

TERMS AND CONDITIONS OF SALE AND SUPPLY

THE CUSTOMER'S ATTENTION IS SPECIFICALLY DRAWN TO CONDITION 7 (LIMITATION OF LIABILITY)

In these terms and conditions ("Conditions") the following words and expressions shall have the following meanings:-

"the Products" means any item of whatsoever nature or part thereof which is to be sold or supplied by the Supplier;

"the Customer" means the person named in the order who buys or has agreed to buy the Products;

"the Supplier" means Diffuse Ltd whose principal place of business is at 1 Jubilee Lane, Langford, Bedfordshire SG18 9PH

1 Order and Acceptance

1.1 All orders placed by the Customer shall be in writing specifying the types of Products and the quantity required. All such orders shall be deemed to be an offer by the Customer to purchase the Products in accordance with these Conditions.

1.2 The Supplier contracts for the sale of the Products only subject to these Conditions and all terms and conditions in the Customer's order or enquiries inconsistent with these Conditions shall be of no effect.

1.3 Any modification to these Conditions will be binding only if it is evidenced in writing signed by the Supplier and the Customer and such evidence contains a specific reference to these Conditions being modified.

1.4 The acceptance of orders for the Products shall be at the entire discretion of the Supplier. Acceptance of the Customer's order shall become binding on the Supplier only when the Customer's deposit (if any) referred to in Condition 3.1 has been received by the Supplier and the Supplier has confirmed in writing that it has accepted the order. The Supplier agrees to refund any deposit in full if it does not accept the relevant order.

1.5 The Supplier shall be entitled in its absolute discretion to extend or discontinue the range of Products or any part thereof prior to the acceptance of any order, provided that the Supplier shall promptly notify the Customer of any such acceptance, rejection, extension or discontinuance.

2 Estimates and Prices

2.1 Subject to Condition 2.3, the price charged for the Products shall be that quoted to the Customer or, if no fixed price is quoted, the price in the current price list of the Supplier at the time the order is accepted.

2.2 Unless otherwise stated in writing, the prices estimated or quoted by the Supplier are exclusive of VAT and other applicable taxes, duties or levies of any kind whatsoever, all of which are payable by the Customer in addition to the price, and are exclusive of delivery and insurance charges, for which the Customer shall be responsible.

2.3 Prices are based on various factors including (without limitation) the cost of materials, labour, transport, import duties and levies and if, before collection, there occurs any increase, for any reason beyond the control of the Supplier, in the cost to the Supplier of supplying the Products, (including (without limitation) a change to any of the above matters) or in the event that the Supplier agrees to the Customer modifying the terms of any contract to which these Conditions apply, the Supplier shall be entitled to adjust the price of the Products by a reasonable amount to take account of any resultant increases in the cost of producing or supplying the Products.

2.4 The Customer shall not be entitled to make any deduction from any payment due to the Supplier in respect of any set-off or counter claim, unless the validity and the amount thereof have been expressly admitted in writing by the Supplier.

2.5 The price to be paid by the Customer for the Products may be adjusted by the Supplier in its absolute discretion at any time prior to the acceptance of the Customer's order upon notice being given by the Supplier to the Customer.

3 Payment

3.1 The time of payment shall be of the essence of any contract to which these Conditions apply. Unless otherwise agreed in writing, the Customer shall at the time of order pay to the Supplier a deposit of 50% of the price of the Products.

3.2 Unless otherwise agreed in writing, the balance of the price of the Products shall be paid by the Customer to the Supplier on or before collection of the Products from the Supplier's premises.

3.3 Without prejudice to any other rights the Supplier may have, failure to pay the price or part thereof or other monies payable by the Customer pursuant to these Conditions shall entitle the Supplier to charge (in addition to such sums) interest on the outstanding amount at the rate per annum of 3 percent above the base rate from time to time of the Supplier's bankers calculated on a daily basis from the date the payment became due until the date payment is made.

3.4 The Supplier may at its discretion require full payment of the price prior to collection of the products or the provision of security for payment by the Customer in a form acceptable to the Supplier.

4 Collection

4.1 Delivery shall be deemed to take place on collection of the Products by the Customer or the Customer's haulier from the Supplier's premises. The Customer shall be solely responsible for arranging for collection of the Products.

4.2 The Supplier shall inform the Customer when the Products are available for collection and the Customer shall collect the Products within fourteen days of such notification.

