

STANDARD TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

In these Terms and Conditions of Sales, unless the context clearly indicates to the contrary:

- 1.1 **"Firn"** means Firn Overseas Packaging Limited of England, Registered in England no. 1225618, VAT Registered no. 792 4421 19.
- 1.2 **"the Buyer"** means the person specified in the Proforma Invoice, Commercial Invoice or Order Acknowledgement, to which any goods are to be supplied by Firn.
- 1.3 **"the Conditions"** means these Terms and Conditions of Sale.
- 1.4 **"the Acknowledgement"** means Firn's Proforma Invoice or Commercial Invoice on the reverse, or to which these Conditions are annexed, or into which they are incorporated by reference, or any other written or verbal acceptance of an order (whether in paper form or electronic) placed with Firn for the sale of goods or in terms of any other agreement of sale, whether the Conditions are expressly incorporated therein or not.
- 1.5 **"the Contract"** means the agreement between Firn and the Buyer for supply of the goods in the Proforma or Commercial Invoice, subject to the Conditions, or any other agreement of sale, either or all of which shall be subject to the Conditions.
- 1.6 **"the goods"** means the goods in the Acknowledgement, Proforma Invoice, or other agreement of sale, to be supplied by Firn to the Buyer.
- 1.7 **"other Agreement of Sale"** means any agreement, whether verbal or expressed in, or reduced to, writing (including any exchange of Telefax or electronic interchange, such as e-mail) in which an authorised representative of Firn agrees to sell to a third party, any goods for a price stipulated or ascertainable, which shall be deemed to incorporate the Conditions, whether or not expressly so incorporated or expressly incorporated by reference.
- 1.8 **"supplier"** shall mean the manufacturer, producer or distributor of the goods (if other than Firn).

2. APPLICATION AND INTERPRETATION

- 2.1 The Conditions shall apply to all intended or concluded sales, or other transactions, howsoever arising between Firn and the Buyer, including, but
- 2.2 not limited to, the supply of all goods ordered by the Buyer and specified in the Acknowledgement, or otherwise.
- 2.3 Any terms and conditions that the Buyer may seek to apply to the supply of the goods by Firn shall not apply, save to the extent that Firn agrees to them in writing.
- 2.4 Headings of clauses are inserted for the purpose of convenience only, and shall be ignored in the interpretation of the Conditions.
- 2.5 Unless inconsistent with the context, words signifying any one gender shall include the others; words signifying the singular shall include the plural, and vice versa, and words signifying natural persons shall include artificial persons, and vice versa.

3. PRICE

- 3.1 The goods are supplied at the price set-out in the Acknowledgement or Commercial Invoice, or in the absence of such a price, then the price ruling at the date of despatch from the Supplier's mill or Firn's warehouse (whichever is the later), unless otherwise agreed to by Firn in writing.
- 3.2 The price quoted for the goods to be supplied is the net price payable and, unless otherwise agreed to by Firn in writing, shall not be liable to further discount or deduction.
- 3.3 Prices do not include Value Added Tax ("VAT"), or any similar tax that may subsequently be imposed. The Buyer shall be liable to pay such tax(es), if applicable, simultaneously with, and in addition to, the price at which the goods are sold.

4. PAYMENT

- 4.1 Unless otherwise specified in the Acknowledgement, the price, and all other sums due by the Buyer to Firn in respect of the supply of the goods, shall be paid on the date specified in the Commercial Invoice, or, if no date is specified, on delivery.
- 4.2 Payment shall be made by the Buyer in the currency, as specified in the invoice, without deduction, commission or set-off, to Firn at the address and/or Bank Account, and in the manner specified by Firn, and may not be deferred or withheld for any reason.
- 4.3 Where the supply of the goods is effected in two or more consignments, each delivery shall be deemed to be a separate contract, and the Buyer shall be liable to pay for the goods supplied in each delivery, as set-out in these conditions.
- 4.4 Interest compounded monthly shall accrue on all amounts not paid by due date, at a rate equivalent to three and a half percentage points above United Kingdom LIBOR.
- 4.5 Firn reserves the right to appropriate any payments made by the Buyer to any indebtedness of the Buyer to it, as it deems fit.

