

U.K.P. Accessories (Hong Kong)
Conditions of Sale

1. The Sale

1.1 Subject to the provisions of Condition 1.2, all contracts made between U.K.P. Accessories (Hong Kong) ("the Seller") and any person, firm or company ("the Buyer") who purchases any goods from the Seller ("the Goods") for the sale and purchase of Goods shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer may purport to apply under any purchase order, confirmation of order, specification or other document) and no terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or any other document shall form part of the contract save as is expressly agreed by the Buyer in accordance with Condition 1.2.

1.2 No variation to these conditions shall be binding or have effect on the Buyer and the Seller unless expressly agreed in writing by both an authorised representative of the Buyer and an authorised representative of the Seller.

1.3 The Seller's employees and agents are not authorised to agree to any variations to these conditions nor are they authorised to make any representations concerning the Goods unless otherwise confirmed in either case by the Seller in writing. In entering into a contract with the Seller the Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or purportedly made or given on behalf of the Seller save as set out in these conditions and to the extent that this is not the case the Buyer waives any claim that it might otherwise have in relation thereto. Provided however that nothing in this condition shall exclude or limit the Seller's liability for fraudulent misrepresentation.

1.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods is followed or acted upon entirely at the Buyer's own risk. Accordingly, the Seller shall not be liable for any such advice or recommendation that might be given and the Buyer waives any claim that it might otherwise have in relation thereto.

1.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

2 Orders and Specifications

2.1 Each order for Goods made by the Buyer and each acceptance by the Buyer of a quotation for Goods from the Seller shall be deemed to be an offer by the Buyer to buy the Goods subject to these conditions.

2.2 No order placed by the Buyer shall be deemed to be accepted by the Seller unless and until a written acknowledgement of the order is issued by the Seller or (if earlier) the Seller delivers the Goods to the Buyer.

2.3 All quotations given by the Seller are on the basis that they remain valid for 30 days, unless withdrawn in writing prior to the end of the 30 day period, and are on the basis that no contract shall come into existence between the Seller and the Buyer for the Goods until the Seller issues a written acknowledgement of the order or (if earlier) the Seller delivers the Goods to the Buyer.

2.4 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all losses (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of the cancellation.

2.5 The Buyer shall be responsible to the Seller for ensuring the accuracy of any order (including application specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform its obligations under the contract in accordance with its terms.

2.6 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation or acknowledgement of order and in the event of a discrepancy between the two the Seller's acknowledgement of order will be decisive.

2.7 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify and keep the Seller indemnified against all losses (including losses arising from the disruption of the business and/or loss of profits of the Seller) judgments, damages, interest, penalties, fines, liabilities, obligations, demands, claims, charges, costs and expenses which the Seller now or hereafter is liable for, pays, incurs, suffers or sustains (including without limitation the costs of investigating or defending any prosecution or claim imposed on, incurred by or asserted against the Seller under or in connection with any claim for infringement of any patent, copyright, design right, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the specification provided to it by the Buyer. Accordingly, any such loss shall be and will remain the sole liability of the Buyer.

2.8 The Seller reserves the right to make any changes to the specification of the Goods which are required so that they conform with any applicable safety or other statutory requirements even where the Goods are to be supplied to the Buyer's specification.

3. Price of the Goods

3.1 Unless otherwise agreed by the Seller in writing and subject to Condition 3.2, the price of the Goods shall be the price set out by the Seller in its quotation or, where no price has been quoted (or where a quoted price is not longer valid), the price set out in the Seller's published price list on the date of delivery or deemed delivery of the Goods in accordance with Condition 5. All prices quoted by the Seller remain valid for 30 days from the date on which the quote is provided as set out in Condition 2.3.

3.2 The Seller reserves the right to and the Buyer agrees that the Seller may, give notice in writing to the Buyer at any time before delivery of the Goods increasing the price of the Goods to reflect either: an increase in cost to the Seller of producing the Goods which is due to any factor beyond the control of the Seller (such as but not limited to, any foreign exchange fluctuation, currently regulation, alteration of duty.); or a change made by the Buyer to the delivery date or to the quantity or specification of the Goods; or any delay caused by any instructions of the Buyer; or any failure of the Buyer to give the Seller adequate information or instructions.

3.3 Except as otherwise agreed in writing between the Buyer and the Seller the price quoted for the Goods shall be exclusive of all costs or charges in relation to packaging, loading, unloading, carriage and insurance all of which the Buyer shall be additional liable to pay to the Seller when it is due to pay for the Goods.

