

# Charles Leek & Sons Limited

## Standard Terms and Conditions of Sale (“Conditions”)

### 1 INTERPRETATION

1.1 In these Conditions the following words and expressions shall have the following meanings:

“the Buyer” the person firm company or other organisation who or which has agreed to purchase Products from the Seller

“the Seller” Charles Leek & Sons Limited, a company incorporated in England and Wales with company number 163422

“a Contract” a contract for the sale and purchase of Products between the Seller and the Buyer

“Products” the goods and/or services (including any instalments of any part of them) which the Seller is to supply in accordance with these Conditions

1.2 Any reference in these Conditions to any provision of any statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.4 These Conditions shall govern each Contract to the exclusion of any conditions of the Buyer (including any terms or conditions which the Buyer purports to incorporate through any purchase order confirmation of order specification or other document) except to the extent that additional or alternative conditions are agreed or stated in writing by the Seller to apply. These Conditions may not be varied or waived except with the express written agreement of the Seller. The failure of the Seller to enforce its rights under a Contract at any time for any period of time shall not be construed as a waiver of any such rights.

1.5 A Contract shall be formed when an order received from the Buyer is accepted in writing by the Seller or, if earlier, on the acceptance by the Buyer without amendment of any valid quotation issued by the Seller.

### 2 PRICES AND QUOTATIONS

2.1 The price of the Products will be the Seller's quoted price. All quotations issued by the Seller shall remain open for acceptance for the lesser of 30 days or such other period as may be stated in the quotation.

2.2 The Seller shall not modify quoted prices at any time before delivery to the Buyer unless to reflect a) any changes to its costs resulting from any alteration in or addition to the Buyer's requirements or b) any changes in external costs charges duties or taxes arising in relation to the supply of the Products which are outside the control of the Seller.

2.3 Unless otherwise agreed in writing between the Seller and the Buyer, all prices quoted are on an ex-works basis and where the Seller agrees to deliver the Products otherwise than at the Seller's premises the Buyer shall be liable to pay the Seller's charges for transport packaging and insurance.

2.4 The price is exclusive of any applicable value added tax and the Buyer agrees to pay amounts equal to any taxes (including Value Added Tax) paid or payable by the Seller on the sale or supply of the Products under this Contract.

### 3 PAYMENT

3.1 Unless full or partial payment in advance or other payment terms have been specified by the Seller, the Seller shall invoice in full for Products on delivery.

3.2 Unless otherwise specified, payment shall be due in the currency invoiced no later than thirty (30) days from the date of invoice. Bank charges incurred by the Seller as a result of payment being made from an overseas bank account shall be reimbursed to the Seller by the Buyer. All payments shall be made free of any demand deduction or off-set by the Buyer.

3.3 In the event of late payment the Seller reserves the right to:

- i) to suspend deliveries and/or any of its outstanding obligations under the Contract;
- ii) to charge interest to cover administrative and other associated costs in relation to the late payment pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 (“the LCD Act”) where applicable;
- iii) in situations where the LCD Act does not apply to charge the interest which would be payable were the LCD Act applicable;
- iv) appropriate any payment made by the Buyer to such of the Products (or the goods supplied under any other contract between the Seller and the Buyer) as the Seller may see fit (notwithstanding any purported appropriation by the Buyer).

3.4 With respect to credit accounts, the Seller may make a search against the Buyer with a credit reference agency which may keep a record of that search and will share that information with other businesses. The Seller may also make enquiries about the proprietors principal directors partners or managers of the Buyer with a credit reference agency.

3.5 If you are a Partner in an unincorporated Partnership or an unincorporated Sole Trader your data will be transferred to our financiers for the purpose of providing finance. Their details are available upon request.

### 4 CHANGES

4.1 The Seller reserves the right to make any changes in the specification of the Products which are required to comply with statutory or EU Regulations or where the Products are to be supplied to the Seller's specification which do not materially affect their quality or performance.

### 5 DELIVERY

5.1 Delivery of Products under a Contract shall be made by the Buyer collecting the Products at the Seller's Premises at any time but within 14 days (“the Delivery Period”) after the Seller has notified the Buyer that the Products are available for collection or if some other place for delivery is agreed by the Seller by the Seller delivering the Products to that place.

