

## ZONEGREEN LIMITED TERMS AND CONDITIONS OF SALE

### 1. DEFINITIONS

- (i) The "Company" means Zonegreen Limited (CRN: 01811556) whose registered office is at Sir John Brown Building, Davy Industrial Park, Prince of Wales Road, Sheffield, S9 4EX
- (ii) The "Buyer" means the person, firm, company, organisation or public authority who purchases the Goods.
- (iii) The "Goods" means the goods including any parts and/or services to be supplied by the Company to the Buyer.
- (iv) The "Contract" means any contract for the sale and purchase of the Goods between the Company and the Buyer incorporating these Conditions.
- (v) The "Conditions" means the standard terms and conditions of sale set out in this document.

### 2. FORMATION OF CONTRACT

- (i) Subject to variation under clause 2 (iii), 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).
- (ii) No order placed by the Buyer or acceptance of a quote shall be binding on the Company until the Company dispatches its standard order acknowledgment or, where no such acknowledgment is sent, the Company dispatches the Goods. Each order shall constitute a separate Contract between the Company and the Buyer.
- (iii) No variation to these Conditions shall be binding upon the Company unless signed by a Director of the Company.
- (iv) The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in writing and signed by a duly authorised representative of the Company. In entering into the Contract, the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any representations, which are not confirmed in accordance with these Conditions.
- (v) No order which has been accepted by the Company may be cancelled by the Buyer except with the agreement in writing of the Company and on terms that the Buyer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges or expenses incurred by the Company, and any claims against the Company arising out of such cancellation. (There shall be a minimum cancellation fee in any event of 20% of the Contract value.)
- (vi) Any quotation is given on the basis that no Contract shall come into existence other than as set out in 2(ii) above. Any quotation is only valid for a period of 30 days from its date provided that the Company has not previously withdrawn it.

### 3. PRICE

- (i) The quantity, description and price of the Goods shall be as set out in the Company's quotation or acknowledgement of order.
- (ii) The Company reserves the right by giving notice to the Buyer at any time before delivery of the Goods to increase the price of the Goods to reflect any increase in the cost of manufacture of the Goods to the Company, and any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions.
- (iii) Prices are quoted exclusive of value added tax and all trade and quantity discounts which will only be granted with the prior written agreement of the Company.
- (iv) The Buyer shall arrange and pay for carriage and insurance of the Goods ordered unless otherwise agreed with the Company.

### 4. TERMS OF PAYMENT

- (i) Unless otherwise stated on the Company's quotation, payment for the Goods must be made prior to the dispatch of the Goods, and in any event, all amounts payable to the Company under a Contract shall become due immediately on its termination despite any other provision.
- (ii) If the Buyer fails to pay the Contract price, the Company shall be entitled to recover the full Contract price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract.
- (iii) In the event that the Buyer fails to make any payment by its due date, the Buyer's right to discount (if any) shall be forfeited and the Buyer shall pay interest on the amount outstanding at the rate of 4% above the NAT West Plc base rate for the time being in force, calculated from day to day from delivery to the date of the actual payment whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- (iv) In the event that the Buyer fails to make any payment on its due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to: (a) cancel the Contract or suspend any further deliveries to the Buyer under this or any other contract between the Company and the Buyer; (b) withdraw credit facilities from the Buyer; (c) appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Company and the Buyer) as the Company may think fit (notwithstanding any purported appropriation by the Buyer); and/or (d) sell to third parties Goods ordered but not delivered under this or any other contract between the Company and the Buyer.
- (v) The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off or counterclaim or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company.

### 5. TITLE

- (i) Ownership of the Goods shall not pass to the Buyer until the Company shall have been paid in full for the Goods and all other sums which are or which become due to the Company from the Buyer on any account. The Buyer shall, until the Goods have been paid for, hold the Goods on a fiduciary basis as the Company's bailee, store the Goods separately from other goods and maintain them in satisfactory condition and shall not sell charge pledge or otherwise dispose of or use the Goods except in the ordinary course of business until they have been paid for in full.
- (ii) The Buyer's right to possession of the Goods shall terminate immediately if the Buyer becomes insolvent or has a receiver appointed over the whole or any part of its property, compounds with its creditors or goes into liquidation, or if payment for any Goods is overdue or it ceases to trade.
- (iii) The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- (iv) In the event of certain Goods having been paid for by the Buyer and other Goods not having been so paid for the onus of proof shall be on the Buyer to show that any Goods remaining in its possession are Goods for which the Company has been paid.
- (v) The Buyer grants the Company its agents and employees an irrevocable license at any time to enter upon any premises where the Goods are or may be stored to inspect them, or where the Buyer's right to possession has terminated, to recover them.
- (vi) On termination of the Contract however caused, the Company's rights set out in clause 5 shall remain in effect.

