

## GERICKE LIMITED

### CONDITIONS OF SALE

#### DEFINITIONS

1. In these Conditions:
  - a. **“the Company”** means Gericke Limited.
  - b. **“the Buyer”** means the purchaser of goods and/or services from the Company.
  - c. **“Goods”** means the articles equipment materials or goods to which this document relates.
  - d. **“the Services”** means the services to which this document relates.

#### GENERAL

2. All orders are accepted and all contracts are made subject to the following terms and conditions provided that any special conditions of the Company in any quotation or contract shall prevail to the extent that they are inconsistent with the following terms and conditions.
3. A quotation of the Company does not constitute an offer by the Company to sell or supply goods or services and every acceptance of any quotation of the Company and every order by the Buyer is and shall be deemed to be an offer by the Buyer to the Company and does not and shall not bind the Company unless and until the Company gives its written acknowledgement of the order. If the Company's terms and conditions (whether special or general) are at or appear to be at variance or inconsistent with any conditions of the Buyer then the Company's terms and conditions shall and shall be deemed to prevail and be effective.
4. No variation or purported variation of a term of this or any contract shall bind the Company unless first agreed in writing and signed by a duly authorised employee on behalf of the Company. After an order has been acknowledged by the Company the

Buyer may not cancel the order or any part thereof without the prior written consent of the Company and subject to clause 17 hereof. The Company shall be entitled to invoice the Buyer for all and any loss occasioned by a cancellation including administrative and other expenses.

## **TECHNICAL SPECIFICATIONS**

5. All descriptive and technical specifications drawings computer media illustrations photographs catalogues particulars of weights and/or dimensions and general literature comprising the artwork produced or processed by or on behalf of the Company relating to the Goods and/or the Services are intended only to present a general guide and shall not be incorporated in or form part of this or any contract unless otherwise expressly agreed in writing signed on behalf of the Company by a duly authorised employee. Such drawings, literature and computer media shall at all times remain the property of the Company and shall not be released other than by special agreement signed on behalf of the Company by a duly authorised employee. The Buyer shall not copy them without the consent of the Company and shall comply with the Company's reasonable requirements as to their use, return and otherwise.

## **PRICE**

6. The Company reserves the right to alter the contract price in respect of the Goods and/or the Services by reference to the price ruling at the date of despatch of the Goods and/or the date of performance of the Services if any variations in the costs of materials and/or labour and/or any other factor shall in the opinion of the Company make such alterations necessary or expedient including without limitation a fluctuation in the rate of exchange. Unless otherwise expressly so stated all prices are:
  - a. exclusive of value added tax which shall be applied in accordance with the legislation in force at the tax point date;
  - b. exclusive of carriage and delivery costs; and
  - c. exclusive of packaging costs.
  - d. exclusive of insurance costs.
  - e. exclusive of taxes, duties or charges of any kind imposed by any competent authority in respect of the contract or its performance.

## **DELIVERY**

7. a. Any dates or period for the delivery of the Goods and/or the performance of the Services or any of them are best estimates and approximate only. Whilst the Company will where possible attempt to comply with such dates or periods any such dates or periods shall not take effect as a term of the contract or constitute an obligation binding on the Company and in any event but without prejudice to the foregoing time shall not be of the essence for such delivery and/or performance. Where the Company is unable to effect delivery and/or performance without further information or details from the Buyer and there is in the opinion of the Company a delay on the part of the Buyer in providing such information or details the Company may give notice extending any delivery period without prejudice to any other right or remedy available to it.
- b. Where the Buyer is to collect goods from the Company, the Company reserves the right to charge for storage if such goods are not collected within seven days of notifying the Buyer that such goods are available for collection. If the goods are not collected by the Buyer within 21 days of such notification the Company shall be entitled to suspend further performance of the contract and to treat the contract as being wrongfully repudiated by the Buyer and forthwith terminate the contract or treat the contract as terminated without liability for any loss whether direct or indirect suffered by the Buyer by reason of such termination but without prejudice to any other right or remedy available to it.
- c. If the Company is prevented from delivering goods and/or performing services at the time provided for delivery and/or performance by reason of any cause outside its reasonable control (including but not so as to limit the generality of the foregoing fire, explosion, plant breakdown, interference by labour strikes or lock outs or non-availability of transport or materials) then the period for delivery and/or performance shall be deemed extended accordingly and the Buyer shall have no right to terminate the contract by reason of such delay. If the delivery and/or performance date has been exceeded by 8 weeks then the Buyer may give notice to the Company to terminate the unfulfilled part of the contract but the Company shall have no liability to the Buyer for any loss or damage arising therefrom or consequential thereon.
- d. If the Company is prevented from delivering goods and/or performing services at the time provided for delivery and/or performances by reason of any cause on behalf of the Buyer the Company shall be entitled to invoice the Buyer on the date provided for delivery and/or performance in respect of all or any monies due and payable on that date which would have been payable had delivery and/or Performance been effected as intended under the Contract. Further the Company shall be entitled on the actual date of delivery and/or performance to invoice the Buyer for any loss or damage arising and consequential to the late delivery of the goods and/or performance of the services.
- e. If so requested by the Buyer in writing, the Company may defer delivery and/or performance to a date agreed by the Company and the Buyer but the Company shall be entitled to charge the Buyer for the said deferment.
- f. The Company shall be entitled to cancel any accepted order or withhold delivery of any goods and/or performance of any services if the Buyer is in breach of any obligation to the Company whether contractual or otherwise.

