

# General Sales, Delivery and Payment Terms & Conditions Edition: March 2011

## DEFINITIONS

In these terms and conditions the following expressions shall have the following meanings and cognate expressions shall be construed accordingly:

- (a) "the Seller" means GRETSCH-UNITAS LIMITED
- (b) "the Buyer" means the natural or juristic person or combination of such persons who place an order with the Seller.
- (c) "the Goods" means the items or articles the subject of the Order placed with the Seller.
- (d) "the Conditions" means the terms and conditions herein set out which shall govern the purchase and sale of the Goods.
- (e) "the Order" means the order placed by the Buyer with the Seller for the supply of the Goods.
- (f) "the Contract" means the contract of sale concluded by the placing of an Order which is accepted by the Seller.
- (g) "the Services" means the Services as set out in the Order Form.

## 2. QUOTATIONS

- (a) Quotations shall only be valid for a maximum period of 30 days from the date of the quotation unless otherwise agreed in writing.
- (b) The quotation may be withdrawn or cancelled or amended by the Seller at any time prior to acceptance within the validity period by written or oral notice.

## 3. VARIATIONS AND CONDITIONS

- (a) NEITHER the Buyer nor the Seller shall be bound by any variation, waiver or addition to the Conditions or to the Contract except as agreed by both parties in writing and signed on their behalf.
- (b) Any terms and conditions used by the Buyer in the course of its business shall not apply to the Contract.
- (c) No statement or representation made at any time prior to the Contract shall be a term of the Contract or deemed to be an inducement or collateral contract pursuant to which the Buyer entered into the Contract.
- (d) The Seller's quotations, estimates and offers do not bind the Seller until confirmed by them in a Confirmation of Order.
- (e) In the event that the Buyer amends the Order – whether before or after the Contract is concluded – the Seller reserves the right to burden the Buyer with any additional costs arising from such amendment.

## 4. DELIVERY

- (a) Delivery of the Goods shall be made at the Seller's earliest convenience. Any time or date for delivery is an estimate only and may be cancelled or revised at the Seller's option. Time for delivery by the seller shall not be of the essence in the Contract.
- (b) The Seller shall not be liable to the Buyer for any loss or damage suffered directly or indirectly by the Buyer from any delays in delivery howsoever arising.
- (c) The Seller shall have no liability to the Buyer in the event of non-delivery of the whole or any portion of the Goods caused directly or indirectly by Act of God, elements, war, act of Government, strikes or lockouts, fire, flood, breakdown of machinery, non-delivery or delay in delivery by the Seller's suppliers of the Goods or materials required therefore, failure by the Buyer to obtain the necessary licenses or documents or any other cause (whether or not *ejusdem generis* to the foregoing) beyond the Seller's control.
- (d) If delivery is delayed due to any of the causes referred to in the foregoing paragraph by a period in excess of 6 months the Seller may cancel the undeliverable portion of the Contract by notice in writing on regular production items, this will not apply to special design/requested product.
- (e) If delivery of goods is delayed at the Buyer's request the Seller reserves the right to charge storage costs of 0.5% of the invoice amount for each month or part thereof commencing one month after the Seller has indicated intention to deliver without need of proof of such costs. Such costs will be limited to a maximum of 5% unless the Seller shows he has incurred higher costs.
- (f) If for reasons beyond the Seller's control delivery does not take place punctually or is interrupted frustrated or rendered difficult or impossible then the Seller may claim damages including costs and expenses arising.
- (g) The Seller may effect part deliveries.
- (h) Dispatch shall ordinarily be effected from the Seller's warehouse in Germany. If the Seller elects to deliver to the Buyer's premises then the Buyer will accept delivery of the Goods when tendered by the Seller provided such delivery is tendered at the Buyer's place of business within usual business hours or at such other place as may be agreed between the Seller and the Buyer.

