification of Goods without notice provided that such modification does not materially affect the performance of the Goods. The Contract is not a contract for sale of Goods by description. All descriptive matter, specifications and advertising issued by Unitruck is solely aimed at giving an approximate idea of the Goods described in them, they will not form part of the Contract.
- 2.3 Any Order accepted by Unitruck may only be cancelled or varied by the Buyer with the prior verbal or written consent of Unitruck and on terms that the Buyer shall indemnify Unitruck in full against all losses, including loss of profit in the ordinary course of business, costs, damages, charges and expenses incurred (directly or indirectly) by Unitruck as a result of such cancellation or variation.

3. PRICE

- 3.1 Unless otherwise agreed in writing by Unitruck the price payable for the Goods is the price listed in Unitruck's published list of prices current at the time of despatch.
- 3.2 Unitruck may at anytime prior to delivery of the Goods:
 - a. withdraw any discount from its normal prices;
 - b. revise prices to take account of inflation, increases in costs including (without limitation) costs of any Goods, materials, carriage, labour or overheads, the increase or imposition of any tax, duty or other levy and any variation in exchange rates.
- 3.3 Unless otherwise specified value added tax and any other tax or duty payable by the Buyer and any costs of carriage, package and insurance shall be added to the price.

4. PAYMENT

- 4.1 Payment of invoices shall, unless otherwise agreed in writing, be made in full within 30 days net monthly of the date of the invoice. Time of payment is of the essence of the contract. Unitruck reserves the right to suspend the provision of Goods to the Buyer where any amounts are overdue under any Contract with the Buyer until all such amounts have been paid in full in cleared funds. The Buyer is not entitled by reason of any set-off, counterclaim, abatement or deduction to withhold payment of any amount due to Unitruck.
- 4.2 Any extension of credit allowed to the Buyer may be changed or withdrawn at anytime.
- 4.3 Interest is payable on overdue accounts at the rate of 3% per annum over Natwest Bank plc base rate from time to time to run from the due date for payment until receipt by Unitruck of the full amount (including any accrued interest) whether before or after judgement. The Buyer shall indemnify Unitruck against all expenses and legal costs incurred by Unitruck in recovering overdue amounts. Unitruck reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

- 4.4 If in the opinion of Unitruck, the credit worthiness of the Buyer deteriorates before delivery of the Goods, Unitruck may require full or partial payment of the price prior to delivery or the provision of security for payment by the Buyer in a form acceptable to Unitruck.
- 4.5 Payment shall only be deemed received by Unitruck from the Buyer upon receipt by Unitruck of cleared funds.

5. DELIVERY

- 5.1 Delivery or despatch dates mentioned in any quotation, Order, acceptance form or elsewhere are given in good faith but are an estimate only and not of any contractual affect. Time for delivery is not of the essence of the contract and shall not be made so by the service of any notice. Subject to condition 9.1 Unitruck is not liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by failure (for any reason) to meet the delivery date stated (even if caused by Unitruck's own negligence), further, the Buyer shall have no right to cancel the Contract in the event of such a failure.
- 5.2 Delivery shall be at the Buyer's premises unless otherwise stipulated or agreed by the Seller.
- 5.3 Unitruck will make an additional charge for delivery other than at the Buyer's premises.
- 5.4 The Buyer is solely responsible for unloading the Goods at the point of delivery. The Buyer shall indemnify Unitruck against each loss, liability and cost arising as a result of Unitruck or its sub-contractors assisting the Buyer in the unloading, loading or other removal of the Goods from the point of delivery.
- 5.5 If the Buyer refuses or fails to take delivery of the Goods tendered in accordance with the Contract or fails to take any action necessary on its part for delivery and/or shipment of the Goods, Unitruck is entitled to terminate the Contract with immediate effect to dispose of the Goods as Unitruck may determine and to recover from the Buyer any loss and additional costs incurred as a result of such refusal or failure (including, without limitation, storage and insurance costs from the due date of delivery).
- 5.6 Unless otherwise expressly agreed, Unitruck may effect delivery in one or more instalments. If delivery is effected by instalments each instalment shall be treated as a separate Contract. Deliveries of further instalments may be withheld until the Goods comprised in earlier instalments have been paid for in full. Default by Unitruck, howsoever caused, in respect of one or more instalments shall not entitle the Buyer to terminate the relevant Contract as a whole.
- 5.7 If Unitruck agrees to permit the Buyer to collect the Goods from Unitruck's place of business then delivery shall be deemed to take place when Unitruck notifies the Buyer that the Goods are ready for collection and unless otherwise agreed in writing by Unitruck it is a condition of the Contract that the Buyer will collect the Goods within 7 days of such notice.
- 5.8 Section 32(2) of the Sale of Goods Act 1979 (the "Act") does not apply. Unitruck is not required to give the Buyer the notice specified in Section 32(3) of the Act.

