

# STANDARD TERMS AND CONDITIONS OF LLEXETER LTD FOR THE SUPPLY OF GOODS FOR BUSINESS USE

These terms and conditions are effective from 23 July 2005 until further notice and shall replace all previous versions.

## 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

**Business Day** Monday – Friday (inclusive), but excluding any day which is a public holiday in England and Wales;

**Buyer** the person, firm or company who purchases the Goods from Llexeter;

**Contact Address** Llexeter Ltd., Units 15-18, Greendale Business Park, Woodbury Salterton, Devon, EX5 1EW, United Kingdom or email address: business@llexeter.co.uk;

**Excluded Parts** those parts not covered by the warranty in clause 9 and which are set out on the Website under “terms and conditions” at the date of the relevant Contract;

**Llexeter** Llexeter Limited (company number 4940600);

**Cancellation Fee** a cancellation fee of £80 or 30% of the Contract price (whichever is the greater);

**Contract** any contract between Llexeter and the Buyer for the sale and purchase of the Goods, incorporating these conditions;

**Delivery Point** the place where delivery of the Goods is to take place under condition 4;

**Goods** any goods agreed in the Contract to be supplied to the Buyer by Llexeter (including any part or parts of them);

**Website** any website owned or used by Llexeter in relation to its business.

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these conditions.

1.6 In these conditions references to “in writing” or “written” shall include fax and e-mail.

## 2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer’s purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These conditions apply to all Llexeter’s sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by any director of Llexeter. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Llexeter which is not set out in the contract. Nothing in this condition shall exclude or limit Llexeter’s liability for fraudulent misrepresentation.

2.4 Each order or acceptance of a quotation for Goods by the Buyer from Llexeter shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.

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

2.6 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

2.7 The Buyer warrants that it is purchasing the Goods in its capacity as a business.

## 3. DESCRIPTION

3.1 The quantity and description of the Goods shall be as set out in Llexeter’s acknowledgement of order.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by Llexeter and any descriptions or illustrations contained in Llexeter’s catalogues, brochures or Website 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 and this is not a sale by sample.

3.3 In the event that the Buyer does not specify the colour of the Goods in writing, Llexeter shall be entitled to send the Buyer Goods of any colour without notifying the Buyer. In the event that the Buyer does specify a colour in writing, Llexeter reserve the right to supply an alternative colour without notifying the Buyer should the Buyer’s chosen colour be unavailable. The Buyer acknowledges and accepts that the colour of the Goods may differ from those on Llexeter’s catalogues, brochures or Website due to the printing of such catalogues and brochures or if shown on the Website the Buyer’s own computer visual settings and hardware.

## 4. DELIVERY

4.1 Unless otherwise agreed by the parties, delivery of the Goods shall take place at such address as is specified by the Buyer.

4.2 Subject to clause 4.3, if the parties agree that the Delivery Point is to be the Contact Address, the Buyer shall take delivery of the Goods at such time and on such date as is agreed between the parties (the “Agreed Collection Date”). If the Buyer fails to collect the Goods on the Agreed Collection Date, Llexeter shall be entitled to cancel the order at any time during a period of five Business Days commencing the day after the Agreed Collection Date and ending at 3.00 pm on the fifth Business Day of such period (the “Collection Period”). If the Buyer fails to collect the Goods during the Collection Period the order shall be cancelled, the Contract will be terminated and the Buyer shall pay the Cancellation Fee within seven Business Days of the expiry of the Collection Period.

4.3 If the parties agree that the Delivery Point is to be the Contact Address and Llexeter has specifically ordered the Goods from one of its suppliers, should the Buyer fail to collect the Goods on the Agreed Collection Date, Llexeter may store the Goods until re-delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage, insurance and any other costs related to the re-delivery). For the avoidance of doubt, in these circumstances, the order shall not be cancelled and the Contract shall not be terminated.

4.4 Delivery of the Goods will be made as soon as possible after a Contract has been agreed and in any event in the case of delivery within the United Kingdom within seven Business Days of despatch.

4.5 If the Contract is agreed before 10.00 am on a particular Business Day Llexeter will usually despatch the Goods on the same day (subject, amongst other things, to the Goods ordered being in stock and in the status that is specified by the Buyer in the Contract).

4.6 Delivery will usually take place at any time between 6.00 am and 8.00 pm on the date of delivery.

4.7 Any dates and times specified by Llexeter for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice.

4.8 Subject to the other provisions of these conditions Llexeter shall not be liable for any direct, indirect or consequential loss (all three of which terms 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 the delivery of the Goods (even if caused by Llexeter’s negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.

4.9 Llexeter will be entitled to deliver the Goods to any person who is present at the Delivery Point who signs a receipt for the Goods.