5.2 Any dates quoted for delivery of the Products are approximate only and the Seller shall not be liable for any delay in delivery of the Products however caused. Failure to deliver by the quoted date will not be a sufficient cause for cancellation and the Seller will not be liable for any direct indirect consequential or economic loss or any costs charges or expenses suffered or incurred by the Buyer due to the delay in delivery. The Products may be delivered by the Seller in advance of the quoted delivery date having given reasonable notice to the Buyer.

5.3 Where the Products are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

5.4 If the Buyer fails to take delivery of the Products or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then without prejudice to any other right or remedy available to the Seller the Seller may:

- 5.4.1 store the Products until actual delivery on behalf of the Buyer whereupon a) delivery shall be deemed to have taken place b) all risk in the goods shall pass to the Buyer c) the Buyer shall be liable for all related costs and expenses (including insurance);
- 5.4.2 charge the Buyer interest on the Contract amount at the rate of 2.5% per annum above the base rate of Natwest Bank PLC from the end of the Delivery Period to the actual date of delivery
- 5.4.3 sell the Products at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the Contract price.

### 6 CANCELLATION

6.1 In the event that an order of Products is cancelled prior to delivery the Buyer shall be liable to reimburse the Seller for the costs incurred or committed to the date of cancellation.

### 7 RISK AND PROPERTY

7.1 Risk of damage or loss to the Products shall pass to the Buyer:

- 7.1.1 in the case of Products to be delivered at the Seller's premises at the time when the Seller notifies the Buyer that the Products are available for collection; or  
7.1.2 in the case of Products to be delivered otherwise than at the Seller's premises at the time the Products leave the Seller's premises or if the Buyer wrongfully fails to take delivery of the Products at the time when the Seller tendered delivery of the Products.

- 7.2 Notwithstanding delivery and the passing of risk in the Products or any other provision of these Conditions the property in the Products shall not pass to the Buyer until the Seller has received in cash or cleared funds payment of the full price of the Products and all other Products agreed to be sold by the Seller to the Buyer for which payment is then outstanding.
- 7.3 Until such time as the property in the Products passes to the Buyer the Buyer shall hold the Products as fiduciary agent and bailee and shall keep the Products separate from those of the Buyer and third parties and properly stored protected and insured and identified as the Seller's property.
- 7.4 Until such time as the property in the Products passes to the Buyer (and provided the Products are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Products to the Seller and if the Buyer fails to do so forthwith to enter upon any premises of the Buyer or any third party where the Products are stored and repossess the Products.
- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any any of Products which remain the property of the Seller but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## 8 WARRANTY

- 8.1 The Seller warrants to the Buyer that the Products are free from defects of workmanship and materials in normal usage for a period of 6 months. The Seller's sole liability and the Buyer's exclusive remedy of a breach of this warranty is limited to repair replacement or refund at the sole option of the Seller.
- 8.2 All other warranties representations terms and conditions (statutory express implied or otherwise) as to quality condition description merchantability or fitness for purpose of Products are hereby expressly excluded.
- 8.3 The Seller shall have no liability under any Contract or otherwise in respect of any defect in Products arising from fair wear and tear or misuse or alteration or repair by parties other than the Seller.
- 8.4 The Seller shall have no liability under any Contract or otherwise in respect of any defect in Products arising from defects in specifications or materials supplied by the Buyer wilful damage or negligence of the Buyer or its employees or agents abnormal working conditions at the Buyer's premises use of the Products for other than the use for which they were specified or failure to follows the Seller's instructions (whether written or oral).
- 8.5 Unless otherwise stated all gear dimensions are in accordance with BS 436:1967:Grade 8.

## 9 LIMITATION OF LIABILITY

- 9.1 Subject to condition 9.2:
- a) The Seller's total liability in contract tort (including negligence or breach of statutory duty) misrepresentation or otherwise arising in connection with the performance or contemplated performance of any Contract shall be limited to the total price payable under that Contract.
  - b) The Seller shall not be liable to the Buyer for any indirect or consequential damage whether for loss of profit loss of business depletion of goodwill or otherwise) costs expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with any Contract.
- 9.2 The exclusion of liability in these Conditions shall not apply in respect of fraudulent misrepresentation or of death or personal injury caused by the Seller's negligence.