3.4 All prices quoted for the Goods by the Seller are exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller when it is due to pay for the Goods.

4. Terms of Payment

4.1 Unless otherwise agreed in writing by the Seller and the Buyer, the Seller shall be entitled to invoice the Buyer for the Goods on or at any time after the Goods have been delivered or deemed to be delivered in accordance with Condition 5.

4.2 The price for the Goods is payable, in Hong Kong Dollars or US Dollars, or in such other currency as the Seller may require, by the Buyer. The time of payment of the price shall be of the essence. No payment shall be deemed to have been received until the Seller has received cleared funds.

4.3 All sums payable to the Seller pursuant to these conditions shall become immediately due and payable in the event of any termination of the contract between the Buyer and the Seller regardless of any other provision.

4.4 The Buyer shall make all payments which are due to the Seller in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

4.5 If the Buyer fails to make any payment due to the Seller pursuant to these conditions on the due date then, without prejudice to any other right or remedy available to the Seller, the Buyer shall be liable to pay interest to the Seller on such sum from the due date until payment is made in full (whether before or after judgment) at the rate of 3% above the prime rate of HSBC (Hong Kong and Shanghai Banking Corporation Limited) from time to time. Such interest shall accrue on a daily basis.

5. Delivery

5.1 Subject to Conditions 5.2 and 5.6, delivery of the Goods shall be made by the Buyer collecting or arranging to have collected the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection.

5.2 Subject to Condition 5.7 and notwithstanding the provisions of Condition 5.1, if the Buyer and the Seller have agreed that delivery shall take place in some other manner, delivery shall be made by the Seller delivering or arranging to have delivered the Goods in that agreed manner.

5.3 Any dates agreed by the Seller and the Buyer for delivery of the Goods in accordance with Conditions 5.1 or 5.2 or otherwise are approximate only and save as otherwise stated in these conditions the Seller shall not be liable for any direct, indirect or consequential loss (all three of which shall 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 delivery of the Goods howsoever caused. Time for delivery shall not be of the essence and the Buyer may not make it so by notice to the Seller or otherwise.

5.4 In the event that the Seller is prevented from or delayed in meeting its obligations to the Buyer due to circumstances beyond the Seller's reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riots, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes affecting either the Seller or one of its suppliers the Seller shall be entitled to defer the date of delivery or cancel the contract with the Buyer or reduce the quantity of Goods which it is required to supply to the Buyer.

5.5 The Seller shall be entitled to deliver the Goods to the Buyer by separate instalments and each instalment may be invoiced and paid for separately in accordance with these conditions. Where the Goods are delivered in instalments, each instalment shall constitute a separate contract and no cancellation, termination or failure to perform a contract relating to a particular instalment shall entitle the Buyer to repudiate or cancel all or any of the other instalments.

5.6 If for any reason the Buyer fails to collect the Goods from the Seller after the Seller has notified the Buyer that they are ready for collection in accordance with Condition 5.1:

5.6.1 the Goods shall nevertheless be deemed to have been delivered; and

5.6.2 the Seller shall thereafter be entitled to store the Goods as it sees fit until such time as they are delivered or collected and the Buyer shall be liable to the Seller for all related costs and expenses (including for storage and insurance of the Goods).

5.7 If for any reason the Seller is unable to deliver the Goods to the Buyer in such manner as shall have been agreed pursuant to Condition 5.2 due to some fault, act or omission on the part of the Buyer:

5.7.1 the Goods shall be deemed to have been delivered on the date that had been agreed for delivery; and

5.7.2 the Seller shall thereafter be entitled to store the Goods as it sees fit until such time as they are delivered or collected and the Buyer shall be liable to the Seller for all related costs and expenses (including for storage and insurance of the Goods).

6. Non-delivery

6.1 The Seller shall not be liable either for any non-delivery of the Goods or for any Goods that are damaged in transport (even if it is as a result of the Seller's negligence) unless a notice in writing is given by the Buyer to the Seller within 7 days of the date of delivery of the Goods or in the event of non-delivery the date when delivery should have occurred. If the Buyer fails to provide such written notice within the required timescale the Buyer shall not be entitled to bring any further claim in relation to that issue.

6.2 Any liability of the Seller for non-delivery of Goods or for the delivery of damaged Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro-rata contract rate against the invoice raised in respect of those Goods.