4.10 If for any reason the Buyer fails to accept delivery (including but not limited to where the Buyer rejects delivery for any reason) of any of the Goods when they are ready for delivery, or Llexeter is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions or documents:

(a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by Llexeter’s negligence);

(b) the Goods shall be deemed to have been delivered; and

(c) Llexeter or Llexeter’s agents may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage, insurance and any costs related to the re-delivery of the Goods by Llexeter or Llexeter’s agents).

4.11 The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading and unloading the Goods.

4.12 Llexeter may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

4.13 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

4.14 If upon delivery the Goods are damaged the Buyer shall, where the damage is apparent, state upon any receipt for the Goods presented to him, that the Goods are damaged.

4.15 If upon delivery the Goods are damaged, or there is a shortage in respect of the Goods, or the Goods are not those ordered, or any part(s) are missing, the Buyer shall sign any delivery acceptance notice accordingly and notify Llexeter in writing within twenty-four hours of delivery. After such notification the parties shall use reasonable endeavours to seek and agree a resolution to the problem within fourteen Business Days of such notification. If the parties are unable to reach agreement within such period the Contract will be deemed to be terminated, the Buyer shall return the Goods, in the same condition as they were delivered, to Llexeter (at the Buyer’s cost) within seven Business Days of such failure to reach agreement and Llexeter shall refund the Contract price within thirty days of receiving the returned Goods.

4.16 Clause 4.15 shall not apply if:

- (a) the Buyer makes further use of the Goods after becoming aware of the defect; or
- (b) if the Goods are collected by the Buyer or any representative of the Buyer from Llexeter or any premises that are specified by Llexeter.

#### 5. NON-DELIVERY

5.1 The quantity of any consignment of Goods as recorded by Llexeter upon despatch from Llexeter's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

5.2 Llexeter shall not be liable for any non-delivery of Goods (even if caused by Llexeter's negligence) unless the Buyer gives written notice to Llexeter of the non-delivery within seven days of the date when the Goods would in the ordinary course of events have been received. If such notification is received, Llexeter shall replace the Goods or refund the Contract price paid within ten Business Days of receipt of such notification.

5.3 Any liability of Llexeter for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

#### 6. RISK/TITLE

6.1 The Goods are at the risk of the Buyer from the time of delivery when Buyer should make its own arrangements for insurance.

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

- (a) the Goods; and
- (b) all other sums which are or which become due to Llexeter from the Buyer on any account.

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

- (a) hold the Goods on a fiduciary basis as Llexeter's bailee;
- (b) store the Goods (at no cost to Llexeter) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as Llexeter's property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- (d) maintain the Goods in satisfactory condition and keep them insured on Llexeter's behalf for their full price against all risks to the reasonable satisfaction of Llexeter. On request the Buyer shall produce the policy of insurance to Llexeter.

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

- (a) 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
- (b) 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 the Contract or any other contract between Llexeter 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
- (c) the Buyer encumbers or in any way charges any of the Goods.

6.5 Llexeter shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Llexeter.

6.6 The Buyer grants Llexeter, 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.

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

6.8 On termination of the Contract, howsoever caused, Llexeter's (but not the Buyer's) rights contained in this condition 6 shall remain in effect.

#### 7. PRICE

7.1 Unless otherwise agreed by Llexeter in writing, the price for the Goods shall be the price set out in Llexeter's price list published on the date of delivery or deemed delivery.

7.2 The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.

#### 8. PAYMENT

8.1 Unless otherwise agreed by Llexeter and subject to condition 8.4, payment of the price for the Goods is due in pounds sterling prior to the delivery of the Goods by Llexeter.

8.2 Time for payment shall be of the essence.

8.3 No payment shall be deemed to have been received until Llexeter has received cleared funds.

8.4 All payments payable to Llexeter under the Contract shall become due immediately on its termination despite any other provision.

8.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by Llexeter to the Buyer.

8.6 If the Buyer fails to pay Llexeter any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to Llexeter on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of HSBC Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment.

8.7 Llexeter reserves the right to engage a third party (including but not limited to a debt collection agency or firm of solicitors) to recover any costs, expenses or fees owed by the Buyer to Llexeter under the terms of this agreement and the Buyer shall be liable for the costs, expenses or fees of such third party (and the cost of Llexeter in assisting such third party) on a full indemnity basis.

#### 9. QUALITY

9.1 Where Llexeter is not the manufacturer of the Goods, Llexeter shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to Llexeter.

9.2 Unless otherwise agreed, Llexeter warrants that (subject to the other provisions of these conditions) upon delivery, and for a period of seven days from the date of delivery, the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979.