## 10 TRADE MARKS, PATENTS AND INTELLECTUAL PROPERTY

- 10.1 Where the Buyer supplies designs drawings and specifications to the Seller to enable it to manufacture non-standard or custom made Products the Buyer warrants that such manufacture will not infringe the intellectual property rights of any third party.
- 10.2 All intellectual property rights in the Products shall at all times remain vested in the Seller and shall not become the property of the buyer.
- 10.3 The Buyer shall have no right to apply to the Products or otherwise use any trademark owned or used by the Seller.
- 10.4 If any claim is made or alleged that the Products infringe any patent rights registered designs copyright or other industrial rights of another then:
- i) the Buyer shall forthwith notify the Seller with full particulars and
  - ii) the Seller or its suppliers or licensors (as the case may be) shall be at liberty at their expense to conduct all negotiations and/or litigation in respect there and (if necessary) in the name of the Buyer and if as a result of such negotiations or litigation the Buyer shall be unable to use the Products substantially for the purposes for which they were bought the Seller shall (except when condition 10.5 applies) take them and refund the purchase price to the Buyer and such refund shall be in full satisfaction of all claims by the Buyer against the Seller.
- 10.5 The Buyer shall indemnify the Seller against all action costs (including the cost of defending legal proceedings) expenses claims proceedings and demands in respect of any infringement or alleged infringement by the Seller of patent rights registered design copyright or other industrial rights attributable to the Seller complying with any instructions or requirements of the Buyer.

## 11 INSOLVENCY OF THE BUYER

- 11.1 This condition shall apply if:
- 11.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
  - 11.1.2 an encumbrance takes possession or a receiver is appointed of any of the property or assets of the Buyer; or
  - 11.1.3 the Buyer ceases or threatens to cease to carry on business; or
  - 11.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 11.2 If this condition applies then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer and if the Products have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 12 HEALTH SAFETY AND WASTE

- 12.1 The Buyer shall be responsible for ensuring that:
- i) the Products as specified are safe and appropriate for the Buyer's intended use;
  - ii) the Products are handled in a safe manner; and
  - iii) any waste originating from the Products is disposed of in accordance with any relevant regulations.

## 13 INDEMNITIES

- 13.1 Except where the claim arises as a result of the negligence of the Seller the Buyer shall indemnify the Seller in respect of any claim which may be made against the Seller arising in connection with the Buyer's use of any Products supplied.

## 14 FORCE MAJEURE

- 14.1 The Seller shall not be liable in respect of the non-performance of any of its obligations to the extent that such performance is prevented by any circumstances beyond its reasonable control including but not limited to any strikes lockouts or labour disputes of any kind (whether relating to its own employees or others) fire flood explosion natural catastrophe military operations blockade sabotage revolution riot civil commotion war or civil war plant breakdown computer or other equipment failure and inability to obtain equipment.
- 14.2 If an event of force majeure exceeds four months either party may cancel the Contract without liability.

## **15 GOVERNING LAW**

15.1 The Contract shall be governed by and construed in accordance with the laws of England and the parties hereby submit to the exclusive jurisdiction of the English Courts.

## **16 NOTICES**

16.1 All notices shall be in writing served on the other party at its registered office or principal place of business.

16.2 Notices may be served by prepaid first class post, by hand or by fax. Notices served by post shall be deemed to have been served five working days after despatch. Notices served by hand shall be served when delivered and notices served by fax shall be deemed to have been delivered the next working day after despatch.

## **17 GENERAL**

17.1 If the whole or any part of a provision of these Conditions is void unenforceable or illegal in a whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

17.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

17.3 These Conditions do not constitute one party the partner agent or legal representative of the other. Save as aforesaid none of these Conditions shall be enforceable by a person who is not a party to the Contract concerned.

17.4 The Seller may assign its rights under any Contract to another member of its group. The Buyer shall not assign or otherwise transfer all or any parts of its rights or obligations under any Contract without the Seller's prior written consent.

7 January 2013