- g. The Buyer shall not refuse prevent or hinder delivery and/or performance and failure by the Company to effect delivery and/or performance by reason of any of the aforesaid shall not affect the obligation of the Buyer to pay the invoice price.
- h. The Company shall be entitled to re-sell all or any goods in respect of which delivery is refused prevented hindered or cancelled and in the event that the reason for refusing preventing hindering or cancelling delivery and/or performance subsequently ceases to apply the Company shall only be bound to re-deliver goods and/or re-perform services subject to the availability of the original or replacement goods and/or the availability of suitable labour and without prejudice to any other right or remedy available to it.
- i. No claim for short delivery of goods or goods damaged in transit can be entertained unless either a receipt is given to the carrier detailing the shortage or damage at the time of delivery or alternatively written notification of the shortage or damage is given to the Company within 48 hours of the date of delivery of the goods to the Buyer.

## **TERMS OF PAYMENT**

- 8. All goods and services shall be paid for (together with value added tax thereon) within 30 days unless otherwise agreed by the parties in writing from the end of the calendar month in which they were invoiced by the Company and without regard to any equity, set-off or counterclaim. If any discount is offered by the Company then the same shall be applicable only if the goods and/or services are paid for within the said period of 30 days and on no account shall discount be deductible from value added tax. The Company shall be entitled to claim interest at the rate of 4% per annum above National Westminster Bank's base rate in force from time to time in England from the date the payment became due until actual payment is made.
- 9. Non-compliance with the above terms of payment does and shall constitute default without reminder. In the event that the Buyer fails to fulfil the terms of payment in respect of any invoice the Company may at its sole discretion demand payment of all or any outstanding liabilities whether or not due and/or cancel all or any outstanding orders and/or decline to make further deliveries and/or decline to perform further services except upon receipt of cash or satisfactory security or such other terms as the Company shall decide.

## **PASSING OF RISK**

- 10. Risk of loss of and/or damage to the goods shall pass save where specific shipping terms are incorporated to the Buyer:
  - a. on delivery to the Buyer or to a third party or carrier nominated by the Buyer to take or accept delivery; or
  - b. where the Company gives notice to the Buyer that the Goods are available for collection, on the expiry of 7 days from the date of such notice or on the expiry of the time agreed for collection following services of such notice (if any) whichever is the later; or

- c. if the Buyer or a third party appointed by the Buyer to accept or take delivery wrongfully fails to accept or take delivery of the Goods on the Company tendering delivery of the Goods; or
- d. if the Buyer is to collect the goods from the Company, on the Buyer entering the premises at which the goods are situated from the purpose of such collection.

and the Company shall not subsequently be liable for the safety of the Goods.

## WARRANTIES AND CLAIMS

11. a. Subject to paragraph 11(b) below the Buyer should satisfy itself whether by testing the goods or otherwise as to the performance merchantability quality fitness for purpose and compliance with description of all goods ordered by it from and/or supplied to it by the Company and shall be deemed and conclusively presumed to have done so provided always that the Company does not accept responsibility for any Goods delivered which fail to produce the results as shown during the testing of the Goods. If goods delivered differ materially from their description or from the equipment tested or are by reason of faulty material workmanship or packing by the Company unmerchantable and/or any Services have not been performed with the requisite degree of skill and care, the Company undertakes to repair or replace such goods and/or re-perform such services or (at the option of the Company) to refund the purchase price thereof. This undertaking by the Company is subject to and conditional upon:
- i. any such claim being made in writing and as soon as any fault and/or cause for complaint is readily discernible and in any event within 12 months of the date of performance of the relevant Service or of the date of delivery of the relevant Goods (as appropriate):-
  - ii. the Buyer must afford to the Company the opportunity to examine any goods which are relevant to the subject of a claim before such goods have been further handled, processed or otherwise dealt with;
  - iii. the Company will not be liable for any damage to or deterioration of any Goods which occurs after delivery whether the same occurs due to unsuitable storage conditions, inappropriate use, over-use (that is where the Goods were used for periods in aggregate exceeding 40 hours during any 7 day period), neglect, overloading, improper installation or repair by the Buyer, alteration or accident or to any other cause whatsoever.
  - iv. where the Services are or have been supplied and/or the Goods are or have been manufactured, and/or modified and/or sold or supplied to the specific design, specification or instruction of the Buyer then, in the event of any claim relating to the merchantability, fitness for purpose or any other ground relating to the performance of the Goods or their ability to carry out a particular function or where the claim (directly or indirectly) arises as a result of or due to the unsuitability, inadequacy or failure of the design specification or instruction of the Buyer the Company shall not have any liability to the Buyer on any account whatsoever whether for loss of profit or for any other direct or consequential loss howsoever arising.

