

WHAT MORE UK LIMITED
TERMS AND CONDITIONS OF SALE

1. INTERPRETATION

1.1 In these Conditions: "the Buyer" means the company, firm or person whose order is accepted by the Seller; "the Seller" means What More UK Limited (Co. Reg. No. 03866672); "Conditions" means the standard terms and conditions of the Seller set out in this document and include any special terms and conditions agreed in writing between the Seller and the Buyer; "Goods" means the goods (including any instalment of the goods) which the Seller is to supply in accordance with these Conditions; and "Contract" means the contract for the sale and purchase of Goods upon and subject to the Conditions between the Seller and the Buyer.

1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. BASIS OF CONTRACT

2.1 Unless otherwise expressly agreed in writing and signed by a director of the Seller, these Conditions shall govern all Contracts between the Seller and the Buyer. No condition, warranty or other term that the Buyer may seek to impose shall apply to the Seller and no terms or conditions endorsed on, delivered with or contained in the Buyer's confirmation or order specification or other document shall form part of the Contract.

2.2 These Conditions shall have effect in place of any other conditions which may previously have been notified by the Seller to the Buyer or referred to in negotiations leading to the Contract. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract. Nothing shall exclude or limit the Seller's liability for fraudulent misrepresentation.

2.3 The Seller's price lists, quotations or proposals are subject to acceptance by the Seller on receipt of the Buyer's order and in the absence of an order, any quotation or proposal shall within 30 days unless otherwise stated in writing of its date be deemed to have been withdrawn.

2.4 No contract for the supply of Goods shall be binding on the Seller unless the Buyer has sent the Seller a signed order for the Goods. Each order or acceptance of a quotation for the Goods by the Buyer from the Seller shall be deemed to be an offer by the Buyer to buy Goods subject to these Conditions.

2.5 It is the responsibility of the Buyer to ensure the accuracy of the terms of any order submitted by the Buyer and for giving the Seller any necessary information relating to the Goods to enable the Seller to perform the Contract in accordance with its terms.

2.6 No order which has been accepted by the Seller may be varied or cancelled by the Buyer except as agreed in writing by the Seller and then only on the terms that the Buyer indemnifies the Seller in full against all loss (including lost profits), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of such variation or cancellation.

3. DESIGN RIGHTS, BROCHURES AND PRICE LISTS

3.1 All designs, specifications, brochures, catalogues, price lists and all advertising matter are the copyright of and shall remain the property of the Seller and must not be copied, reproduced or divulged, either directly or indirectly, to any other person without the Seller's prior written consent. Any information disclosed by the Seller is for the Buyer's secret and confidential use and the Buyer undertakes not to disclose it to any third party without the Seller's consent in writing.

3.2 The Buyer undertakes to indemnify the Seller against all costs should any order or instruction which the Buyer gives to the Seller involve the Seller in actual or threatened litigation or arbitration as a result of alleged infringement of any letters patent, registered design, trade marks, copyright, design right or invention.

4. CREDIT

4.1 Prospective Buyers wishing to open a credit account with the Seller must do so on the Seller's official credit application form. Until the opening of a credit account has been approved by the Seller, payment with the order is required.

4.2 The granting of a credit account by the Seller is subject to the Seller being satisfied as to the Buyer's creditworthiness and the Seller reserves the right in its absolute discretion to refuse the opening of a credit account to refrain from delivery and to close a credit account should the Buyer be in default or not have conducted the account in a proper manner.

4.3 Where the Seller agrees to the opening of a credit account and the agreed amount outstanding to the agreed credit account is exceeded, then the Seller reserves the right at its absolute discretion to charge the Buyer interest at a rate of 5% above the base rate of the Bank of England from time to time on such excess amount of credit.

5. DELIVERY

5.1 Time for delivery is not of the essence and the Seller shall not be liable for any loss or damage caused by late delivery or by non-delivery unless otherwise agreed in writing by the Seller.

5.2 Delivery may at times be withheld pending payment of any sum due on any account whatsoever from the Buyer to the Seller.

5.3 Unless otherwise agreed, delivery of the Goods shall be made by the Seller or its agents delivering Goods to the Buyer's premises. If for any reason the Seller is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

5.3.1 risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Seller's negligence);