5. DELIVERY & TERMS AND CONDITIONS OF SALE

- 5.1 The goods are sold on the trade terms stipulated and specified in the Acknowledgement and/or the contract or other agreement of sale, which will be one of:
 - 5.1.1 Cost, Insurance and Freight ("CIF"); or
 - 5.1.2 Cost and Freight ("CFR"); or
 - 5.1.3 Delivered Duty Unpaid ("DDU"); or
 - 5.1.4 Delivery Duty Paid ("DDP"); or
 - 5.1.5 Free on Board ("FOB")

all as defined in Incoterms 2000 published by the International Chamber of Commerce ("Incoterms"), as varied by the contract; or

- 5.1.6 Free on Truck ("FOT") or Free on Rail ("FOR") which terms shall bear the definition accorded the Free on Board ("FOB") term, as defined in Incoterms 2000, save that in place of "ship" and "port of shipment" shall be substituted "road truck" or "rail truck" respectively and in place of "port of shipment" shall be substituted "place of loading onto the transport vehicle or truck", together with other logical amendments, and as may be varied by the contract.

If no sale term is specified in the Acknowledgement, contract or other agreement of sale, such goods shall be deemed to be sold and supplied Cost and Freight (CFR) as defined in Incoterms 2000.

- 5.2 The time stipulated in the Acknowledgement, or elsewhere, for the delivery of the goods, is approximate only, and shall not be a material term or of the essence of the contract.
- 5.3 The supply of the goods is subject to the prompt receipt by Firm of all information, specifications, inspection documents, import documents, payments, letters of credit, and other data that Firm may require from the Buyer for the proper performance of the contract.
- 5.4 Firm shall be entitled to require the Buyer to furnish it with security for the due payment of the price, including, but not limited to, letters of credit and guarantees issued by financial or other institutions and on terms and conditions acceptable to Firm.
- 5.5 Until the securities in preceding clause 5.4 have been furnished to Firm's satisfaction, Firm shall be entitled to withhold delivery of the goods, or the performance of any other obligation of Firm, at the risk and expense of the Buyer.
- 5.6 Subject to clauses 5.2 – 5.5, Firm shall use its best endeavours to supply the goods by the date specified in the Acknowledgement.
- 5.7 If, at the Buyer's request, or due to a default of the Buyer, Firm withholds or postpones delivery, the Buyer shall pay Firm storage charges at the ruling rate charged by Firm for such storage, without prejudice to Firm's other rights.
- 5.8 Firm shall be entitled to make delivery of goods ordered in two or more consignments.
- 5.9 No demurrage, waiting charges, late turn in charges or similar penalty shall be payable by Firm under any circumstances.
- 5.10 The Buyer shall ensure that it timeously takes all steps necessary to accept delivery of the goods on the delivery date, including the prompt issue of shipping or other transport instructions, and provide all necessary documentation and approvals.
- 5.11 The Buyer shall furthermore ensure that the goods are promptly cleared and entered for customs purposes, and that all duty and any other charges or taxes payable are prepaid.
- 5.12 Firm shall not be responsible, under any circumstances, for a failure to delivery, or any delay in the supply of the goods, due to the fault or the acts or omissions of the supplier or their servants and agents.

6. RISK AND OWNERSHIP

- 6.1 All risk, including the risk of loss of or damage to or arising from the goods, shall pass to the Buyer on delivery, or as accordingly to agreed Incoterms.
- 6.2 Unless otherwise agreed, ownership of the goods shall remain with Firm and shall not pass to the Buyer, until delivery, or when the price, any VAT, taxes and/or duty and all other charges attributable to the goods have been paid in full, whichever is later.

7. FORCE MAJEURE

- 7.1 If Firm is prevented or delayed from meeting any of its obligations under the contract as a result of any circumstance which is beyond its reasonable control, including, but not limited to, any labour dispute, strike, lock-out, shortage of labour or materials, delays in transport, accident, default or delay by any sub-contractor or supplier of Firm, war, political or civil disturbance, act of God, the elements, or any order or regulation of any Government or other lawful authority, then Firm shall have the election either to cancel the contract in whole, or in part, or, alternatively, subject to the provisions of clause 7.2, to extend the time for performance until the intervening circumstance has ceased to apply.
- 7.2 If Firm elects to extend the time for performance in terms of clause 7.1, the Buyer shall be entitled to cancel the contract by giving written notice to Firm, if Firm does not perform any material obligation within a period of 60 days following the original date for performance.

