

The customer's attention is drawn in particular to the provisions of clause 10

**1. Interpretation**

1.1. Definitions. In these Conditions, the following definitions apply:

<b>"Business Day"</b>	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
<b>"Conditions"</b>	the terms and conditions set out in this document as amended from time to time in accordance with clause 12.6.
<b>"Contract"</b>	the contract between Conway and the Customer for the sale and purchase of the Goods in accordance with these Conditions.
<b>"Conway"</b>	Conway Packaging Services Limited (registered in England and Wales with company number 02648068).
<b>"Customer"</b>	the person or firm who purchases the Goods from Conway.
<b>"Force Majeure Event"</b>	has the meaning given in clause 11.
<b>"Goods"</b>	the goods (or any part of them) set out in the Order.
<b>"Intellectual Property"</b>	any copyrights, letters, patents, know-how, inventions, utility models, registered and unregistered designs, trade and service marks, trade names, logos, patent applications, rights in the nature of copyrights and all other similar rights in the Goods.
<b>"Order"</b>	the Customer's order for the Goods, as set out overleaf.
<b>"Services"</b>	the services to be provided by Conway under the Contract, together with any other services which Conway provides or agrees to provide to the Customer.
<b>"Specification"</b>	any specification for the Goods, including any related plans and drawings, that is supplied to Conway by the Customer, or produced by Conway and agreed in writing by the Customer.

## **1.2. Construction**

In these Conditions, the following rules apply:

- 1.2.1. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2. A reference to a party includes its personal representatives, successors or permitted assigns.
- 1.2.3. A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.2.4. Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.2.5. A reference to writing or written includes faxes and e-mails.

## **2. Basis of contract**

- 2.1. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2. The Order constitutes an offer by the Customer to purchase the Goods or Services in accordance with these Conditions. The Customer shall ensure that the terms of the Order and any relevant Specification are complete and accurate.
- 2.3. The Order shall only be deemed to be accepted when Conway issues a written acceptance of the Order, or (if earlier) Conway delivers the Goods or performs the Services to the Customer, at which point the Contract shall come into existence.
- 2.4. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Conway which is not set out in the Contract. Any samples, drawings, descriptive matter, or advertising issued by Conway and any descriptions or illustrations contained in Conway'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 or any other contract between Conway and the Customer for the sale of the Goods.
- 2.5. A quotation for the Goods or Services given by Conway shall not constitute an offer. Quotations will be compliant with BS 1133 for packing specifications unless otherwise requested by the Customer. A quotation shall only be valid for a period of [20] Business Days from its date of issue.

- 2.6. The Buyer shall ensure that the terms of its Order and any applicable Specification are complete and accurate.
- 2.7. Any typographical, clerical or other error or omission in any sales literature, quotation, acceptance or offer, invoice or other document or information issued by Conway shall be subject to correction without liability on the part of Conway.

### **3. Description**

- 3.1. The quality and description of the Goods or Services shall be as set out in Conway's quotation or acknowledgment of order.
- 3.2. All samples, drawings, descriptive matter, specifications and advertising issued by Conway's and any descriptions or illustrations contained in Conway's catalogues or brochures are issued or published for the sole purpose of giving an appropriate idea of the Goods in them. They should not form part of the contract and this is not a sale by sample.
- 3.3. The Customer acknowledges that all Intellectual Property in any designs and drawings or Goods provided by Conway vest (as between the Customer and Conway) solely with Conway. The Customer acknowledges that it has no Intellectual Property rights in any designs or drawings provided by Conway without Conway's prior written consent.
- 3.4. Conway reserves the right to make any changes to the Specification of the Goods which are required to conform with any applicable EU or statutory requirements, which do not materially affect their quality or performance.
- 3.5. No Order which has been accepted by Conway may be cancelled by the Customer except with agreement in writing of Conway and on the terms that the Customer shall indemnify Conway in full against all loss (including, without prejudice to the generality or the foregoing loss of profit), costs (including without prejudice to the generality of the foregoing the cost of all labour and materials ordered, whether used or unused), damages, charges and expenses incurred by Conway as a result of cancellation.

### **4. Delivery**

- 4.1. Conway shall ensure that:
  - 4.1.1. each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
  - 4.1.2. [if Conway requires the Customer to return any packaging materials to Conway, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as

Conway shall reasonably request. Returns of packaging materials shall be at Conway's expense.]