7. Risk

The Goods shall be at the risk of the Buyer from the time the Goods are delivered or deemed to be delivered in accordance with Condition 5.

8. Property

8.1 Ownership of the Goods shall not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of:

8.1.1 the Goods; and

8.1.2 all other sums which are or which become due to the Seller from the Buyer on any account.

8.2 Until ownership of the Goods has passed to the Buyer, the Buyer shall:

8.2.1 hold the Goods on a fiduciary basis as the Seller's bailee;

8.2.2 store the Goods (at no cost to the Seller) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;

8.2.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

8.2.4 maintain the Goods in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller.

8.3 The Buyer's right to possession of the Goods shall terminate immediately if:

8.3.1 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

8.3.2 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 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

8.3.3 the Buyer encumbers or in any way charges any of the Goods.

8.4 The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.

8.5 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.

8.6 Where the Seller is unable to determine whether any goods are Goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold the Goods in the order in which they were invoiced to the Buyer.

8.7 On termination of the contract between the Seller and the Buyer, howsoever caused, the Seller's (but not the Buyer's) rights contained in this Condition 8 shall remain in effect.

9. Warranties

9.1 The Seller warrants that (subject to the other provisions of these conditions and in particular Condition 9.2) on delivery the Goods provided hereunder shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979.

9.2 The Seller expressly and to the fullest extent possible excludes any liability for a failure of any of the Goods to meet the requirements of any British Standard, Euronorm, 150 Recommendation, or any other standard or technical specification as to the suitability for any purpose which could give rise to any legal liability. The Buyer must satisfy itself that the Goods are suitable for any product or application for which they are to be used before they are incorporated into such product or application.

9.3 The Seller shall not be liable for a breach of the warranty in Condition 9.1 unless:

9.3.1 the Buyer gives written notice of the defect to the Seller within 7 days of the date of delivery; and

9.3.2 the Seller is given a reasonable opportunity after receiving the notice to examine such Goods and the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Buyer's cost for the examination to take place there.

9.4 The Seller shall not be liable for a breach of the warranty in Condition 9.1 if:

9.4.1 the Buyer makes any further use of such Goods after giving such notice; or

9.4.2 the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

9.4.3 the Buyer alters or repairs such Goods without the written consent of the Seller; or

9.4.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, abnormal working conditions or misuse and furthermore if any of the Goods are damaged by any washing process to which the Buyer subjects them, including but not exclusively, during stonewashing or bleaching.

9.5 Subject to Condition 9.3 and Condition 9.4, if any of the goods do not conform with the warranty in Condition 9.1 the Seller shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata rate pursuant to the contract provided that, if the Seller so requests, the Buyer shall, at the Buyer's expense, return the Goods or the part of such Goods which are defective to the Seller.

9.6 If the Seller complies with Condition 9.5 it shall have no further liability for a breach of the warranty in Condition 9.1 in respect of such Goods.

10. Limitation of liability

10.1 Subject to the other provisions of these conditions, the provisions of this Condition 10 set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

10.1.1 any breach of these conditions;

10.1.2 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and

10.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the contract between the Seller and the Buyer.

10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from this contract.

10.3 Nothing in these conditions excludes or limits the liability of the Seller:

10.3.1 for death or personal injury caused by the Seller's negligence; or

10.3.2 for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability; or

10.3.3 for fraud or fraudulent misrepresentation.

10.4 Subject to Condition 10.2 and Condition 10.3, the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this contract shall be limited to the price payable by the Buyer pursuant to the contract.

11 General

11.1 The Seller may assign this contract or any part of it to any person, firm or company. However, the Buyer shall not be entitled to assign this contract or any part of it without the prior written consent of the Seller.

11.2 Each right or remedy of the Seller under this contract is without prejudice to any other right or remedy of the Seller whether under this contract or not.

11.3 Failure or delay by the Seller in enforcing or partially enforcing any provision of this contract shall not be construed as a waiver of any of its rights under this contract.

11.4 Any waiver by the Seller of any breach of, or any default under, any provision of this contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of this contract.

11.5 The parties to this contract do not intend that any term shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

11.6 If any provision of these conditions is held by any court, tribunal or administrative body of competent jurisdiction to be illegal, invalid, void, voidable, unenforceable or unreasonable in whole or in part it shall to the extent that such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of these conditions shall not be affected thereby but shall continue in full force and effect.

11.7 These conditions shall be governed by the laws of Hong Kong Special Administration Region and jurisdiction of HKSAR courts.