## 5. PRICE, INSTRUCTIONS AND VARIATIONS

- (a) The price of the Goods and/or the Services shall be the prices stated in the quotation or such other prices expressly agreed in writing. If no such price for the Goods and/or services is fixed the prices shall be that calculated using the Seller's standard procedure for pricing current at the date when the Contract is made.
- (b) The Seller reserves the right by giving notice to the Buyer at any time before delivery to increase the price of the Goods and/or the Services to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials, surcharge or other costs of manufacture), any change in delivery dates, quantities specification for the Goods and/or the Services which is requested by the Buyer, or any delay caused by any instruction of the Buyer or failure by the Buyer to give the Seller adequate information or instructions.
- (c) Where the Seller has manufactured the Goods in preparation for a delivery date agreed to by the parties, if the Buyer requires a deferred delivery date to which the Seller agrees, and either the Seller is required to store the goods at its premises, or to deliver the Goods to site at the risk of the Buyer as hereinafter provided, the Buyer shall be invoiced for the Goods at the original delivery date and shall be invoiced for any balance when the Contract has been completed. The Buyer shall be responsible for any storage costs incurred by the Seller as a result of the Buyer's requirement for a deferred delivery date.
- (d) All variations issued to the Seller by the Buyer must be in commencing with the works and or material procurement. The Seller for its part will substantiate, upon request, the price quoted using the previously agreed/applied rates, or the Seller's current pricing procedure. If the Buyer fails to adhere to this procedure the Seller will accept no responsibility whatsoever for any delays to the agreed programme or for any loss or costs incurred by the Buyer howsoever incurred.

## 6. MEASUREMENTS

MEASUREMENTS, dimensions, weights, colours and other

details contained in the Seller's catalogues, sales manuals, photographs, drawings, illustrations and price lists and the Seller's samples constitute only an approximate guide and do not form part of the Contract. No warranty is given that the Goods will correspond exactly with those specified.

## 7. BUYER MANUFACTURING DESCRIPTIONS

The Buyer shall be solely responsible for ensuring that all details given to the Seller either by the Buyer or by the Buyer's advisors or consultants relating to the Contract including measurements, colours, materials, products and locations and all drawings, advice and recommendations are accurate correct and suitable. The Buyer shall not be entitled to cancel any order made to its own specification and the Seller shall not be obligated to accept any such Goods for return, repair or replacement unless any such Goods are covered by the Seller's warranty and in such case, clause 14 will apply.

## 8. TERMS OF PAYMENT

- (a) Subject to clause 8 (f) below the Buyer shall make payment in full of the Goods and/or the services within 30 days from the date of the delivery of the Goods and/or the carrying out of the Services. No retention shall be applicable to any payments. Time of payment shall be of the essence for all contracts between the Seller and the Buyer to which these Conditions apply.
- (b) Neither disputes arising under the Contract nor factors outside the control of the Buyer or the Seller shall entitle the Buyer to delay payment in full or in part.
- (c) No payment to the Seller may be withheld or may any counterclaims of the Buyer be set off against any payment due.
- (d) In the event of default in payment by the Buyer, the Seller shall be entitled without prejudice to any other of its rights or remedies to suspend all further deliveries without notice and to charge interest on the amount overdue at the rate of 5% over the base rate of the Bank of England from time to time.
- (e) Failure by the Buyer to make payment in respect of any one or more instalments of Goods delivered and/or the Services carried out hereunder shall entitle the Seller to treat the whole of the Contract, at its discretion, as repudied by the Buyer.
- (f) Payment terms as referenced in 8 (a) above are subject to the Seller obtaining a satisfactory credit rating for the Buyer and documented verification of previous good trading practices. The Seller at its sole discretion will approve or decline a credit facility, and upon such facility being provided the Seller always reserves the right to withdraw such a facility at any time whatsoever. The Seller may also elect to implement other payment terms, such as but not exclusive to, payment for the cost of Goods and or Services carried out or completed to date, cash on delivery, upfront payment.

## 9. SITE PREPARATION

- (a) The Buyer shall give the Seller at least 10 working days notice in writing that the site is ready for work or the Services to be commenced in accordance with the agreed programme and subject always to the other scheduled commitments of the Seller.
- (b) If either: (i) the Seller shall be called to the site and the site shall not be ready for the Services to be commenced, or (ii) if, while the Seller is on site, the Services are delayed by any cause outside the control of the Seller, then in either case, the Buyer shall reimburse the Seller at a reasonable rate in respect of the labour and the transportation costs thereby incurred by the Seller and any other reasonable costs incurred.

