

Perfect Bindery Solutions LLP - Terms and Conditions of Sale

1. Interpretation

- 1.1 In these conditions the following words have the following meanings:
- 1.2 *the Buyer* the person(s), firm or company who purchases the Goods and/or Services from the Company;
- 1.3 *the Company* Perfect Bindery Solutions LLP;
- Contract* any contract between the Company and the Buyer for the sale and purchase of the Goods and/or Services, incorporating these conditions;
- Delivery Point* the place where delivery of the Goods or performance of the Services is to take place under condition 4;
- Goods* any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them);
- Services* any maintenance or repairs to the Goods carried out by the Company and/or training and consultancy advice provided.

2. Application of Terms

- 2.1 Subject to any variation under condition 2.2, each Contract will 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). No terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.2 Any variation to these conditions and any representations about the Goods and/or Services shall have no effect unless expressly agreed in writing and signed by a director or the company secretary of the Company. Nothing in this condition will exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.3 Each order for Goods and/or Services by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase Goods and/or Services subject to these conditions. No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer or performs the Services.
- 2.4 The Buyer must ensure that the terms of its order (including quantity, quality, delivery details and extent of any Services to be provided) are complete and accurate, and that orders sent in confirmation of telephone instructions are clearly marked as such.
- 2.5 Any quotation is given on the basis that no Contract will come into existence until the Company dispatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

3. Descriptive Matter

All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods or Services described in them. They will not form part of this Contract.

4. Delivery of the Goods and/or Performance of the Services

- 4.1 Delivery of the Goods or performance of the Services shall take place at the Delivery Point notified to the Company by the Buyer when the order for the Goods or Services is placed.
- 4.2 Any dates specified by the Company for delivery of the Goods or performance of the Services are intended to be an estimate and time for delivery or performance shall not be made of the essence by notice. If no dates are so specified, delivery or performance will be within a reasonable time.
- 4.3 Subject to the other provisions of these conditions the Company will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, loss of profits, loss of business, depletion of goodwill and like loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods or performance of the Services (even if caused by the Company's negligence), nor will any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 60 days.
- 4.4 If for any reason the Buyer will not accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licenses or authorisations:
- 4.4.1 risk in the Goods will pass to the Buyer (including for loss or damage caused by the Company's negligence);
- 4.4.2 the Goods will be deemed to have been delivered; and
- 4.4.3 the Company may store the Goods until delivery whereupon the Buyer will be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.5 The Buyer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for unloading the Goods.
- 4.6 The Company reserves the right to deliver the Goods by separate installments and each delivery shall be treated as a separate Contract. Without prejudice to any of the Company's rights under these conditions or otherwise, the failure or refusal of the Buyer to take delivery or to pay for any one or more of the said installments of the Goods on the due dates for payment shall entitle the Company at its sole discretion without notice to suspend further delivery of the Goods pending payment by the Buyer.
- 4.6 If for any reason the Buyer is not ready for or declines to accept performance of the Services on the due date for performance, the Company reserves the right to demand or retain (as the case may be) payment in full.

5. Non-Delivery or Non-Performance

- 5.1 The Company shall not be liable for any non-delivery of Goods or non-performance of Services (even if caused by the Company's negligence) unless written notice is given to the Company within 3 working days of the date when the Goods would in the ordinary course of events have been received or the Services performed.
- 5.2 Any liability of the Company for non-delivery of the Goods or non-performance of Services shall be limited to replacing the Goods or performing the Services within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods or Services.

6. Risk / Title

- 6.1 The Goods are at the risk of the Buyer from the time of delivery.
- 6.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of the Goods and all other sums which are or which become due to the Company from the Buyer on any account.
- 6.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
- 6.3.1 hold the Goods on a fiduciary basis as the Company's bailee;
- 6.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
- 6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 6.3.4 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company; and
- 6.3.5 hold the proceeds of the insurance referred to in condition 6.3.4 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdraft bank account.
- 6.4 The Buyer may resell the Goods before ownership has passed to it solely on condition that any sale shall be effected in the ordinary course of the Buyer's business.
- 6.5 The Buyer's right to possession of the Goods shall terminate immediately if:
- 6.5.1 the Buyer makes a voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 6.5.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- 6.5.3 the Buyer ceases, or threatens to cease, to carry on business.
- 6.6 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.
- 6.7 The Buyer grants the Company, its agents and employees an irrevocable license 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.

