

# AD Goddard – Terms & Conditions

## 1. General

**1.1** These conditions are the only conditions upon which A.D.GODDARD (“the Company”) is prepared to deal with its customer (“the Customer”) and they shall govern the contract to the entire exclusion of any other express or implied conditions.

**1.2** These Conditions may only be modified by a variation in writing signed on behalf of the Company by a Director and on other action on the part of the Company (whether delivery of the goods or otherwise) shall be construed as an acceptance of any other conditions.

**1.3** These Conditions (as modified in accordance with paragraph 1.2 and together with any matters referred to on the face of the Company’s quotation and/or acceptance of order) embody the entire understanding of the parties and supersede any prior promises, representations, undertakings or implications.

## 2. Performance

**2.1** As site conditions vary and are beyond the Company’s control, the Company’s liabilities for performance of the goods are limited. The Customer must satisfy itself by appropriate trials that the goods are suitable for the intended use and ensure that the instructions on any labels, data sheets or COSHH sheets are strictly complied with

**2.2** The Company warrants only that the goods shall at the time of delivery be free from defects in workmanship and materials. If any goods do not conform to this warranty the Company will at its option:-

**2.2.1** replace any goods found not to conform to the warranty;

**2.2.2** take such steps as the Company deems necessary to bring the goods into a state where they are free from such defect; or

**2.2.3** take back goods found not to conform to the warranty and refund the appropriate part of the purchase price.

Provided that the liability of the Company shall in no event exceed the purchase price of the goods, and performance of any one of the above options shall constitute an entire discharge of the Company’s liability under this warranty.

**2.3** The foregoing warranty is conditional upon:-

**2.3.1** the Customer giving written notice to the Company of the alleged defect in the goods such notice to be received by the Company with seven days of the time when the Customer discover or ought to have discovered the defect and in any event within three months of delivery of the goods, and:-

**2.3.2** the Customer affording the Company a reasonable opportunity to inspect the goods and, if so requested by the Company, returning the allegedly defective goods to the Company’s works, carriage pre-paid, for inspection to take place.

**2.4** Save as provided in Condition 2.2 Section 2 (1) of the Unfair Contract Terms Act 1977 and section 12 of the Sale of Goods Act 1979:-

**2.4.1.** all conditions and warranties, express or implied, as to the quality or fitness for any purpose of the goods are hereby expressly excluded; and

**2.4.2** the Company shall be under no liability for any loss or damage (whether direct, indirect or consequential) howsoever arising which may be suffered by the Customer.

**2.5** In the event that, notwithstanding the foregoing provisions of this Conditions, the Company is found liable for any loss or damage suffered by the Customer, that liability shall in no event exceed the purchase price of the goods.

**2.6** The foregoing provisions of this condition shall not apply to sales which are made to persons who deal as consumers (as that expression is defined in Section 12 of the Unfair Contract Terms Act 1977), unless the contract is an international supply contract (as described in Section 26 of that Act).

### **3. Variation in Price**

**3.1** Unless the Quotation specifies a fixed price the price for the Products will be the Company's list price last published on the date of invoice subject to such discounts as may be specifically agreed by the Company.

**3.2** Unless otherwise stated, the contract price is exclusive of value added tax or any similar taxes, levies or duties, which will be added to or charged on invoices at the appropriate rates.

### **4. Payment**

**4.1** Unless otherwise agreed in writing, the Customer shall pay for the goods within 30 days of the date upon which the Company's invoice is despatched to the Customer.

**4.2** Where any sum owed by the Customer to the Company under this or any other contract is overdue the Company may withhold deliveries of goods due to be made under this contract until arrangements as to payment or credit have been established which are satisfactory to the Company.

### **5. Delivery**

**5.1** Unless otherwise stated, the Company's prices include delivery to any part of the United Kingdom (save for orders below £100 not including VAT, which are subject to a carriage charge of £15 plus VAT, and orders which are subject to minimum order levels).

**5.2** The periods quoted for delivery are indications only and bear no undertaking on the part of the Company unless a fixed date is expressly agreed.

**5.3.** The Company will use reasonable endeavours to effect delivery on agreed dates but will not be liable for any loss or damage occasioned by the delay.

**5.4** Under no circumstances shall the Customer refuse to accept the goods on the grounds of delay in delivery.

**5.5** If the Customer being a company shall pass a resolution or suffer an order of a court to be made for its winding-up, or if a receiver shall be appointed, or if a petition for the appointment of an administrator shall be presented in respect of it, or being an individual or partnership shall suspend payment or propose to enter into any composition with creditors or become unable to pay its debts (or have no reasonable prospect of doing so) or suffer a bankruptcy order, then the Company may without prejudice to any other right rescind the contract, or suspend or cancel delivery or recover the possession of any goods for which payment in full has not been received.