## 10. RISK

- (a) The Seller has made no provision for the protection of the Goods and/or the Services from delivery of the Goods and/or carrying out the Services.
- (b) Unless otherwise agreed between the parties the risk in the Goods shall pass to the Buyer when the Goods are delivered (to site) and the Buyer shall effect and maintain adequate insurance in full value against all damage to or loss of such Goods. The Buyer shall, if required, produce to the Seller evidence of such insurance cover.
- (c) The Buyer shall at all times ensure that adequate security is provided so as to prevent any loss or damage to any of the Companies property or hired in equipment, and undertakes to reimburse the Seller for any loss or damage incurred resultant from a failure by the Buyer for providing such security.

## 11. RETENTION OF TITLE

- (a) Notwithstanding delivery the property in the goods shall not pass to the buyer until the Buyer has paid in full the price of the Goods.
- (b) Furthermore the property in the Goods shall not pass to the Buyer unless and until the full price of any other delivered goods the subject of any other business transaction between the Buyer and the Seller has been paid. Such price and the price of the Goods shall hereinafter together be called "the value" and shall where the context so permits include in addition thereto any costs of repossession incurred pursuant to paragraph (iv) of Clause (c) hereof.
- (c) Until the value has been received by the Seller the Buyer will hold the Goods as bailee on behalf of the Seller and the Buyer hereby acknowledges that there shall accordingly subsist a fiduciary relationship in respect of the Goods between the Buyer and the Seller. Subject thereto:
  - (i) The Buyer will store the Goods on its premises separately from its own goods or those of any other person in such a way that they can be readily identified as the goods of the Seller.
  - (ii) Until payment as aforesaid the Buyer will take all necessary measures for the protection of the Goods including the insurance thereof against all usual risks with an insurance Seller approved by the Seller for the full replacement value of the Goods. The Buyer will procure that the interest of the Seller is noted upon any policy of insurance effected pursuant hereto and that a copy of the same is supplied to the Seller on the creation thereof.
  - (iii) The Buyer is authorised by the Seller to agree to sell on the Goods at a price which shall nevertheless be no less than the purchase price of the Goods hereunder subject to the express condition that the entire proceeds thereof are held in trust for the Seller and are not mingled with other monies or paid into any overdraft bank account and shall be at all times identifiable as the Seller's money. The Buyer shall keep records (to be produced to the Seller whenever required) of the name and address of any such sub-purchaser and the date and contract price of each delivery and shall if the Seller so requires in writing assign such claims as the Buyer has against such sub-purchasers as emanate from this transaction.
  - (iv) The Seller may, at any time if payment is overdue in whole or in part without prejudice to any other right arising pursuant to or

consequent upon this Agreement, for the purpose of recovery of the Goods, enter upon any premises where the Goods are stored or where they are reasonably incurred by the Seller in connection with such recovery shall be paid by the Buyer;

- (v) It is declared for the avoidance of doubt without prejudice to the generality of the foregoing that the Seller may recover the Goods and payment shall become due if:
  - (a) The Buyer does or fails to do anything which would entitle an Administrator or Administrative Receiver to take possession of any of its assets or which would entitle any person to present a petition to wind up the Buyer; and/or
  - (b) The Buyer passes any resolution to wind itself up or publishes a notice convening a meeting of its creditors pursuant to section 98 of the Insolvency Act 1986 or any statutory modification or replacement thereof; and/or
  - (c) The Buyer if an individual has a Bankruptcy Order made against it or enters into any arrangement for the benefit of its creditors generally.
  - (d) (i) The Buyer may not admit the Goods with other property not belonging to the Seller. However if goods the property of the Seller are admixed with goods the property of the Buyer or are processed with an incorporated therein the product thereof shall become and/or shall be deemed to be the sole and exclusive property of the Seller. If Goods the property of the Seller are admixed with Goods the property of any person other than the Buyer or reprocessed with incorporated therein the product thereof shall become or shall be deemed to be owned in common with that other person.
  - (ii) The provisions of Paragraph (iii) of Clause (c) hereof shall apply mutatis mutandis to the proceeds of the sale of any product referred to in Paragraph (i) of this Clause.
  - (e) In the event of the goods having been resold by the Buyer the Seller reserves the beneficial entitlement to the proceeds of sale until payment of goods has been made in full.
  - (f) The Seller also reserves the right to add collection costs and legal fees incurred in the recovery of the outstanding debt.
  - (g) Each of the preceding Clauses and subparagraphs shall be construed and shall take effect separately and in the event of one or more such Clauses or sub-paragraphs being held ineffective this shall not affect the validity of the remaining Clauses or sub-paragraphs.