- 4.2. Conway shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("Delivery Location") at any time after Conway notifies the Customer that the Goods are ready. [The Customer shall be responsible for unloading the Goods at the Delivery Location.]
- 4.3. Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.4. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Conway shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure event or the Customer's failure to provide Conway with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5. If Conway fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Conway shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Conway with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6. If the Customer fails to accept delivery of the Goods within [3] Business Days of Conway notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Conway's failure to comply with its obligations under the Contract:
  - 4.6.1. delivery of the Goods shall be deemed to have been completed at 9.00 am on the [third] Business Day following the day on which Conway notified the Customer that the Goods were ready; and
  - 4.6.2. Conway shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7. If [10] Business Days after Conway notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, Conway may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.8. [Conway may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.]
- 4.9. The quantity of any consignment as recorded by Conway on despatch from Conways place of business shall be conclusive evidence of the quantity received by the

Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

**5. Services**

5.1. Conway may, from time to time, accept and store the Customer's property on Conway's premises. The Customer's property shall at all times be at the Customer's risk. Conway shall only insure the Customer's property at the Customer's written request and cost.

5.2. Unless otherwise agreed in writing, Conway will not accept, handle or provide the Services in relation to certain goods including (but not limited to) inflammable, explosive, inherently dangerous goods, bullion, coins, precious stones, jewellery, antiques, pictures, paintings, livestock or plants.

**6. Quality**

6.1. [Where Conway is not the manufacturer of the Goods, Conway shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to Conway.]

6.2. Conway warrants that on delivery, and for a period of [12] months from the date of delivery (warranty period), the Goods shall:

6.2.1. conform in all material respects with their description and any applicable Specification;

6.2.2. be free from material defects in design, material and workmanship;

6.2.3. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

6.2.4. be fit for any purpose held out by Conway.

6.3. Subject to clause 6.4, if:

6.3.1. the Customer gives notice in writing to Conway during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 6.2; and

6.3.2. Conway is given a reasonable opportunity of examining such Goods; and

6.3.3. the Customer (if asked to do so by Conway) returns such Goods to Conway's place of business at Conway's cost,

Conway shall, at its option, repair or replace the defective Goods, issue a credit note at the pro rata Contract rate or refund the price of the defective Goods in full.

6.4. Conway shall not be liable for Goods' failure to comply with the warranty set out in clause 6.2 if:

- 6.4.1. the Customer makes any further use of such Goods after giving notice in accordance with clause 6.3; or
  - 6.4.2. the defect arises because the Customer failed to follow Conway's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice; or
  - 6.4.3. the defect arises as a result of Conway following any drawing, design or Specification supplied by the Customer; or
  - 6.4.4. the Customer alters or repairs such Goods without the written consent of Conway; or
  - 6.4.5. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - 6.4.6. the price for the Goods has not been paid by the due date for payment.
- 6.5. Except as provided in this clause 6, Conway shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 6.2.
- 6.6. Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 6.7. These Conditions shall apply to any repaired or replacement Goods supplied by Conway for the unexpired term of the Warranty Period.

**7. Title and risk**

- 7.1. The risk in the Goods shall pass to the Customer on completion of delivery.
- 7.2. Title to the Goods shall not pass to the Customer until Conway has received payment in full (in cash or cleared funds) for:
- 7.2.1. the Goods; and
  - 7.2.2. all other sums which are or which become due to Conway for sales of the Goods or any other products to the Customer.
- 7.3. Until title to the Goods has passed to the Customer, the Customer shall:
- 7.3.1. hold the Goods on a fiduciary basis as Conway's bailee;
  - 7.3.2. store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Conway's property;
  - 7.3.3. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

- 7.3.4. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- 7.3.5. notify Conway immediately if it becomes subject to any of the events listed in clause 9.2; and
- 7.3.6. give Conway such information relating to the Goods as Conway may require from time to time,

but the Customer may resell or use the Goods in the ordinary course of its business.

- 7.4. If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 9.2, or Conway reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Conway may have, Conway may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **8. Price and payment**

- 8.1. The price of the Goods and Services shall be the price set out in the quotation, or, if no price is quoted, the price set out in Conway's published price list in force as at the date of delivery.
- 8.2. Conway may, by giving notice to the Customer at any time before delivery, increase the price of the Goods or Services to reflect any increase in the cost of the Goods or Services that is due to:
  - 8.2.1. any factor beyond Conway's reasonable control (including foreign exchange fluctuations, increases in taxes and duties, increases in carrier costs due to delays, delays caused by the Customer and increases in labour, materials and other manufacturing costs);
  - 8.2.2. any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
  - 8.2.3. any delay caused by any instructions of the Customer or failure of the Customer to give Conway adequate or accurate information or instructions.
- 8.3. The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be paid by the Customer when it pays for the Goods.
- 8.4. The price of the Goods and Services is exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from Conway, pay to Conway such additional amounts in respect of VAT as are chargeable on the supply of the Goods and Services.