**5.6** Any pallets used in deliveries remain the property of the Company and it shall be the responsibility of the Customer to return these to the Company or pay £20 plus VAT per pallet. The Company is, without obligation, prepared to assist the Customer in this by collecting empty pallets when subsequent deliveries are made.

### **6. Risk and Property**

**6.1** The risk in the goods shall pass to the Customer upon delivery of the goods to the Customer or any carrier acting on the Customer's behalf.

**6.2** The property in the goods shall not pass to the Customer until the full price of the goods and goods which are the subject of any other contract between the Customer and the Company is paid.

**6.3** Until such time as the full price of all such goods has been paid:-

**6.3.1** they shall be held by the Customer in fiduciary capacity and stored by the Customer at its premises in such a manner that they are clearly identifiable as the goods of the Company and shall be kept separate from any other goods whether or not supplied by the Company.

**6.3.2** they shall be handed over to the Company on demand and the Company shall be entitled to re-take possession of them without prejudice to any of its other rights against the Customer and the Company is hereby granted a licence to enter into the Customer's premises for the purpose of recovering the goods

**6.3.3** the Company hereby authorises the Customer to use and/or sell the goods in the normal course of its business. If the Customer sells the goods prior to paying the full price thereof, the Customer shall hold the proceeds of sale on trust for the Company and shall immediately pay the proceeds of sale into a separate bank account. The Company shall be entitled to call upon the Customer to assign all claims that the Customer may have against purchasers from the Customer.

## **7. Initial Defects**

**7.1** The Customer shall have no claim in respect of any breach of the warranty in Condition 2.2 hereof which should be apparent on a reasonable visual examination of the goods unless the conditions in Paragraph 7.4 are satisfied.

**7.2** If the quantity of goods delivered does not correspond with the quantity required to be delivered in that consignment the Customer shall not be entitled to reject that consignment but shall be entitled only:-

**7.2.1** if the quantity delivered is less than the contract quantity, to a further delivery of goods to make up the deficiency or (at the Company's option) a refund of the appropriate part of the purchase price, and

**7.2.2.** if the quantity delivered exceeds the contract quantity, to return the excess or to retain the whole, in which case the price shall be adjusted at the correct rate then prevailing.

**Provided that the Customer shall have no entitlement whatsoever in respect of that deficiency unless the conditions in paragraph 7.4 are satisfied.**

**7.3** The Customer shall have no claim in respect of the fact that the goods delivered are of the wrong description unless the conditions in paragraph are satisfied.

**7.4** The conditions before referred to are that:-

**7.4.1** the Delivery Note for the goods is qualified by a remark to that effect and,

**7.4.2** the claim is made upon the Company within 48 hours of delivery and is confirmed in writing by letter within seven days of delivery.

**7.5** In any event the Customer shall be treated as having accepted any consignment of the goods if it retains them for longer than seven days after delivery.

## **8. Storage**

**8.1** The Company shall be entitled to store the goods (or any of them) at its own premises or elsewhere and to make a storage charge calculated at the rate of 5% of the value of any goods held in stock per month or part of any month if:-

**8.1.1** where the Customer is required to collect the goods from the Company's works, the Customer fails to take delivery at the time specified therefore

**8.1.2** where the arrangement is for the goods to be delivered by the Company, either the Company is unable to despatch the goods by reason of any act or omission on the part of the Customer, or the Company has despatched the goods but the Customer fails to take delivery thereof

**8.1.3** the Company is withholding delivery of the goods pursuant to condition 4.3.

## **9. Set off**

No deduction or set off (whether legal or equitable) shall be made from sums due to the Company unless by way of payment or a contra account accepted in writing by the Company or the Company has accepted and agreed in writing the amount involved in any claim for set off or such amount has been awarded against the Company by the decision of any court or arbitrator.

## **10. Cancellation**

Contracts are not subject to cancellation without the Company's written consent. Where cancellation is accepted, the Company shall in addition to any express terms of acceptance of cancellation be entitled to reimbursement of any costs incurred by the Company in connection with the contract. Goods returned in good condition may be accepted for credit by the Company at its discretion less 10% administrative costs.

## **11. Force Majeure**

The Company shall have the right to cancel or reduce the volume of the goods delivered if it is prevented from or hindered in delivery of the goods through any circumstances beyond its control including (but not limited to) industrial action, war, fire, or prohibition or enactment of any kind, without incurring any liability for any loss or damage whatsoever resulting therefrom.

## **12. Governing Law**

The contract is governed by the Laws of England and the English High Court of Justice (to the jurisdiction of which the Customer hereby irrevocably submits) shall have the exclusive jurisdiction to resolve any disputes arising out of it.

**Note: The Company's prices are calculated on the basis that the above conditions will apply. Customers requiring prices to be quoted on a different basis should inform the Company.**