- v. the undertaking of the Company to make a repair or replacement or to re-perform the Services and/or to refund the proportion of the invoice price in respect of those Goods or Services therefore shall be the absolute limit of the Company's liability to the Buyer in respect of any such claim. The undertaking is in substitution for any condition or warranty implied by statute, common law or otherwise in respect of the Goods and/or Services which are hereby expressly excluded and under no circumstances shall the Company be in any way further liable to the Buyer whether for loss of profit or for any other direct or consequential loss howsoever arising.
- b. Subject to paragraph 11(a) above in the event of any claim on any ground being made by the Buyer against the Company in respect of Goods manufactured by a third party or any of them or any matter arising from or relating to the Goods or this contract (including without prejudice to the generality of the foregoing any claim for non-delivery of or relating to any defects in or damage to the Goods, or in respect of any breach of any term, condition or warranty relating to the performance, merchantability, quality, fitness for purpose, description or freedom from latent or patent defects of the Goods) or otherwise howsoever the liability of the Company to the Buyer shall be and is hereby limited (in respect of each claim) to the Company making available to the Buyer (in so far as it is able so to do) the benefit of the terms and conditions upon which the Goods have been supplied to the Company such terms and conditions are deemed to be within the knowledge of the Buyer and under no circumstances shall the Company be in any way further liable to the Buyer whether for loss of profit or for any other direct or consequential loss howsoever arising.
- c. Nothing in these conditions shall operate or be construed as operating to exclude or restrict or attempting to exclude or restrict any liability of the Company for death or personal injury caused by the negligence of the Company or its employees.

## INDEMNITIES

- 12. a. The buyer shall indemnify the Company and keep it fully and effectively indemnified against all and any costs claims demands losses or liabilities of whatsoever nature brought or made against the Company or otherwise suffered or incurred by the Company relating to or connected with the Goods and/or Services after the date upon which the risk in the Goods passes between Buyer and/or the date of the performance of the Services as the case may be whether in accordance with Clause 10 of these conditions or otherwise and including (but without prejudice to the generality of the foregoing) any of the aforesaid which results from the operation application or existence of any product liability consumer protection or similar laws.
- b. In the event that the Buyer is to collect Goods from the Company the Buyer shall indemnify the Company and keep it fully and effectively indemnified against any loss or liability of whatsoever nature suffered or incurred by the Company as a result of the acts or omissions of the Buyer or its employees (or agents) in the course of such collection.

- c. i. The Buyer warrants to the Company that the Buyer owns all intellectual property rights in its designs, samples and any other materials supplied to the Company absolutely and the Buyer shall indemnify the Company and keep it fully and effectively indemnified against all and any costs claims demands losses or liabilities whatsoever brought or made against the Company or otherwise suffered or incurred by the Company relating to a claim by a third party that the Goods and/or the performance of the Services infringes any of such third party's patent copyright design trademark or intellectual property rights.
- ii. The Company shall have the right if it so elects to conduct all negotiations with such third party.

## **RESERVATION OF PROPERTY AND RIGHT OF DISPOSAL**

- 13. a. Notwithstanding delivery and/or the passing of risk in the Goods, or any other provisions of the contract between the Buyer and the Company in respect of Goods, until payment by the Buyer in full of:
  - i. the price; and
  - ii. any other monies due and payable to the Company in respect of all Goods agreed to be sold and Services performed by the Company to the Buyer including (without prejudice to the generality of the foregoing) the Goods, then:-
    - 1. the property in the Goods shall remain in the Company and the Buyer shall hold the same as bailee for the Company and shall not without the prior written consent of the Company sell, assign, let, mortgage, charge, pledge, part with possession of or otherwise deal with the Goods;
    - 2. the Buyer shall insure the Goods against all normal commercial risks to their full replacement value with an insurance company of repute for the benefit of the Company and the Company shall be entitled to inspect and take copies of such insurance policy and the premium receipts for it upon giving the Buyer not less than seven days' notice;
    - 3. the Buyer shall keep the Goods separate from those of the Buyer and third parties and properly stored and protected and shall ensure that they are at all times identifiable as the Company's property.