- 8.5. Conway may invoice the Customer for the Goods on or at any time after the completion of delivery. Unless in the case of Goods which are to be collected by the Customer, or the Customer wrongfully fails to take delivery of the Goods, in which event Conway shall be entitled to invoice the Customer at any time after Conway has notified the Customer that the Goods are ready for collection or (as the case may be) Conway has tendered delivery of the Goods.
- 8.6. The Customer shall pay the invoice in full and in cleared funds within 20 Business Days of the date of the invoice. Payment shall be made to the bank account nominated in writing by Conway. Time of payment is of the essence. Conway shall be entitled to recover the invoice amount notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Customer.
- 8.7. If the Customer fails to make any payment due to Conway under the Contract by the due date for payment (**due date**), then the Customer shall pay interest on the overdue amount at the rate of [4]% per annum above Lloyds Bank Plc, base lending rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 8.8. The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Conway in order to justify withholding payment of any such amount in whole or in part. Conway may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Conway to the Customer.
- 8.9. If the Customer fails to make any Payment due by the due date without prejudice to any other right or remedy available to Conway, Conway may exercise a general lien over all the Customer's property held by Conway, exercisable in respect of all sums lawfully due from the Customer to Conway. Conway shall be entitled on [14] days' notice in writing, to dispose of such of the Customer's property in such manner and at such price as it thinks fit and to apply these proceeds towards the amount outstanding.
- 9. Customer's insolvency or incapacity**
- 9.1. If the Customer becomes subject to any of the events listed in clause 9.2, or Conway reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to Conway, Conway may cancel or suspend the Services and all further deliveries under the Contract or under any other contract between the Customer and Conway without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered or Services provided to the Customer shall become immediately due.
- 9.2. For the purposes of clause 9.1, the relevant events are:
- 9.2.1. the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of

section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or

- 9.2.2. the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer; or
- 9.2.3. (being an individual) the Customer is the subject of a bankruptcy petition or order; or
- 9.2.4. a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- 9.2.5. (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer; or
- 9.2.6. (being a company) a floating charge holder over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver; or
- 9.2.7. a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer; or
- 9.2.8. any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2.1 to clause 9.2.7 (inclusive); or
- 9.2.9. the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or
- 9.2.10. the financial position of Conway deteriorates to such an extent that in the opinion of the Customer the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy.
- 9.2.11. (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

## **10. Limitation of liability**

- 10.1. Nothing in these Conditions shall limit or exclude Conway's liability for:
- 10.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - 10.1.2. fraud or fraudulent misrepresentation; or
  - 10.1.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - 10.1.4. defective products under the Consumer Protection Act 1987; or
  - 10.1.5. any matter in respect of which it would be unlawful for Conway to exclude or restrict liability.
- 10.2. Subject to clause 10.1:
- 10.2.1. Conway shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or indirect or consequential loss arising under or in connection with the Contract (including any losses that may result from a deliberate breach of the Contract by Conway, its employees, agents or subcontractors);
  - 10.2.2. Conway shall not be liable to the Customer for any liability whether in contract, tort (including negligence) breach of statutory duty or otherwise, for any direct or indirect loss arising under or in connection with:
    - (a) any variation to the BS 1133 from the Customer following a request from the Customer;
    - (b) any stowing of unpacked goods in shipping containers following a request from the Customer;
    - (c) any handling of restricted goods under clause 5.2 without Conways written consent; and
  - 10.2.3. Conway's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, including losses caused by a deliberate breach of the Contract by Conway, its employees, agents or subcontractors shall not [exceed the price of the Goods].

## **11. Force majeure**

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, default of suppliers or subcontractors, default of suppliers or subcontractors, acts of God, war, terrorism, riot, civil commotion,

interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions.

## **12. General**

### *12.1. Assignment and subcontracting*

- 12.1.1. Conway may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 12.1.2. The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Conway.

### *12.2. Notices*

- 12.2.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, commercial courier, fax or e-mail.
- 12.2.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2.1; if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- 12.2.3. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### *12.3. Severance*

- 12.3.1. If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 12.3.2. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

12.4. *Waiver*

A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

12.5. *Third party rights*

A person who is not a party to the Contract shall not have any rights under or in connection with it.

12.6. Any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Customer.

12.7. *Governing law and jurisdiction*

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.