## 12. SUPPLY ONLY CONTRACT

Where the Contract provides for the supply only of the Goods if the Buyer requests any assistance with off-loading or installation or commissioning of the Goods, the Buyer shall be responsible for the Seller's costs.

## 13. STRUCTURE AND CONSENTS

- (a) The Buyer shall ensure that any structure to which the Goods are to be annexed and/or upon which the Services shall be carried out shall be correctly designed and soundly constructed, and suitable for the Goods to be so annexed and for the Services to be carried out. The positions of any concealed services are to be brought to the attention of the Seller. The Buyer shall indemnify the Seller, as a result of third party claims against the Seller, which is caused as a result of any inherent defect in the structure to which the Goods are to be annexed or upon which the Services are carried out.
- (b) It shall be the responsibility of the Buyer to ensure that all necessary planning permissions, Building Regulation approval, local authority approvals and any other consents have been obtained for the installation of the Goods and/or carrying out of the Services.

## 14. WARRANTY

- (a) The Warranty set out in this clause applies to materials that have been manufactured by the Seller. The Seller undertakes to repair or replace at the Seller's option, free of charge, any such materials, or part thereof, used under normal conditions for which the material was designed, which is found, to the Seller's reasonable satisfaction, to be faulty in either materials or workmanship with twelve calendar months from the date of delivery of the Goods and/or the Services being carried out. Misuse or damage due to defective installation by Buyer is excluded. Where Goods only are supplied, the Goods shall be returned to the Seller's premises at the Buyer's expense unless the Seller agrees otherwise in writing. The Seller's responsibility under this clause shall cease if:
  - (i) The Buyer has not paid in full all invoices for the Goods and/or the Services supplied by the Seller within the time stipulated by these conditions.
  - (ii) The Seller's representatives are denied full and free right of access to the Goods and/or the Services for the purposes of repair or replacement or remedial work during normal working hours.
  - (iii) The Buyer permits persons other than the Seller's employees or agents or those approved or authorised by the Seller to effect any replacement parts, maintenance, adjustments or repairs to the Goods.
  - (iv) The Buyer has not properly maintained the Goods.
  - (v) The Buyer uses any spare parts or replacement for the Goods that are not manufactured by or on behalf of the Seller, nor supplied by the Seller.
- (b) In the case of any part of the Goods not supplied by the Seller, then the Buyer shall be entitled to only such benefits as the Seller may receive under any guarantee or Warranty given to the Seller in respect thereof.
- (c) When reasonably required by the Seller, for the purposes of the Goods and or the Services, the Buyer shall provide tower scaffold, craneage, etc., where necessary at no cost to the Seller.
- (d) If the Seller's representative is required to attend the Buyer's premises to effect remedial work under warranty and it is found that the fault is not with the Goods and/or Services, or that the fault is deemed not to be covered by the Warranty, or that no problem exists, then the Seller reserves the right to charge (and be paid a reasonable fee) for such call outs.
- (e) Notice in writing of the defects complained of together with full details shall be given to the Seller within three working days of the date of discovery. The Seller reserves the right to vary notification procedure which shall be as devised by the Seller in writing from time to time.
- (f) Alternatively to clause 14(a), the Seller shall be entitled at its absolute discretion to refund the price of the defective Goods and/or Services in the event that such price shall already have been paid by the Buyer to the Seller, or, if such price has not been paid, to relieve the Buyer of all obligations to pay the same by the issue of a credit note in favour of the Buyer in the amount of such price.

## 15. BREACH BY BUYER

If the Buyer shall commit any material breach of its obligations hereunder or shall commit an act of bankruptcy or (being a corporation) shall go into liquidation other than for the purpose of reconstruction or amalgamation or shall suffer the appointment of a receiver of any of his or its property or make any deed or arrangement with or composition for the benefit of any of his or its creditors, or if in the opinion of the Seller, the Buyer's credit becomes impaired, the Seller shall have the following rights and remedies in addition to any other rights and remedies provided by applicable law:-

- (a) The Seller shall have the right forthwith to terminate the Contract or any part of it.
- (b) All sums shall become immediately due and payable, notwithstanding any credit terms previously in effect.
- (c) The Seller may refuse any order placed by the Buyer.
- (d) The Seller may cancel any accepted orders or delay shipment of any order.
- (e) If credit previously has been extended by the Seller to the Buyer and the Seller elects to make further sales to the Buyer, the Seller may require payments on a C.O.D or cash-in-advance basis.
- (f) In the event collection of sums due from the Buyer the Seller is referred to lawyers or debt recovery agents for which the Seller is insured or if proceedings are brought to collect such sums or to enforce the right of the Seller, the Buyer agrees to pay all costs, commissions, administration charges and reasonable fees, including such costs and fees incurred in any appeal or proceedings and in executing on any judgment and shall indemnify the Seller in this respect.