- b. Until such time as the property in the Goods passes to the Buyer, the Buyer shall be entitled to use the Goods in the ordinary course of its business provided that any monies received by the Buyer in respect of the Goods shall be held by the Buyer in a fiduciary capacity on behalf of the Company and, if the Company shall by notice so require, the Buyer shall keep such monies in a separate account but without prejudice to the Company's right to trace the same if the Buyer fails to keep such proceeds separate as aforesaid. The Company shall be entitled to inspect and take copies of the statements and other documents relating to any such account upon giving the Buyer not less than seven days' notice.
- c. Until such time as the property in the Goods passes to the Buyer, the Company shall be entitled by notice to the Buyer served on or at any time after the occurrence of any of the events specified in Condition 15 below forthwith to terminate the Buyer's power to use the Goods.
- d.
  - i. At any time upon such termination, the Company shall be entitled to require the Buyer to deliver up the Goods to the Company and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and take possession of any Goods in which the property remains in the Company, remove any part of the Goods and dispose of them as the Company thinks fit.
  - ii. where the Goods are affixed to or incorporated to any other goods the Company is entitled to enter upon any premises of the Buyer or any third party where such other goods are stored and take possession and remove such other goods to enable the Company to remove the Company's property from such other goods. The Company shall not be liable for any damage arising therefrom.
- e. The Buyer shall be deemed not to have paid the Company for the Goods in the possession of the Buyer at any time unless the Buyer can prove to the satisfaction of the Company that payment for such Goods have been received by the Company.

#### **NOT ASSIGNMENTS OR SUBCONTRACTS WITHOUT CONSENT**

- 14. The Buyer shall not assign or sub-contract the whole or any part of these Conditions without the prior written consent of the Company signed on behalf of the Company by a duly authorised employee. If such consent is given (and without prejudice to any other rights the Company may have) it is conditional upon the Assignee or sub-contractor accepting the conditions agreed between the Company and the Buyer in these Conditions of Sales and the Buyer shall be responsible in all respect for the acts and defaults of any such assignee or sub-contractor.



## **BREACH**

15. If the Buyer:

- a. Make default or commits any breach of its obligations to the Company hereunder;  
or
- b. Is involved in any legal proceedings in which its solvency is in question; or
- c. Being a company presents a petition or has a petition presented for its winding-up or convenes a meeting to pass a resolution for voluntary winding-up or an encumbrances takes possession of or a receiver or administrative receiver is appointed of all or any part of its assets or undertaking of an Administration Order is made in respect of it or it calls a meeting of or enters into any composition or arrangement with its creditors or applies for an interim order under the Insolvency Act 1986; or
- d. Ceases or threatens to cease to trade

then in any such case the Company shall immediately become entitled (without prejudice to its other claims and rights under the contract) to suspend further performance of the contract for such time as it shall in its absolute discretion think fit or (whether or not notice of such suspension shall have been given) to treat the contract as wrongfully repudiated by the Buyer and forthwith terminate the contract or treat the contract as terminated.

## **LIEN**

16. Without prejudice to the Company's rights under Clause 5 above the Company shall have a general lien against the owner thereof over all goods, articles, materials or property received by the Company from the Buyer for any monies whatsoever due from the Buyer to the Company. If any such lien is not satisfied within a reasonable time the Company may at its absolute discretion sell the goods, or part thereof, as agent for the Buyer and apply the proceeds towards the monies due and the expenses of the retention, insurance and sale of the goods and shall, upon accounting to the Buyer for any balance remaining, be discharged from all liability whatsoever in respect of the goods.

## **CANCELLATION**

17. a. Subject to paragraph 17(b) the Buyer shall not be entitled to cancel the contract.
- b. The Buyer may be entitled to cancel the contract if:
  1. he serves notice of his intention of cancellation on the Company,
  2. the Company serves notice of its acceptance of the Buyer's notice on the Buyer; and
  3. the Buyer reimburses the Company in respect of 25% of the contract price together with all expenses incurred by the Company in performance of the contract.

## **NOTICES**

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18. Any notice required to be given hereunder may be served by pre-paid first class letter or facsimile transmission addressed to the last know place of business of the party upon whom service is being effected and such notice shall be deemed to have been served 48 hours after despatch.

#### **PREVIOUS CONDITIONS**

19. These Conditions supersede all previous Conditions of Sales of the Company.

#### **CONSTRUCTION**

20. The sub-headings do not form part of these Conditions.

#### **GOVERNING LAW**

21. This contract shall be governed by and construed in accordance with English Law and the parties hereby irrevocably submit to the non-exclusive jurisdiction of the English Courts.