### 6. DELIVERY

- (i) The Company will use its reasonable endeavours to deliver the Goods on the date or dates specified in the Contract, but such dates are approximate only and not guaranteed and time for delivery is not of the essence of the Contract. The Company shall not be liable in respect of any claim arising out of or consequent upon failure to meet such dates and such failure shall not entitle the Buyer to repudiate or cancel the Contract other than in accordance with clause 6(ii). The Goods may be delivered by the Company in advance of any specified delivery date upon giving reasonable notice to the Buyer.
- (ii) In the event of delivery being delayed for a period of six months or more from the said date or dates referred to in clause 6(i) by reason of war, invasion, hostilities (whether or not war has been declared) civil war or unrest, rebellion, insurrection or military or usurped power, or by any acts of foreign governments, or by reason of statute, rules or requests issued by any government department or other duly constituted authority, or strikes, lock-outs, breakdown of plant, or any other cause (whether or not of like nature) beyond the Company's reasonable control, either party may terminate the Contract by notice in writing to the other.
- (iii) Delivery shall be deemed to take place: (a) Upon the physical handing over by the Company of the Goods to the Buyer or his designated carrier or agent; (b) Upon consignment of the Goods by the Company to the Post Office at the request of the Buyer for delivery in the normal course of post; (c) Upon the removal of the Goods from the Company's premises where the Company has, at the request of the Buyer, agreed to transport the Goods by its own transport or by carrier designated by the Company; or (d) Upon the placing of the Goods in storage facilities either at the request of the Buyer or due to his failure or refusal to accept delivery.
- (iv) Notwithstanding the provisions of clause 5, the risk of the Goods shall pass to the Buyer from the time of delivery.
- (v) Non-delivery of the Goods shall be notified to the Company within seven days of the date of dispatch as indicated by the Company.
- (vi) The Company and (where relevant) the carriers must be notified within three days of actual delivery of any damage or shortage and the Buyer must retain for inspection any damaged Goods and packaging.

- (vii) The Company may deliver the Goods by instalments. Each instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

### 7. STORAGE

- (i) If for any reason the Buyer fails or refuses to accept delivery of the Goods or any part thereof at the time when the Goods are due and ready for delivery the Company may store the Goods and take reasonable steps to safeguard and preserve them until their actual delivery.
- (ii) Storage and insurance of the Goods shall be at the Buyer's risk and expense.
- (iii) If the Buyer shall fail to take delivery of the Goods within twenty eight days of notification that they are ready for delivery the Company shall have the right to sell, dispose of or otherwise deal with the Goods and the Buyer shall be liable to the Company for all loss (including loss of profits) or damage which the Company shall suffer in consequence of the Buyer's failure to take delivery of the Goods or of such sale. The Company shall account to the Buyer for any excess over any such liability.

### 8. ACCEPTANCE

- (i) If the Buyer accepts any of the Goods delivered, the Buyer shall be deemed to have accepted them all, and will not be entitled to reject any other Goods which constitute part of that same delivery.
- (ii) If the Goods are delivered mixed with goods of a different description to the Goods, the Buyer shall be entitled to accept the Goods and reject the other goods, but not to reject the entire consignment. (iii) The Buyer undertakes to examine the Goods immediately upon delivery, and if the Buyer does not notify any defect to the Company within seven days of delivery, the Buyer will be deemed to have accepted them.
- (iv) Delivery of the Goods by the Buyer to a third party constitutes acceptance of them by the Buyer.
- (v) The Buyer will be deemed to have accepted the Goods if the Buyer seeks or agrees to have any defect in the Goods repaired.

### 9. DESIGN AND SPECIFICATION

- (i) Drawings, weights, dimensions, shipping specifications and other descriptive matters are approximate unless specified otherwise in the Contract.
- (ii) The Company reserves the right to alter the specification of any Goods without prior reference to the Buyer, provided that the Goods comply substantially with the description or purpose specified in the Contract.
- (iii) The Buyer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties, legal and other professional costs and expenses) suffered or incurred by the Company arising out of or in connection with any claim made or threatened against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with any materials supplied to the Company by the Buyer.