6. RISK

- 6.1 Risk for the Goods passes on delivery.
- 6.2 From the time of delivery until title in the Goods passes to the Buyer in accordance with condition 7 the Buyer shall insure the Goods for their full replacement value with a reputable insurance office. Upon request, the Buyer shall use reasonable endeavours to have Unitruck's interest in the Goods noted on the insurance policy. Until title in the Goods passes to the Buyer the Buyer shall hold the proceeds of any claim on the insurance policy on trust for Unitruck and shall immediately account to Unitruck with the proceeds.

7. TITLE

- 7.1 Notwithstanding delivery and passing of risk, the Goods remain the property of Unitruck until the Buyer pays to Unitruck with cleared funds the agreed price for the Goods (together with any accrued interest) and all other amounts owed by the Buyer to Unitruck in respect of any other Contract.
- 7.2 Until property in the Goods has passed the Buyer is in possession of the Goods in a fiduciary capacity and shall:
 - a. not part with possession of the Goods (otherwise than in accordance with condition 7.(g));
 - b. take proper care of the Goods and take all reasonable steps to prevent any damage or deterioration of them;
 - c. keep the Goods free from any charge, lien or other incumbrance and store the Goods in such a way as to show clearly that they belong to Unitruck;
 - d. give Unitruck such information relating to the Goods as Unitruck may from time to time require;
 - e. Unitruck reserves the right to repossess and re-sell any of the Goods to which it has retained title. Unitruck's consent to the Buyer's possession of the Goods and any right the Buyer may have to possession of the Goods shall in any event cease upon the happening of any of the events set out in condition 15.2;
 - f. the Buyer grants an irrevocable right and licence to Unitruck and its employees and agents to enter the Buyer's premises with or without vehicles during normal business hours for the purpose of inspecting and/or repossessing Goods to which it has retained title. This right and licence shall continue to subsist notwithstanding the termination for any reason of a Contract and is without prejudice to any accrued rights of Unitruck under a Contract or otherwise;
 - g. Whilst the Buyer is in possession of the Goods with Unitruck's consent (but not otherwise) the Buyer may in the ordinary course of business sell the Goods or any new product or products produced with the Goods provided that:
 - i. as between the Buyer and its sub-buyer or customer the Buyer sells or hires the Goods as principal and the Buyer is not and shall not be empowered to commit Unitruck to any contractual relationship with or liability to the sub-buyer or customer or any other person;

- ii. the Buyer acknowledges that as a consequence of its fiduciary relationship with Unitruck it is under a common law duty to Unitruck to hold the proceeds of any such sales on trust for Unitruck and not to mingle such proceeds with any other monies or pay them into an overdrawn bank account, such common law duty being unaffected by and wholly independent of the terms of these Conditions;
- iii. Notwithstanding the provisions of this condition Unitruck may:
 - A. bring an action against the Buyer for the price of the Goods in the event of non payment by the Buyer by the due date even though title in the Goods has not passed to the Buyer;
 - B. by notice to the Buyer at any time after delivery pass title in the Goods to the buyer with effect from the date of the notice;

8. THIRD PARTY RIGHTS

- 8.1 The Buyer shall indemnify Unitruck against each loss, liability and cost which Unitruck incurs as a 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 Buyer involving any infringement or alleged infringement of the rights (including without limit any IPRs) of the third party.
- 8.2 If at anytime it is alleged that the Goods infringed the rights (including without limit any IPRs) of any third party or if in Unitruck's reasonable opinion such an allegation is likely to be made, Unitruck may at its option and at its own expense:
 - a. modify or replace the Goods without detracting from the overall performance of the Goods, so as to avoid the infringement;
 - b. procure for the Buyer the right to continue to use the Goods;
 - c. repurchase the Goods at the price paid by the Buyer less depreciation at the rate Unitruck applies to its own equipment; or
 - d. the Buyer shall notify Unitruck immediately of any claim made or action brought or threatened alleging infringement of the rights of any third party. Unitruck shall have control over and shall conduct any such proceedings in such a manner as it shall determine. The Buyer shall provide all reasonable assistance as Unitruck may request. The cost of any such proceedings shall be borne by Unitruck.