4.3 Although dates for collection are given in good faith, these are indicative only and time of delivery shall not be of the essence. The Supplier shall use reasonable efforts to ensure that orders are available for collection as soon as reasonably practicable and to inform the Customer if there may be any delays in any agreed collection date for the Products and, wherever possible, the reasons for and the anticipated length of the delay. If the Supplier is unable to produce any Product by the agreed collection date the Supplier shall not be liable to the Customer for any delay caused as a result of the failure to deliver, provided that if the Supplier fails to deliver the Products within [6 weeks of the agreed collection date] other than as a result of force majeure (as defined below), the Customer shall have the right to terminate the contract and to receive a refund of all monies paid to the Supplier in respect of the Products to be supplied pursuant to that contract.

4.4 The Customer shall reimburse the Supplier for any costs or expenses (including, without limitation, any storage costs) incurred by the Supplier as a result of the Customer failing to collect the Products at the agreed time and place or failing to provide the Supplier with such instructions and/or documentation as it shall require in order to make the Products available for collection. If the Customer fails to collect the Products within one month from the agreed date for collection, then without prejudice to any other remedies which the Supplier might have, the Supplier shall be entitled to re-sell the Products and retain the proceeds of sale.

4.5 The Customer agrees to inspect the Products upon collection and inform the Supplier [within forty eight hours] in writing of any Products which were delivered in a damaged or defective state or of any shortfall in any delivery. Any shortfall in the quantity of Products delivered from that stated in any contract to which these Conditions apply shall not give rise to a right to claim damages for breach of contract solely as a result of such shortfall but the Customer shall only be obliged to pay at the contract rate for the quantity of the Products delivered.

4.6 All Products supplied by the Supplier shall be at the Customer's risk immediately following notification that the Products are available for collection by the Customer. The Customer shall maintain appropriate insurance against all usual risks and shall procure that the Supplier's interest is noted on any relevant policy.

5 Transfer of Property

5.1 All Products supplied to the Customer or at the Customer's direction shall remain the sole and absolute property of the Supplier, notwithstanding collection and installation, until:

5.1.1 payment in full for all the Products has been received by the Supplier; and

5.1.2 all accounts due from the Customer to the Supplier have been paid in full,

and until such time the Customer shall hold the Products to the order of the Supplier.

5.2 Until such time as the Supplier has been paid in full the Customer shall ensure that all Products are stored separately and in such a way as to be readily identifiable as the property of the Supplier and easily removable by the Supplier. The Customer shall ensure that the Products are properly maintained in the condition in which they were delivered and shall make good any damage or deterioration.

5.3 In the event of non-payment (in whole or in part) by the Customer by the due date the Supplier shall be entitled in addition to all other rights during normal business hours to enter upon any land or premises where the Products may for the time being be and recover possession of them. The Supplier may take such measures as may be reasonably necessary to enter such land or premises and remove the Products.

5.4 The Supplier may maintain an action for the price of the Products notwithstanding that the property in the Products may not have passed to the Customer (provided that ownership shall pass to the Customer once all accounts due from the Customer to the Supplier have been paid in full).

6 Warranties

6.1 The Supplier warrants to the Customer that all Products delivered to the Customer:

6.1.1 will be fit for the purpose notified to the Supplier as the purpose for which they will be used;

6.1.2 will correspond with the specification under which they were sold.

6.2 All samples, illustrations, colours, drawings and diagrams in the Supplier's catalogues, trade literature and other published matter are of a generally informative nature and approximate only and are subject to change without notice and none of these shall form part of any contract or give rise to any independent or collateral liability of whatsoever nature on the part of the Supplier.

6.3 The Products sold and supplied by the Supplier are hand crafted products and variations in colour, texture, size, shade and shape will therefore occur. The Supplier shall not be liable for variations described in this Condition 6 which are outside the Supplier's control.

7 Limitation of Liability

7.1 Subject to the provisions of Condition 7.4, the liability of the Supplier in respect of any breach of the warranties given in Condition 7, or any defect in or failure of any Products supplied, or for any loss, injury or damage attributable directly or indirectly thereto shall be limited to (at the Supplier's option):-

7.1.1 repairing defects or failures in the Products or making good the Products by replacement; or

7.1.2 refunding the contract price for the Products, provided that the Supplier is reasonably satisfied that such defects or failure arose solely from the faulty design of the Products, defective materials or workmanship and that the Supplier shall not be liable in respect of defects to, or failure of, the Products caused by misuse, default or neglect of the Customer, accident or wear and tear.