8. VARIATION OF PRODUCTION PROCESSES

- 8.1 Unless the Acknowledgement specifies a specific process of manufacture, or the use of specific materials and/or components, Firm's suppliers shall be entitled to carry out any manufacturing or processing work, in accordance with its normal or commercially accepted manufacturing processes, and to use its usual or commercially acceptable materials and/or components.
- 8.2 Firm shall not be liable for the use of any particular manufacturing process, material and/or components by its suppliers.
- 8.3 Firm reserves the right, on behalf of its suppliers, for the supplier to alter the process of manufacture or the composition, finish and/or presentation of any of the goods manufactured, processed or supplied.

9. WARRANTIES AND GUARANTEES

- 9.1 Firm does not give any warranties or guarantees of any nature whatsoever in respect of the goods supplied by Firm to the Buyer, except as may be expressly given in writing by Firm.
- 9.2 The Buyer shall satisfy itself as to the nature, quality and suitability of the goods for the purposes intended.
- 9.3 Unless otherwise agreed to by Firm in writing, any catalogue, advertisement, pamphlet, illustration, descriptive matter, or other similar material distributed by Firm or their suppliers to the Buyer at any time, shall be for general information only and shall not form part of the contract between the parties.

10. LIMITATION OF LIABILITY

- 10.1 If any of the goods supplied by Firm are defective, Firm's liability shall be limited to the replacement or, at the option of Firm, the repair thereof, but if Firm fails either to replace or repair the goods, the Customer's claim shall be limited to an amount not exceeding the purchase price of such goods.
- 10.2 Subject to clause 10.1, Firm shall not be liable for any loss or damage, whether direct, indirect, consequential, punitive or otherwise, suffered by the Buyer arising from any cause in connection with all and any intended or concluded sales or other transaction, howsoever arising between Firm and the Buyer, including, but not limited to, the supply of the goods (including, without limitation, any cause in connection with the use, resale or other disposal of the goods, or anything done or not done pursuant to the contract relating to such supply), whether such loss or damage results from breach of contract (whether total, fundamental or otherwise), delict, negligence or any other cause without limitation.

11. CLAIMS

The Buyer may not make any claim against Firm:

- 11.1 based upon any alleged short delivery of the goods, unless written notice of such claim is delivered to Firm within 30 days of such delivery or (if applicable) arrival at the port of destination (or the date the goods would have arrived at the port of destination) whichever is later;
- 11.2 based upon any other cause, unless written notice of such claim is delivered to Firm within 60 days of the date of delivery of the goods or (if applicable) arrival at the port of destination (or the date the goods would have arrived at the port of destination) whichever is later.

12. ASSIGNMENT AND SUB-CONTRACTING

- 12.1 Firm shall be entitled to cede, assign, delegate or sub-contract any of its rights and/or obligations in terms of the contract.
- 12.2 The Buyer may not cede, assign, delegate or sub-contract any of its rights or obligations in terms of the contract, without the prior written consent of Firm.

13. EVIDENCE & LAW

- 13.1 The Buyer agrees that a certificate purporting to be signed by or for any manager of Firn, or by Firn's duly authorised representative, showing the amount of indebtedness due and/or payable by the Buyer to Firn at any particular time, shall be prima facie proof of the amount due and the fact that it is then due and payable.
- 13.2 The contract shall be governed by and construed according to the law of domicile of the manufacturing supplier in respect of the goods supplied under the contract.

14. FINANCIAL STANDING

- 14.1 The Buyer undertakes to furnish and deliver to Firn, within 10 days of receiving a written request from Firn, copies of the Buyer's latest income statement and balance sheet ("the financial statements").
- 14.2 Upon receipt and perusal of the financial statements, or any information in succeeding clause 14.3, Firn may, in its sole discretion, cancel the further performance of any agreements with the Buyer, including the contract, or suspend any of them subject to the prior provision by the Buyer of such security as may be acceptable to Firn.
- 14.3 The Buyer undertakes to notify Firn forthwith of any material fact, which may directly or indirectly affect the credit facilities extended by Firn to the Buyer.