- 5.3.2 the Goods shall be deemed to have been delivered; and
- 5.3.3 the Seller may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance)
- 5.4 Goods for delivery to mainland UK are normally despatched by the Seller's own transport or by its agents. In all other respects or where the Buyer has requested special or express delivery, the cost will be borne by the Buyer.
- 5.5 The unloading of Goods at the point of delivery is the Buyer's responsibility and at the Buyer's risk and no charge will be accepted by the Seller for this. Further it is also the responsibility of the Buyer to ensure proper and adequate facilities are at hand for the unloading of Goods.
- 5.6 Unless otherwise agreed in writing, the Seller shall be entitled to make deliveries by instalments and to invoice separately for each instalment. Each instalment shall be construed as constituting a separate agreement to which all the provisions of these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to reject the balance of the Goods agreed to be purchased by the Buyer.
- 5.7 Save where the right to receive liquidated damages has been specified and agreed by the Seller in writing as part of the Contract prior to performance of the Contract occurring, the Seller shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Seller's negligence), nor shall any delay entitle the Buyer to rescind the Contract unless such delay exceeds 180 days.
- 5.8 Where the Seller has agreed to deferred delivery, such delivery shall be accepted by the Buyer within 6 weeks from the date of the order. If the Buyer fails to take delivery within such a period, the risk shall pass to the Buyer and the balance remaining undelivered together with the storage cost shall be invoiced to the Buyer and payment shall become immediately due.
- 5.9 Goods which the Buyer agrees to collect itself ex-works, must be collected within 7 days of the Seller notifying the Buyer that the Goods are ready. If the Goods are not collected within this period, the Seller shall be entitled to invoice the Buyer for the Goods and to charge for storage of the Goods, the Goods being held at the Buyer's risk.
- 5.10 Deviations in quantity of the Goods delivered from those stated in the Contract shall not give the Buyer the right to repudiate the Contract or to reject the Goods (save insofar as they materially exceed the amount ordered) or to claim damages for breach of Contract. The quantity of any consignment of Goods as recorded by the Seller on despatch from the Seller's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 5.11 Where the Buyer requires an order to be delivered over a period of time, the Buyer shall agree a programme of deliveries with the Seller before commencement of the order, which shall not be varied unless expressly consented to by a director of the Seller. In the event of variation, the Buyer will indemnify the Seller fully against all expenses incurred by the Seller as a result of such variation.

6. INSPECTION, ACCEPTANCE AND REJECTION

- 6.1 The quantity and description of the Goods shall be as set out in the Seller's quotation.
- 6.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.
- 6.3 The Buyer shall examine all Goods on delivery. No responsibility or liability will be accepted by the Seller for any shortage or damage to the goods unless:
- 6.3.1 where the Goods are delivered by the Seller's own transport, details of any shortage or damages are endorsed on the delivery note; and
- 6.3.2 where Goods are delivered by the Seller's own transport, the Buyer notifies the Seller in writing within 2 working days of receipt of the Goods.
- 6.4 In all cases, where the Buyer complains of defects or shortages, the Seller shall without prejudice to the question of liability generally, be under no liability in any event if it has not been given an opportunity to inspect the Goods before they had been used by the Buyer or if the Goods have already been used by the Buyer, or if the Buyer is unable to prove (by whatever method) to the reasonable satisfaction of the Seller that the defect or shortage has been caused due to the Buyer's use of the Goods in accordance with any specification for the Goods as set out in the Buyer's order.
- 6.5 Goods delivered to the Buyer are not returnable, except under the terms of the guarantee in existence at the time of delivery. No credit will be given by the Seller to the Buyer for Goods until such time as these have been returned to and inspected by the Seller and found to be defective.

7. PRICE

- 7.1 The price for the Goods shall be the quoted price or, where no price has been quoted, the price listed in the Seller's published price list current at the date of acceptance of the Buyer's order.
- 7.2 The Seller reserves the right by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in cost to the Seller which is due to:

- 7.2.1 any fact beyond the reasonable control of the Seller (including without limitation, the cost of labour, materials and other manufacturing costs);
- 7.2.2 change in delivery date, quantity or specification of the Goods requested by the Buyer;
- 7.2.3 any delay caused by any instructions of the Buyer or a failure by the Buyer to give the Seller adequate information or instructions.
- 7.3 The price is exclusive of Value Added Tax, which the Buyer will be additionally liable to pay.
- 7.4 Should any additional tax, duty, levy or other payment whatsoever be imposed by the government relating to the Goods prior to delivery, the Buyer shall bear the burden of such charges.

8. PAYMENT

- 8.1 Unless otherwise agreed in writing by the Seller, the price of the Goods shall be due and payable without deduction 30 days from invoice. Time for payment shall be of the essence and the Seller shall be entitled to charge interest (both before and after judgment) on a daily basis at the rate of 5% above the base rate of the Bank of England from time to time to be paid by the Seller per month from the due date until the date of actual payment. No payment shall be deemed to have been received until the Seller has received cleared funds.
- 8.2 If the Buyer defaults in payment of the Goods by the due date on this or on any other contract, the Seller shall at its discretion (without prejudice to any other right or remedy) be entitled to withhold despatch of the Goods until such time as all monies owed to the Seller by the Buyer have been paid in full.
- 8.3 If the Buyer defaults in payment for the Goods by the due date on this or any other contract, the Seller shall be entitled to regard all monies owed as immediately due and payable, notwithstanding any previous agreement.
- 8.4 The Buyer shall not in any circumstances for any reason whatsoever be entitled to make any deduction or withhold any sum from the price of the Goods by way of set off.
- 8.5 The Seller reserves the right at any time to demand security for payment before continuing with or delivering any order.
- 8.6 All payments payable to the Seller under the Contract shall become due immediately on its termination despite any other provision.