## 16. LIABILITY

- The Buyer agrees that it has read the Conditions of Sale, that they have been explicitly negotiated and that they have become a part of the basis of its bargain with the Seller.
- (a) Except in respect of death or personal injury caused by the negligence of the Seller the Seller's aggregate liability, if any, to Buyer whether for negligence, breach of contract, misrepresentation, unless fraudulent, or otherwise shall, in no circumstances exceed £1,000,000 (one million pounds sterling).
  - (b) Except as expressly provided for in these conditions:
    - (i) All conditions and representations expressed or implied by statute, common law or otherwise in relation to the Goods and or Services are hereby excluded to the fullest extent permitted by law save for liability for death or personal injury caused by negligence of the Seller.
    - (ii) The Seller shall have no liability for any direct/indirect or consequential losses or expenses suffered by the Buyer, howsoever caused, and excluding without limitation loss of anticipated profits, goodwill, reputation, business receipts or contracts, or losses or expenses resulting from third party claims.

**CUSTOMERS DEALING AS CONSUMERS HAVE OTHER RIGHTS GRANTED BY LAW IN ADDITION TO THOSE SET OUT IN THESE TERMS AND CONDITIONS WHICH THE SUPPLIER CANNOT EXCLUDE. THESE TERMS AND CONDITIONS DO NOT AFFECT THOSE OTHER RIGHTS GRANTED BY LAW.**

## 17. PATENTS AND COPYRIGHT

Orders to Buyers drawings or specifications are executed only on the understanding that the Buyer will indemnify the Seller against all losses and claims of whatsoever nature incurred by or made against the Seller in respect of infringement of patents, copyright or other intellectual property rights of any other person. Copyright in the Seller's drawings and specifications shall not pass to the Buyer in respect of the Goods and/or the Services.

## 18. SEVERABILITY

- Should any provision of the Terms & Conditions for the supply of Goods prove to be illegal or unenforceable, such provision shall be deemed severable to the extent of such illegality or unenforceability and the remaining provisions thereof shall continue in full force and effect.
- (a) That failure by the Seller at any time to fully enforce any Terms & Conditions of the contract for the supply of Goods or to exercise any rights hereunder shall not constitute a waiver of such Terms & Conditions nor shall it affect the Seller's right to enforce them.

## 19. WAIVER

No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

## 20. GOVERNING LAW

These conditions and each and every contract shall be subject to and interpreted in accordance with English law and all parties agree to accept the non-exclusive jurisdiction of the English Courts. Such submissions shall not limit nor be construed as limiting the Seller's rights to take proceedings against the Buyer in connection with this contract in any court of competent jurisdiction nor shall the taking of proceedings in any one or more courts preclude the taking of proceedings in any other jurisdiction.

## 21. FORCE MAJEURE

If the Seller is hindered or prevented (whether temporarily or permanently) from procuring supplies to enable it to supply Goods or Services or if such supply is prevented or hindered by reason, without limitation, of Act of God, war, Act of Parliament, or orders, regulations or bye laws made under statutory authority, labour disputes including the Seller's labour force, interruption of power supply, failure of sources of supply, interference by a third party, civil commotion, fire, flood or other natural disaster, or any causes of whatever kind and whenever occurring being a cause beyond the Seller's control, (circumstances of Force Majeure), then the Seller may cancel performance of the contract for as long as and to the extent that the prevention or hindrance may last and such cancellation shall not give rise to any claims by the Buyer, and the Buyer shall remain liable to pay for the Goods delivered prior to the date of such cancellation.

## 22. NOTICES

Notices may be given by either or both the Seller and the Buyer by sending such notices to the last known business address or the Registered Office of the other party. Such notices shall be in writing and sent by "First Class Post" Fax \*e-mail.