7. Price

- 7.1 The price for the Goods and/or Services shall be the price set out in the Company's price list published overleaf. If no price is shown, the price shall be the price prevailing in the Company's current price list on the date of delivery, deemed delivery, performance or deemed performance. The Company reserves the right to charge additional sums in respect of any materials, parts, components and replacements fitted during the performance of any Services.
- 7.2 The Company reserves the right to increase the price of the Goods and/or Services at any time before delivery and/or performance to reflect any increase in cost to the Company for whatever reason. The Company shall notify the Buyer of any increased prices and the Buyer shall be entitled to cancel its order within 5 working days of receipt of such notice.

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

8. Payment

- 8.1 Where the Company has agreed a credit account relationship with the Buyer, payment of the price for the Goods and/or Services is due 30 days from the date of the invoice or sooner.
- 8.2 Where the Buyer has no credit account relationship the Company reserves the right to require that an irrevocable letter of credit be opened in its favour or that payment of all or part of the price be made when the order for the Goods and/or Services is placed.
- 8.3 Time for payment shall be of the essence.
- 8.4 No payment shall be deemed to have been received until the Company has received cleared funds.
- 8.5 The Buyer shall make all payments due under the Contract 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 the Company to the Buyer.
- 8.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract the Buyer will be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 8% 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. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 8.7 All deposits a non-refundable unless agreed by all parties in advance.

9. Quality

- 9.1 The Company warrants that (subject to the other provisions of these conditions):
- 9.1.1 upon delivery, and for a period of 12 months from the date of delivery, the Goods will be of satisfactory quality within the meaning of the Sale of Goods Act 1979 as amended
- 9.1.2 the Services will be performed with reasonable skill and care.
- 9.2 The Company shall not be liable for a breach of the warranty in condition 9.1 unless:
- 9.2.1 the Buyer gives written notice of the breach to the Company, and (if the breach relates to a defect in the Goods as a result of damage in transit) to the carrier, within 3 working days of the time when the Buyer discovers or ought to have discovered the breach; and
- 9.2.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods or reviewing the Services performed.
- 9.3 The Company shall not be liable for a breach of the warranty in condition 9.1 if the breach arises from wilful damage, negligence, abnormal working conditions, failure to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods, misuse or alteration of the Goods or failure to follow good trade practice.
- 9.4 Subject to conditions 9.2 and 9.3, if any of the Goods and/or Services do not conform with the warranty in condition 9.1 the Company shall at its option repair such Goods (or the defective part) or refund the price of such Goods and/or Services at the pro rata Contract rate.
- 9.5 If the Company complies with condition 9.4 it shall have no further liability for a breach of the warranty in condition 9.1 in respect of such Goods and/or Services.

10. Limitation of Liability

- 10.1 Subject to condition 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- 10.1.1 any breach of these conditions; and
- 10.1.2 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.
- 10.3 Nothing in these conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.

THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION 10.4

- 10.4 Subject to conditions 10.2 and 10.3:
- 10.4.1 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 this Contract shall be limited to the Contract Price; and
- 10.4.2 the Company shall not be liable to the Buyer for any indirect or consequential loss or 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 the Contract.
11. **Returns** Subject to clause 9, Goods delivered to the Buyer which are in accordance with the Contract will not be accepted for return.
12. **Cancellation** Subject to condition 7.2, once an order for the Goods and/or Services has been accepted by the Company, the Buyer shall have no right of cancellation. All deposits are non-refundable.
13. **Assignment** The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company. The Company may assign the Contract or any part of it to any person, firm or company.
14. **Force Majeure** The Company reserves the right to defer the date of delivery or performance 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 the Company 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 30 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

15. General

- 15.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 15.2 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.
- 15.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 15.4 The parties do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 15.5 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.
16. **Communications**
- 16.1 All communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission:
- 16.1.1 (in the case of communications to the Company) to its head office or such changed address as shall be notified to the Buyer by the Company; or
- 16.1.2 (in the case of the communications to the Buyer) to the registered office 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 this Contract or such other address as shall be notified to the Company by the Buyer.
- 16.2 Communications shall be deemed to have been received:
- 16.2.1 if sent by pre-paid first class post, 2 working days after posting (exclusive of the day of posting);
- 16.2.2 if delivered by hand, on the day of delivery so long as delivery occurs on a normal working day during normal working hours;
- 16.2.3 if sent by facsimile transmission on a working day prior to 4.00pm, at the time of transmission and otherwise on the next morning working day.
- 16.3 Communications addressed to the Company shall be marked for the attention of Mr Steve Giddins