9. RISK AND PROPERTY

- 9.1 Risk in the Goods shall pass to the Buyer when the Goods are delivered to or collected by the Buyer or its agents.
- 9.2 Legal and equitable title and property ("Title") in the Goods shall not pass to the Buyer until payment in cleared funds is received by the Seller for the Goods and no other amounts are then outstanding from the Buyer to the Seller in respect of any other goods supplied by the Seller.
- 9.3 Until Title in the Goods passes to the Buyer in accordance with clause 9.2 the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller, the Buyer shall not do anything with the Goods which would cause the Goods to become unidentifiable as belonging to the Seller and shall keep the Goods properly stored, protected and insured and the Goods shall be stored in such a way as to be clearly identifiable as belonging to the Seller.
- 9.4 The Buyer shall be entitled to use or re-sell the Goods in the ordinary course of its business before Title passes. If the Buyer does use or re-sell the Goods, the Buyer shall do so as licensee for the benefit of the Seller and the following provisions shall apply:-
- 9.4.1 In re-selling the Goods, the Buyer shall act as agent of the Seller but shall not have authority to create privity of contract between the Seller and any person to whom the Goods are sold.
- 9.4.2 The Buyer shall hold any proceeds from the sale of the Goods as trustee on behalf of the Seller.
- 9.4.3 If the Buyer re-sells any Goods on credit terms, it shall on request assign to the Seller any rights it may have against its customer under the re-sale contract.
- 9.4.4 The Buyer shall be entitled to receive by way of commission any amount by which the proceeds of any re-sale under this clause exceeds the total amount due to the Seller on all accounts between the Seller and the Buyer.
- 9.4.5 The Seller's interest on the monies held for its benefit under this clause shall determine automatically when the Buyer has paid all sums due from it to the Seller.
- 9.5 The Buyer may use any Goods supplied under this Contract in the manufacture of any new product in the course of its business, even though the Goods may be the property of the Seller in accordance with clause 9. However, if the Buyer does use any such Goods, the following provisions shall apply:-
- 9.5.1 Any new products manufactured using the Seller's Goods shall be the property of the Seller and the right and duties of the Seller and the Buyer in respect of any such new product shall be the same as their rights and duties in respect of the Goods supplied under this Contract in accordance with these Conditions.

- 9.5.2 The Buyer may re-sell in the ordinary course of its business any product manufactured using the Seller's Goods and the rights and duties of the Buyer and the Seller in respect of such re-sale and any proceeds for the re-sale shall be the same as their rights and duties in respect of the sale of the Goods supplied under this Contract and their proceeds in accordance with clause 9.4.
- 9.6 The Seller shall at any time be entitled to appropriate any payment made by the Buyer in respect of any Goods in settlement of such invoices as the Seller may in its absolute discretion think fit notwithstanding any purported appropriation by the Buyer.
- 9.7 Until such time as Title in the Goods passes to the Buyer, the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller 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 repossess the Goods.
- 9.8 If the Buyer fails to pay for the Goods in accordance with the terms relating to payment in these Conditions, the Seller shall be entitled as an alternative to repossessing the Goods in accordance with clause 9.7 above, to bring an action against the Buyer for the price of the Goods regardless of the fact that Title may not have passed to the Buyer.
- 9.9 The Buyer's right to possession of the Goods shall terminate immediately if:
- 9.9.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
- 9.9.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Seller and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
- 9.9.3 the Buyer encumbers or in any way charges any of the Goods.
- 9.10 The Seller shall be entitled to recover payment for the Goods notwithstanding that Title in any of the Goods has not passed from the Seller.
- 9.11 The Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 9.12 Where the Seller is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Seller to the Buyer in the order in which they were invoiced to the Buyer.
- 9.13 On termination of the Contract, howsoever caused, the Seller's (but not the Buyer's) rights contained in this clause 9 shall remain in effect.