15. CANCELLATION

- 15.1 Firn may cancel any of its agreements with the Buyer, including the contract, if the Buyer:
- 15.1.1 commits a breach of any provision of the contract or the terms or conditions of any other agreement with Firn; or
- 15.1.2 surrenders his estate, (or equivalent) in any jurisdiction, or is sequestrated, liquidated, de-registered or placed under judicial management (or equivalent of any of these) in any jurisdiction, or any steps are taken towards any of those ends.
- 15.2 Any such cancellation shall be without prejudice to Firn's other rights, including the right to claim damages.

16. PROTECTION OF RIGHTS

- 16.1 If the Buyer fails to comply with any obligation imposed upon it by the contract, Firn shall, without prejudice to any other rights it may have, be entitled, but not obliged, to effect such compliance at the risk and expense of the Buyer and to recover the costs and expenses of doing so from it.
- 16.2 The Buyer shall have no claim against Firn nor defence to any claim by Firn arising out of any act or omission on the part of Firn arising from or connected with effecting or attempting to effect such compliance or, even if Firn has undertaken to effect such compliance, failing to do so properly or at all.

17. ARBITRATION

- 17.1 If any dispute arises out of or in connection with the contract, its termination or cancellation, or the subject matter thereof, including claims in delict or for rectification of contract, Firn shall have the option to refer the dispute for final determination by arbitration: provided that the Buyer shall be entitled to require Firn to make its election within 30 days of written notice from the Buyer to that effect and, failing exercise of the option within that time, such option shall lapse.
- 17.2 Any arbitration shall be held in London, England, in accordance with the Rules of Arbitration of the International Chamber of Commerce before a single arbitrator appointed in terms of those rules.
- 17.3 The arbitration proceedings shall be in English and the award shall be final and binding on the parties.



18. MISCELLANEOUS

- 18.1 If the Buyer is in default, Firm shall be entitled to recover from the Buyer all legal costs incurred by it on a scale as between solicitor and own client, (so that Firm is fully indemnified in respect of all amounts paid to its legal and other professional advisors), incurred by Firm, including any collection commission, contingency fee, bank charges and tracing fees, if any.
- 18.2 If any part of the contract is, or becomes, unenforceable, it shall be severable from the rest of the contract, which shall continue to be binding on the parties.
- 18.3 The Buyer may not rely on any representation, which allegedly induced it to enter into the contract, unless the representation is recorded herein or in the Acknowledgement.
- 18.4 No agreement varying, adding to, deleting from or cancelling the contract and no waiver of any right under the contract shall be effective unless reduced to writing and signed by or on behalf of the Buyer and Firm.
- 18.5 No relaxation by Firm of any of its rights in terms of the contract at any time shall prejudice or be a waiver of its rights (unless it is a written waiver) and it shall be entitled to exercise its rights thereafter as if such relaxation had not taken place.
- 18.6 The Buyer indemnifies Firm against all claims, damages, losses and costs incurred by Firm arising out of, or in connection with, any act or omission on the part of the Buyer or any of its employees, agents or subcontractors.

19. NOTICES AND DOMICILIA

- 19.1 All notices shall be in writing and shall be delivered by hand, telefaxed or sent by prepaid registered post to the addresses of the parties in the Acknowledgement, which physical addresses the parties select as their domicilium citandi et executandi.
- 19.2 Either party shall be entitled at any time to change its domicilium to any other physical address within the same country as its existing domicilium: provided that such change shall take effect only upon delivery of notice thereof to the other party.
- 19.3 Any notice shall be deemed to have been received:
- 19.3.1 on the date of delivery, if delivered by hand during normal business hours to the person apparently in charge of the premises at the domicilium address:
- 19.3.2 14 days after posting, if sent by prepaid registered post; and
- 19.3.3 on the day following transmission, if sent by Telefax to the Telefax number in the Acknowledgement.
- 19.4 Notwithstanding the above, any notice actually received by a party shall be adequate notice to it.