9.3 Llexeter shall not be liable for a breach of the warranty in condition 9.2 unless:

- (a) the Buyer gives written notice of the defect to Llexeter as soon as reasonably practicable after becoming aware of the defect, and, if the defect is as a result of damage in transit by the carrier, within twenty-four hours of the time when the Buyer discovers or ought to have discovered the defect; and
- (b) Llexeter is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by Llexeter) returns such Goods to Llexeter's place of business at the Buyer's cost (unless, after examining the Goods, Llexeter accepts that the defect is not the fault of the Buyer in which case Llexeter shall bear the cost) for the examination to take place there.

9.4 Llexeter shall not be liable for a breach of the warranty in condition 9.2 if:

- (a) the Buyer makes any further use of such Goods after becoming aware of the defect; or
- (b) the defect arises because the Buyer failed to follow Llexeter's oral or written instructions as to the storage, use or maintenance of the Goods or (if there are none) good trade practice; or
- (c) the Buyer or a third party alters or repairs such Goods without the written consent of Llexeter; or
- (d) the Buyer has sold the Goods to a third party purchaser; or
- (e) the relevant parts are Excluded Parts.

9.5 Subject to condition 9.3 and condition 9.4, if any of the Goods do not conform with the warranty in condition 9.2 Llexeter shall at its option repair within seven Business Days or replace such Goods (or the defective part) and return the Goods (or the defective part) to the Buyer at the Buyer's cost (unless, after examining the Goods, Llexeter accepts that the defect is not the fault of the Buyer in which case Llexeter shall bear the cost) or refund the price of such Goods or issue a credit note at the pro rata Contract rate provided that, if Llexeter so requests, the Buyer shall, at the Buyer's expense, return the Goods or the part of such Goods which is defective to Llexeter.

9.6 If Llexeter complies with condition 9.5 it shall have no further liability for a breach of the warranty in condition 9.2 in respect of such Goods.

9.7 Any Goods replaced shall be guaranteed on these terms for the unexpired portion of the warranty period of the original purchase.

#### 10. LIABILITY AND INDEMNITY

10.1 Subject to condition 4, condition 5 and condition 9, the following provisions set out the entire financial liability of Llexeter (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

- (a) any breach of these conditions;
- (b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
- (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

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 the Contract.

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

- (a) for death or personal injury caused by Llexeter's negligence; or
- (b) under section 2(3), Consumer Protection Act 1987; or
- (c) for any matter which it would be illegal for Llexeter to exclude or attempt to exclude its liability; or
- (d) for fraud or fraudulent misrepresentation.

10.4 Subject to condition 10.2 and condition 10.3:

- (a) Llexeter'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 the Contract shall be limited to the Contract price; and
- (b) Llexeter shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

10.5 The Buyer accepts full responsibility for, and shall indemnify and hold Llexeter harmless against, any action, claim, damage, loss (including, without limitation, economic loss, loss of profit, revenue or goodwill), costs (including management and legal costs), or penalty whatsoever awarded against or incurred or paid by Llexeter resulting or arising directly or indirectly from any disputes between the Buyer and its customers.

#### 11. ASSIGNMENT

11.1 Llexeter may assign the Contract or any part of it to any person, firm or company.

11.2 The Buyer shall not be entitled to assign the Contract or any part of it (including, without limitation, the benefit of any warranty) without the prior written consent of Llexeter.

#### 12. FORCE MAJEURE

Llexeter reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of Llexeter including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 180 days, the Buyer shall be entitled to give notice in writing to Llexeter to terminate the Contract.

#### 13. GENERAL

13.1 Each right or remedy of Llexeter under the Contract is without prejudice to any other right or remedy of Llexeter whether under the Contract or not.

13.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

13.3 Failure or delay by Llexeter in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

13.4 Any waiver by Llexeter of any breach of, or any default under, any provision of the 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 the Contract.

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

13.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

#### 14. COMMUNICATIONS

14.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid registered or recorded post or sent by fax:

- (a) (in case of communications to Llexeter) to its Contact Address or such changed address as shall be notified to the Buyer by Llexeter; or
- (b) (in the case of the communications to the Buyer) to the registered office or the trading address (at the sole discretion of Llexeter) of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to Llexeter by the Buyer.

14.2 Communications shall be deemed to have been received:

- (a) if sent by pre-paid recorded or registered post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- (b) if delivered by hand, on the day of delivery; or
- (c) if sent by fax or email on a Business Day which is Monday - Friday (inclusive) between 10.00 am and 4.00 pm, at the time of transmission and otherwise on the next Business Day.

14.3 Communications addressed to Llexeter shall be marked for the attention of the Managing Director.