

TERMS AND CONDITIONS OF SALE

- 1 These Conditions shall apply to all commercial dealings between SWC Trade Frames Limited (hereinafter called "the Company") and the customer and all quotations given, orders accepted and contracts made by the Company shall be subject to them. All conditions of the customer or other terms, conditions or warranties whatsoever are excluded from the contract and the customer accepts that this document comprises the entire agreement between the parties and that the customer has not been induced by or relied upon any statement or representation made by the Company, its servants or agents other than those contained herein. Notwithstanding the provisions of this clause, the terms and conditions of agreement between the Company and the customer may be varied by a Director or Manager of the Company in writing.
- 2 All prices stated or quoted by the Company are exclusive of Value Added Tax which will be added to the amount invoiced at the rate prevailing at the invoice date together with any other statutory tax or charge from time to time being in force. The price invoiced to the customer shall be that prevailing at the time of despatch and notwithstanding any prior estimate or quotation given to the customer shall be subject to fluctuation caused by but not restricted to increases in costs incurred by the Company as a consequence of any increases in the cost of raw materials, manufacture, packaging, transport or other direct or indirect costs. Any such increase will be added to the price quoted by the Company and the adjusted amount will be invoiced to the customer.
- 3 Unless otherwise agreed by the Company in writing payment shall be made by the customer without deduction. In the event that the customer defaults in making payment to the Company when payment is due and payable in accordance with the provisions of this agreement, the Company shall have the right to cancel the agreement and any other contract between the Company and the customer and to suspend all further deliveries of goods to the customer until the default is made good and further without prejudice to any other right or remedy available to the Company against the customer to charge interest on any amount outstanding at the time of default, until the account is settled and notwithstanding that the customer may allege entitlement to with-hold payment. Where goods are delivered to the customer by instalments, the Company may at its discretion invoice each instalment separately. No dispute arising under the contract shall interfere with the customer's obligation to make prompt payment in full for all goods sold and delivered by the Company to the customer or to the customer's order.
- 4 Any time for delivery given to the customer by the Company, its servants or agents, shall be an estimate only and although the Company shall endeavour to deliver the goods within the period of time stated, time for delivery is not of the essence of the contract and the Company shall not be liable for any loss, cost, damage or expense caused to the customer whether arising directly or indirectly by reason of the Company's failure to comply with any delivery time stated and further the customer shall have no right to cancel any order given to the Company or to refuse to accept delivery of the Company's goods. Notwithstanding that the customer shall take delivery of the goods at the time when they are due and ready for delivery, the Company may at its sole discretion postpone delivery at the request of the customer, provided always that the customer shall be responsible to pay all reasonable costs, including but not restricted to the costs of storage and insurance arising from postponement of delivery.
- 5 Cancellation of the customer's order will only be agreed by the Company on the condition that all costs and expenses incurred by the Company up to the time of cancellation, including the loss of any profit, shall be paid by the customer on demand by the Company.
- 6 Notwithstanding that risk shall pass on delivery, legal and equitable property in all goods supplied shall remain in the Company until payment in full therefore has been received by the Company and the customer shall permit the Company's servants or agents to enter its property to re-possess the goods at any time prior thereto. In the event that the customer deals with the goods so that their identity is no longer ascertainable or re-sells them, prior to obtaining title the Company's property in the goods shall attach to the proceeds of the sale which shall be placed in a separate bank account and shall be held on trust for the Company or to any claim for such proceeds or to the products which the Company's goods may have been made or become merged to the full extent of the Company's claim against the customer.
- 7 Until property in the goods has passed to the customer the goods shall be stored separately from other products at the customer's place of business and shall be identified or otherwise marked so that the Company's ownership can be ascertained. If the goods are delivered to the customer otherwise than by the Company's transport risk shall pass to the customer at the time of despatch from the Company's premises whether or not the Company arranges transport on behalf of the customer.

- 8 The Company shall not be liable for any loss, cost, damage, detriment or expense whatsoever or howsoever arising if manufacture or delivery of the goods is delayed or hindered by Act of God, governmental intervention or restriction, hostilities, civil commotion, fire, flood, accident, machinery breakdown, strike, lock-out, non-delivery of goods by the Company's suppliers or any other cause or circumstance whatsoever beyond the reasonable control of the Company and on the occurrence of any of the above events, the Company reserves the right to cancel the agreement or suspend delivery of goods to the customer. The Company shall not in any event be liable for any consequential loss or damage to the customer whatsoever or howsoever arising or for any other loss of profits or damage to property, and the Company's liability shall not exceed the limitations set forth in this agreement.
- 9 The customer shall have no claim for shortages or defects which are apparent upon examination of the goods, unless the customer notifies the Company within 2 working days of delivery of the goods and a written complaint is received at the Company's registered office within 2 working days thereafter if the goods were transported to the customer by the Company's transport or within such period as may be specified in the conditions of carriage, if the goods were transported to the customer by carrier. In the event that the customer alleges that the goods are defective, the customer must give the Company the opportunity to examine the goods and investigate any complaint made and if upon inspection the goods are shown to be defective, the Company will at its sole discretion repair or replace with satisfactory alternative or substitute goods or refund to the customer the cost of the defective goods.
If the Company repairs the goods or replaces them with alternative or substitute goods, the customer shall be bound to accept such goods and the Company shall not be responsible or liable for any delay, damage, detriment or expense to the customer arising from the initial delivery to the time when such goods are repaired or replaced and in no circumstances shall the liability of the Company exceed the cost of replacement of the goods, or the price paid by the customer for them. The customer shall have no claim in respect of defects which are not apparent upon inspection following delivery to the customer unless notice is given to the Company within 2 working days of such defect becoming apparent, or when such defect should have come to the knowledge of the customer in the ordinary course of events. Notice must be given to the Company in writing. Complaints made by the customer shall not be a ground for the customer to delay payment of monies due to the Company and shall not give rise to any right of set-off.
- 10 The customer shall determine the suitability of the Company's products for the customer's intended purpose and shall be deemed to be satisfied that they meet the customer's particular requirements. Any drawing, illustration or information contained in the Company's advertising, sales, technical or other literature is provided for guidance only and shall form no part of this contract unless specifically agreed by the Company in writing.
- 11 The goods manufactured by the Company carry a 12 months manufacturer's warranty incorporating the benefit of the warranty given to the Company by its suppliers. This warranty extends only to the replacement of the goods as originally supplied and the Company has no liability as regards any consequential loss such as the costs of fitting replacements etc.
- 12 If the customer employs the services of sub-contracted fitters recommended by the Company this is on the understanding that the contract for such fitting is between the customer and the sub-contracted fitters only. No liability attaches to the Company for the work carried out by the sub-contracted fitters.
- 13 All drawings documents and information supplied by the Company to the customer are supplied on the strict understanding that copyright is vested in the Company and that the contents are confidential and shall not be replicated or disclosed to any third party other than with the consent of the Company first hand and in writing.
- 14 The waiver by the Company of any breach of any of the terms of this agreement shall not prevent the subsequent enforcement of that term and shall not be deemed to be a waiver of any subsequent breach. If any term or provision of this agreement shall be found to be unenforceable for any reason whatsoever then this agreement shall be constructed as if such term or provision was specifically excluded from it.
- 15 This agreement will be governed by and construed in accordance with English law and the Company and the customer shall submit in all matter of disputes arising out of this agreement to the exclusive jurisdiction of the Courts of Law in England.