### 10. RETURNS, WARRANTY AND LIABILITY

- (i) Return of Goods that are not defective shall not be accepted unless the Company has agreed in writing to accept their return. It is a requirement that the Goods be insured and carefully packed by the Buyer.
- (ii) Subject to the conditions set out below, the Company warrants that Goods other than proprietary items will correspond with their specification and will be free from defects in material and workmanship at the time of delivery, and for a period of 12 months from the date of delivery (or deemed delivery) of the Goods.
- (iii) The Company shall be under no liability: (a) in respect of any defect in the Goods which is not notified to the Company promptly upon discovery, and for defects that would have been evident on delivery, within two months of the delivery of the Goods to the Buyer, or which is so slight that it would be unreasonable for the Buyer to reject the Goods or claim damages for the defect; (b) In respect of any defect in the Goods arising from any design or specification supplied by the Buyer; (c) In respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Company's approval; (d) In respect of the fitness of the Goods for any purpose unless that purpose is one for which the Company commonly supplies the goods or is a purpose specified in the Contract; (e) If the total price for the Goods has not been paid by the due date for payment; (f) The Buyer makes any further use of the Goods after giving notification to the Company under (a) above.
- (iv) All other 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 under the Contract. (v) The Company'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.
- (vi) Where any valid claim in respect of any of the Goods is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these Conditions, the Company shall be entitled to replace the Goods (or the part or parts in question) free of charge or, at the Company's sole discretion, to refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Company shall have no further liability to the Buyer. (vii) The Company shall not be liable to the Buyer for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever which arise out of or in connection with the supply of the Goods or their use by the Buyer. (viii) For proprietary items such as hoisting equipment, the Company's liability to the Buyer is limited to the repair of the defective Goods at the manufacturer's work or supply of spare parts for the Buyer to fit. If replacement parts are supplied for the Buyer to fit, then the defective parts must be returned to the Seller or the Buyer will be liable for the value of those parts supplied at full list price. In any case, if parts are found not to be defective when returned and tested at the manufacturer's works, the Buyer will be liable for the value of those parts, including the costs of delivery, at full list price (without deduction or discount). (ix) Nothing in these Conditions excludes or limits the liability of the Company: (i) for death or personal injury caused by the Company's negligence; or (ii) for any matter where it would be illegal for the Company to exclude or attempt to exclude its liability; or (iii) for fraud or fraudulent misrepresentation.

### 11. DEFAULT OR INSOLVENCY OF BUYER

- (i) If the Buyer defaults in any way in its commitments to the Company under the Contract or suffers any distress or execution upon its property or assets or makes or offers to make any arrangement or composition with its creditors or commits an act of bankruptcy or insolvency or has a Receiver appointed over all or substantial parts of its assets or a resolution is passed or petition filed for winding up or otherwise is unable to make payment of any liability when due or ceases to trade then the Company shall have the right (without prejudice to other remedies) to take any actions set out in clause 4(iv)(a) to (d).
- (ii) In the event of an order being cancelled by the Company in the above circumstances or being cancelled by the Buyer in any circumstances, the Buyer shall indemnify the Company against the Company's costs (including loss of profits, labour, materials and overheads) and all expenses and damages incurred by the Company in connection with the order and its cancellation (the Company giving credit for the value of materials sold or utilised for other purposes).

### 12. NOTICES

- Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by fax or other means of telecommunication resulting in the receipt of a written communication in permanent form, and if so sent or transmitted to the registered office of the other party, or to such other address as the party may by notice to the other have substituted therefore, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would be first received by the addressee in normal business hours.

### 13. MISCELLANEOUS

- (i) The invalidity, illegality or unenforceability for any reason of any part of these terms and conditions shall not prejudice or affect the validity, legality or enforceability of the remainder.
- (ii) No failure on the part of either party to exercise any rights under the Contract at any time shall constitute a waiver of their rights nor shall any single or partial exercise of any right under the Contract preclude any other or further exercise of any other right. The election by either party of a particular remedy in the event of default by the other party shall not be exclusive of any other remedy and all rights and remedies of the parties shall be cumulative and not exhaustive of any other rights or remedies provided by the law.
- (iii) The Buyer shall not without the prior written consent of the Company assign transfer or sub-let the benefit or the burden of the Contract or any part thereof. 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.
- (iv) The Company may without prejudice to its liabilities hereunder assign transfer or sub-contract the Contract or any part thereof to any other person or company.
- (v) The headings used in these terms and conditions are for the purpose of convenience and identification only and are not to be taken as limiting in any way the scope or possible construction of any clause.
- (vi) The Contract shall be governed by the laws of England, and the parties submit to the exclusive jurisdiction of the English Courts.