10. **INSOLVENCY OF THE BUYER**

- 10.1 If the Buyer makes a voluntary arrangement with its creditors or becomes subject to an administration order or, being an individual or firm, becomes bankrupt, or being a company goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or a receiver is appointed over any of the property or assets of the Buyer and notifies the Buyer accordingly or documents are filed with the Court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), then the Buyer's right to possession of the Goods shall terminate immediately and without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries without liability to the Buyer and if the Goods have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

11. **DISCLAIMER AND LIMITATION OF LIABILITY**

- 11.1 All Goods shown on any promotional brochures or literature of the Seller are representations of the designs that will be manufactured by the Seller to comply with the Buyer's particular order and, as such, the Seller cannot guarantee that the Goods will look exactly like the design shown on such promotional brochures or literature including the pictures shown which are for guidance only and in particular no liability is accepted for any variation in hue or colour of the Goods to be delivered.
- 11.2 The Seller accepts liability for death or personal injury arising from our negligence.
- 11.3 Subject to clause 11.2, the Seller's liability in contract, tort (including negligence and breach of statutory duty) misrepresentation, restitution or otherwise arising by reason of or in connection with the Buyer's order with the Seller shall be limited to the price paid for the Goods.
- 11.4 Subject to clauses 11.2, the Seller excludes all liability for any claims, losses, demands and damages, including without limitation any costs, loss of profits, loss of contracts or business opportunity, loss of data and any other consequential, incidental, special or punitive damages, even if the Seller has been advised of the possibility of such damages, arising directly or indirectly out of or in any way connected with the Buyer's use or the end customer's use whether arising in contract, tort (including negligence), under statute or otherwise PROVIDED THAT nothing contained in these Conditions affects or will affect the Buyer's or the recipient's statutory rights in relation to the quality, fitness or description of the Goods supplied.

11.5 Subject to clause 11.1 above, the Seller shall not be liable for any delay or inability to perform the Seller's obligations to the Buyer if such delay is due to any cause whatsoever beyond the Seller's reasonable control in accordance with clause 14.

12. SAMPLE GOODS

12.1 In those circumstances where the Seller supplies a sample to the Buyer or prospective Buyers, it is not intended to provide them with a contractual specification of the Goods or to constitute a sale or offer of sale by sample and the Buyer shall be responsible to the Seller for ensuring the accuracy of the items of any order (including any applicable specification) submitted by the Buyer in accordance with clause 2.

13. THIRD PARTY RIGHTS AND INTELLECTUAL PROPERTY RIGHTS

13.1 For the purposes of this clause 13, "Intellectual Property Rights" means all patents, trade names or marks, service marks, copyright, moral rights and design rights and all mask work, trade secrets, know-how and other intellectual property rights (whether in any case registered or unregistered and wherever subsisting) and any right to register any of them.

13.2 Save where any Intellectual Property Rights are licensed to the Seller by a third party, all Intellectual Property Rights in the Goods and in any promotional literature or brochures shall belong to the Seller.

13.3 If the Buyer uses or sells the Goods in such a manner so as to incur any liability to any third party, then such liability shall be the sole responsibility of the Buyer which shall indemnify the Seller from and against any such liability.

13.4 The Buyer shall not make any representations, warranties or guarantees with reference to Goods supplied by the Seller except as are consistent with these conditions.

13.5 The Buyer shall indemnify the Seller against all claims, costs, losses, damages and expenses for which the Seller may suffer or be liable arising out of the affixing on the Goods any trade mark or registered name or other Intellectual Property Right identification on the Buyer's instructions or (without prejudice to the generality of the foregoing) arising out of the use of Intellectual Property Rights (including without limitation patent rights, brand or unregistered trade names/marks, registered trade marks, copyright or registered designs) supplied by the Buyer or required by the Buyer to be used by the Seller.

13.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 (and notwithstanding any other provision of these Conditions) these Conditions are not intended to, and do not, give any person other than the Buyer and the Seller any right to enforce any of its provisions.

14. FORCE MAJEURE

14.1 The Seller shall not be liable for any failure or delay in delivering the Goods to the extent that delivery is prevented, frustrated, impeded and/or delayed or rendered uneconomical arising from circumstances outside the Seller's control including for example Acts of God, war, riot, explosion, abnormal weather, fire, flood, strikes, lock outs, government action or regulations (UK), delays by suppliers, accidents, shortage of materials or manufacturing difficulties and the Seller reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) in such circumstances.

15. GENERAL

15.1 Any notice to be given hereunder by either party to the other shall be in writing and shall be deemed to have been duly given if sent to the registered office or principal place of business of the other or such other address as that party may from time to time notify in writing by first class post. Any notice sent by post shall be deemed to be properly served 3 days after posting.

15.2 No waiver by the Seller of any breach of contract by the Buyer shall operate as a waiver in respect of any subsequent breach of the same or any other provision.

15.3 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 order provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

15.4 The Buyer shall not assign or transfer or purport to assign and transfer this Contract nor any of its rights or obligations thereunder without the prior written consent of the Seller.

15.5 These Conditions and the Contract based thereon shall be governed by the laws of England and the parties submit to the non-exclusive jurisdiction of the English Courts.