7.2 If a Product fails, is defective or does not comply with the warranties:-

7.2.1 the Customer shall notify the Supplier immediately in writing on discovery and in any case within [one year] of collection of the relevant Products, setting out details of the problem, the Products affected and the order number and shall take any measures which the Supplier reasonably requests to prevent further problems or to minimize the damage; and

7.2.2 the Customer shall (if the Supplier so requests) return the Products to the Supplier or its nominated representative (and the Supplier shall pay the reasonable costs of the return transport, provided that it has been given prior notice of, and agreed to, such costs, such agreement not to be unreasonably withheld or delayed).

7.3 Subject to Condition 7.6.1, the Customer acknowledges that it has not relied on and shall not rely on any oral statement or representations made by the Supplier or by its employees, agents or servants and the Customer acknowledges that it has only and will only rely on written data and specifications provided by the Supplier.

7.4 The Customer agrees that the Supplier shall not be liable for:-

7.4.1 the cost of substitute goods;

7.4.2 any indirect or consequential loss;

7.4.3 any loss of production;

7.4.4 any loss of profit or goodwill suffered or incurred by the Customer or any third parties;

7.4.5 any loss or damage in excess of the contract price for the Products or part thereof in respect of which a claim is made;

7.4.6 any defects in the Products caused by failure to follow the Supplier's instructions in relation to the maintenance or use of the Products or caused by alterations or repairs made to the Products other than those made by the Supplier or its subcontractors.

7.5 Except as otherwise provided in these Conditions, all representations, guarantees, undertakings, terms, conditions or warranties, express or implied, in tort or contract, statutory or otherwise in relation to the Products are hereby expressly excluded to the extent so permitted by law.

7.6 For the avoidance of doubt, nothing in these Conditions shall exclude or restrict the Supplier's liability:-

7.6.1 for any fraudulent misrepresentation made to the Customer on which the Customer relied in entering into any contract made under these Conditions; or

7.6.2 in relation to any statutory implied conditions as to title in the Products; or

7.6.3 to any person for death or personal injury to that person resulting from the Supplier's negligence;

or

7.6.4

under the Consumer Protection Act 1987 (or any replacement or re-enactment thereof) to a person who has suffered damage (as defined therein) caused wholly or partly by a defect in a Product or to a dependant or relative of such a person.

7.7 The Customer acknowledges that:-

7.7.1 the price of the Products is based on the limitations of liability set out in this Condition 7;

7.7.2 the Supplier is unable to obtain insurance providing unlimited cover for its full potential liability to its clients and such insurance as is available to the Supplier is more expensive than insurance cover available to the Customer to cover loss or damage to the Customer, which insurance cover the Customer should or ought reasonably to maintain in any event; and

7.7.3 the Supplier would not enter into transactions of this nature without such a limitation and that in the light of the provisions of this Condition 7.7, it is fair and reasonable that the Supplier should seek to limit and restrict its liability to the Customer.

8 Indemnity

The Customer shall (and shall ensure that any third party to whom any Products may subsequently be supplied) comply with all instructions of the Supplier in relation to the storage, maintenance and use of the Products, and, except to the extent any of these are caused by the negligence of the Supplier, the Customer shall keep the Supplier fully and effectually indemnified against all costs, claims, demands, expenses and liabilities, (including, without limitation, claims for consequential loss and loss of profit) which may be made against the Supplier or which the Supplier may sustain, pay or incur arising out of or in connection with the Customer's failure so to comply and/or to ensure that any third party to whom any Products have subsequently been supplied so complies.