9. WARRANTY AND LIABILITY

- 9.1 Nothing in these Conditions shall exclude or limit the liability of Unitruck for death or personal injury caused by Unitruck's negligence or fraudulent misrepresentation.
- 9.2 Unitruck warrants that the Goods will, for a period of six months from the date of delivery:
 - a. comply with their specification;
 - b. be free from defects in material and workmanship; and
 - c. the warranties contained in condition 9 are given on the following conditions:
 - i. Unitruck is not liable for a defect in the Goods caused by fair wear and tear, abnormal or unsuitable conditions of storage or use or an act, neglect or default of the Buyer or a third party;
 - ii. any defect in the Goods must be notified to Unitruck within one month of discovering such a defect;
 - iii. The total price for the Goods has been paid by the due date for payment;
 - iv. Unitruck is not liable for:
 - A. non delivery unless the Buyer notifies Unitruck of the claim within 7 days of the date of Unitruck's invoice;
 - B. shortages in quantity delivered unless the Buyer notifies Unitruck of a claim within 14 days of receipt of the Goods;
 - C. the damage to or loss of all or part of the Goods in transit (where the Goods are carried by Unitruck's own transport or by a carrier on behalf of Unitruck), unless the Buyer notifies Unitruck of the claim within 14 days of receipt of the Goods or the scheduled date of delivery, whichever is the earlier; or
 - D. if Unitruck is liable under the warranties and condition 9.2(c)(i) or under condition 11.3, Unitruck's only obligation is, at its option to:
 - I. make good any shortage or non delivery;
 - II. replace or repair any Goods which are damaged or defective provided that such Goods are returned to Unitruck in their delivered state at the Buyer's expense if so requested by Unitruck within 1 month from the date of their delivery;
 - III. refund to the Buyer the amount paid by the Buyer for the Goods the subject of the claim;
 - v. Except to set out in these conditions, all conditions, warranties and representations, express or implied by statute, common law or otherwise in relation to the Goods are excluded;
 - vi. Unitruck is not liable to the Buyer, whether for negligence, breach of contract, misrepresentation or otherwise for:
 - A. Loss or damage incurred by the Buyer as a result of third party claims;
 - B. Indirect or consequential loss or damage suffered by the Buyer, including, without limitation, loss of profit in the ordinary course of business, goodwill, business opportunity or anticipated savings; or
 - vii. The entire liability of Unitruck under or in connection with the supply of the Goods, whether for negligence, breach of contract, misrepresentation or otherwise is limited in respect of each event or series of connected events, to the cost of the defective damaged or undelivered Goods which give rise to such liability as determined by the net priced invoiced to the Buyer.
 - 9.3 Nothing in these Conditions shall be construed as a representation or warranty by Unitruck that the design, manufacture, use or sale of the Goods is not an infringement of any third party's IPR's.

10. SPECIFICATIONS AND CONFIDENTIALITY

- 10.1 Unless expressly agreed in writing by Unitruck all drawings, designs, specifications and particulars of weights and dimensions submitted by Unitruck are approximate only and Unitruck is not liable from any deviation from them.
- 10.2 All drawings, designs, specifications and information submitted by Unitruck shall be treated as confidential and shall not be disclosed to any third party without Unitruck's written consent (except to the extent such information is or becomes public through no fault of the Buyer) or used by the Buyer other than for purposes authorised by Unitruck.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 The Buyer shall not, under any circumstances acquire any right in or to any of the IPRs (including, without limitation, copyright) subsisting in, resulting from or relating to the Goods, or any documents, drawings and/or specifications relating thereto either:
- supplied by Unitruck to the Buyer in connection with the Goods; or
 - resulting from the Goods, unless otherwise expressly agreed by Unitruck in writing.
 - If the Buyer shall in anyway acquire any such rights then the Buyer shall immediately inform Unitruck and shall forthwith take such steps as may be required by Unitruck to assign such rights or rest such title.
- 11.2 Unitruck shall have the right to apply any trademarks, trade names and/or service marks to the Goods. The Buyer acknowledges that no rights are granted to the Buyer by the use by the Buyer of such trademarks, trade names and/or service marks. The Buyer shall not deface, remove or obliterate any trademarks, trade names or logos applied by Unitruck or in relation to the Goods.

12. PACKAGING

- 12.1 The Buyer shall meet the costs of any special packaging requested by the Buyer or any packaging rendered necessary by delivery by any means other than Unitruck's normal means of delivery. The Buyer shall, unless otherwise agreed, be solely responsible for the disposal of all packaging in accordance with all regulations (whether statutory or otherwise) relating to the protection of the environment.
- 12.2 Unitruck is entitled to invoice the Buyer for the cost of all pallets and other returnable packaging materials unless they are returned to Unitruck in good condition, carriage paid within 30 days from the date of delivery.