9 Default and Customers Insolvency

9.1 In the event that:

9.1.1 there is any default or breach of any of the Customer's obligations under these Conditions, including without limitation any failure to make any payments due under any contract to which these Conditions apply;

9.1.2 the Customer shall make or offer to make any arrangement or composition with creditors or commit any act of bankruptcy or if any petition or receiving order is presented or made against the Customer or if any order, resolution or petition to wind it up shall be passed or presented to a receiver, manager or administrative receiver of all or any of its assets shall be appointed, or if the Customer becomes insolvent or undergoes any similar or analogous process in any jurisdiction;

9.1.3 the Customer's ability to carry out its obligations under these Conditions is prevented or hindered or substantially interfered with for any reason (whether or not within the control of the Customer);

9.1.4 there is a material change in the control or ownership of the Customer,

9.1.5 then, (without prejudice to any other remedies the Supplier might have) outstanding unpaid invoices rendered by the Supplier in respect of the Products shall become immediately payable by the Customer and (except where the Supplier exercises its rights under paragraphs (i) or (ii) below) invoices in respect of Products ordered prior to termination but for which an invoice has not been submitted shall be payable immediately upon submission of the invoice, and the Supplier shall be entitled to:-

(i) cancel or suspend any contract to which these Conditions apply (either in whole or part) by notice in writing to the Customer; and/or

(ii) sell or otherwise dispose of any Products which are the subject of any order by the Customer and apply the proceeds of sale to the overdue payment.

9.2 If any contract to which these Conditions apply is terminated by the Supplier under Condition 9.1, the Customer shall indemnify the Supplier against all losses arising out of such termination. Such losses shall be deemed to include loss of profits, the cost of work in progress, labour costs and the cost of any materials purchased by the Supplier for use in producing the Products for the Customer which were not so used and which the Supplier will be unable to use in future in the production of any other products.

9.3 If any contract to which these Conditions apply is cancelled by the Customer (other than in the circumstances set out in Conditions 4.3 or 9.1):-

9.4.1 where the Customer has paid a deposit to the Supplier under Condition 3.1, the Supplier shall be entitled to retain that deposit; and

9.4.2 where the Customer has not paid a deposit to the Supplier under Condition 3.1, the Customer shall be liable within 7 days of the date of cancellation to pay to the Supplier 50% of the price of the Products in each case as liquidated damages which the parties agree are a reasonable pre-estimate of the losses and expenses incurred by the Supplier in relation to that contract.

9.5 Termination of any contract to which these Conditions apply shall be without prejudice to any rights accrued in favour of either party prior to the date of such termination.

10 Assignment

10.1 The Customer may not assign or transfer or purport to assign or transfer any contract to which these Conditions apply or the benefit thereof to any person.

11 Force Majeure

11.1 If the Supplier is prevented from fulfilling any order or contract within a reasonable time by force majeure, it will notify the Customer of the delay. The Supplier shall be under no liability to the Customer and shall be entitled to extend the time or times for delivery or otherwise performing such contract for so long as such cause of prevention or delay shall continue.

11.2 If the event of force majeure continues for a period of more than 40 days, both the Customer and the Supplier shall have the right to terminate any contract to which these Conditions apply.

12 For the purpose of these Conditions "force majeure" shall be deemed to be any cause affecting the performance of these Conditions arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of the Supplier.

14 Severability

Except in so far as the context otherwise requires, each provision herein shall be construed as independent of every other provision, and if any provision hereof is or becomes partially or totally invalid or unenforceable then the validity and enforceability of the remaining provisions shall not be affected.

15 Entire Agreement

These Conditions constitute the whole agreement and understanding between the parties and supersede all prior discussions and agreements (whether oral or written) between the parties and/or their agents or advisers.

16 Waiver

A failure by either party to exercise or enforce any right conferred upon it by these Conditions shall not be deemed to be a waiver of such right or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.

17 Notices

17.1 Any notice to be given under these Conditions shall be given by delivering the same personally or by sending the same by registered post or by facsimile transmission to the address of the other party set out on page 1 of these Conditions or to such other address as may be notified by that other party for this purpose to the party seeking to give such notice.

17.2 Any notice given pursuant to Condition 17.1 shall be deemed when sent by registered post (and in the absence of evidence of earlier receipt) to be delivered 3 days after despatch and shall be deemed when sent by facsimile transmission to be delivered on the day of transmission provided that the party giving the notice proves that the registered envelope containing the notice was correctly addressed or proves the date, time and correct number of the facsimile transmission.

18 Other Provisions

Nothing in these Conditions shall be taken to constitute a partnership or the relationship of employer and employee between the parties hereto.

19 Law

Any contract to which these Conditions apply (and these Conditions) shall be governed by and construed in accordance with the laws of England and the Supplier and the Customer submit to the non-exclusive jurisdiction of the Courts of England.