13. LICENCES AND CONSENTS

- 13.1 If any licence or consent of any governmental or other authority is required for the acquisition, carriage or use of the Goods by the Buyer, the Buyer shall obtain the licence or consent at its own expense and if requested produce evidence of it to Unitruck on demand. Failure to obtain any licence or consent does not entitle the Buyer to withhold or delay payment of the price. Any additional expenses or charges incurred by Unitruck resulting from such failure shall be paid by the Buyer.

14. FORCE MAJEURE

- 14.1 If Unitruck is prevented, hindered or delayed from or in supplying the Goods in accordance with these conditions by a Force Majeure Event (as defined below) Unitruck may, at its option:
- suspend deliveries while the Force Majeure Event continues;
 - if Unitruck has sufficient stocks to meet its commitments, apportion available stocks between its customers as it decides;
 - terminate any Contract so affected with immediate effect by written notice to the Buyer; and Unitruck is not liable for any loss or damage suffered by the Buyer as a result.
- 14.2 In this condition "Force Majeure Event" means an event beyond the reasonable control of Unitruck including, without limitation, strike, lockout, labour dispute, act of God, war, riot, civil commotion, malicious damage, compliance with the law of governmental order, rule, regulation or direction, accident, break down of plant or machinery, fire, flood, storm, difficulty or increased expense in obtaining workers, materials or transport or other circumstances affecting the supply of the Goods or raw materials by Unitruck's normal source of supply or the manufacture of the Goods by Unitruck's normal means or the delivery of the Goods by Unitruck's normal route or means of delivery.

15. TERMINATION

- 15.1 On or at any time after the occurrence of any of the events in condition 15.2 Unitruck may (at its discretion):
- stop any Goods in transit;
 - suspend further deliveries to the Buyer;
 - exercise its rights under Condition 8;
 - terminate any Contract with the Buyer with immediate effect by written notice to the Buyer.
- 15.2 The events are:
- the Buyer is in breach of any obligations under the Contract which, if capable of remedy, the Buyer has not remedied within 30 days of receiving written notice from Unitruck; or
 - the Buyer is or becomes Insolvent or the Buyer suffers a distress or execution or other legal process to be levied or enforced or sued upon or against any part of the property, assets or revenue

of the Buyer which is not discharged or stayed within seven days or the Buyer ceases or threatens to cease to carry on business.

16. ASSIGNMENT

16.1 The Buyer may not assign, sub-contract or transfer or purport to assign, subcontract or transfer any of its rights or obligations under a Contract without first having obtained Unitruck's written consent.

17. SEVERABILITY

17.1 The invalidity, illegality or unenforceability of the whole or part of a Condition does not affect or impair the continuation in force for the remainder of these Conditions.

18. WAIVER

18.1 The failure by Unitruck to exercise or delay by Unitruck in exercising a right or remedy provided by a Contract or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by a Contract or by law prevents a further exercise of another right or remedy.

19. ENTIRE AGREEMENT

19.1 The Contract (including, for the avoidance of doubt, these Conditions) contains the whole agreement between Unitruck and the Buyer and all other understandings, agreements, warranties, conditions, terms or representations, whether express or implied, statutory or otherwise, are excluded to the fullest extent permitted by law.

20. NOTICES

20.1 A notice under or in connection with a Contract shall be in writing and shall be delivered personally or sent by first class post pre-paid recorded delivery to the party due to receive the notice at its last known address.

20.2 Unless there is evidence that it was received earlier, a notice is deemed given:

- a. if delivered personally when left at the address referred to Condition 19.1.; or
- b. if sent by post two days after posting it.

21. GOVERNING LAW

21.1 The Contract shall be construed in accordance with and governed in all respects by English law and the Buyer submits to the exclusive jurisdiction of the English courts.

22. RETURNED GOODS All goods correctly supplied by unitruck in accordance with the customers order, which are then returned, will only be credited provided that:

22.1 our written agreement has been obtained, we reserve the right to refuse returns.

22.2 the goods are listed in our current price list and are of current design, and are in good condition including packaging.

22.3 the goods must be accompanied by a packing note explaining the reason for return, quoting the invoice/delivery number against which the goods were supplied on.

22.4 a handling charge will apply and will be payable by the customer, the value of the handling charge will be at our discretion and will be quoted as a percentage of the net invoice value of the returned goods.

22.5 any stock clearance of goods that are agreed between unitruck and the customer, must have our written agreement and will be credited at current price list value and will incur a 25% handling charge.