



## STANDARD TERMS AND CONDITIONS OF SALE

## TITHEBARN LTD

## 1 Definitions

1.1 In these conditions the following words have the following meanings:  
"Buyer" shall mean the person, firm or company who purchases the Goods from the Seller;

"Contract" shall mean any contract between the Seller and the Buyer for the sale and purchase of the Goods, incorporating these conditions;

"Corresponding Bank" shall mean such United Kingdom bank as the Seller shall specify to receive, confirm and hold irrevocable letters of credit issued by the Buyer's bank upon the Buyer's instructions;

"Domestic Territory" shall mean the United Kingdom;

"FOB" shall mean Free on Board delivered to such ship and at such English port as specified in writing by the Buyer;

"Goods" shall mean any goods agreed in the Contract to be supplied by the Seller to the Buyer;

"Order" shall mean the Buyer's order for the Goods;

"Seller" shall mean TITHEBARN LTD, a company incorporated in England and Wales (Company No. 300375) whose registered office is at Road Five, Industrial Estate, Winsford, Cheshire. CW7 3PG.

1.2 In these conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.3 Any quotation given by the Seller from time to time is deemed to form part of these conditions and has full force and effect as if expressly set out in these conditions themselves.

1.4 Words importing the singular include the plural, words importing any gender include every gender and words importing persons include bodies corporate and unincorporated and in each case vice versa.

1.5 The headings to these conditions are for ease of reference only and shall not affect the interpretation or construction of these conditions.

1.6 Where there are two or more parties to these conditions, as the Buyer their liability shall be joint and several.

1.7 References to "shall" indicate an obligation on the relevant person.

1.8 References to "including" are to particular examples only and are not intended to be exhaustive, or to limit in any way whatsoever, the interpretation of any preceding language.

## 2 Application of Conditions

2.1 Subject to any variation under condition 2.3, these conditions of sale apply to all Contracts between the Seller and the Buyer. They shall apply in place of, and prevail over, any other terms or conditions, whether contained or referred to in the Order or specification, or in correspondence or otherwise, or implied by trade, custom, practice or course of dealing. Any purported provisions to the contrary are excluded or extinguished.

2.2 No terms or conditions endorsed upon, delivered with or contained in the 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.

2.3 These conditions apply to all the Seller's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by the Managing Director of the Seller.

### 3 *Formation of Contract*

3.1 A Contract shall only come into existence upon the Seller's acceptance of the Order or, if earlier, delivery of the Goods. A quotation given by the Seller does not constitute an offer and the Seller may withdraw or revise a quotation at any time before the Seller's acceptance of the Order. In any event, any quotation given by the Seller shall only be valid for a period of 30 days from its date if not previously withdrawn by the Seller. No order shall be binding on the Seller unless or until the Seller accepts it.

3.2 The Buyer must ensure that the terms of its Order and any applicable specification are complete and accurate.

### 4 *Description*

4.1 The description of the Goods shall be as set out in the Seller's quotation.

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

### 5 *Delivery Dates*

Delivery dates mentioned in any quotation, Order, acknowledgement of Order or elsewhere are intended to be estimates only. If no dates are so specified delivery will be within a reasonable time. The Seller shall not be under any liability to the Buyer in respect of any failure to deliver on any particular date or dates including any loss of profit, costs, damages, charges or expenses caused directly or indirectly by any delay in delivery of the Goods (even if caused by the Seller's negligence) nor will any delay entitle the Buyer to terminate or rescind the Contract.

### 6 *Delivery*

6.1 All Orders must state the place for delivery of the Goods and the Buyer shall, subject to condition 6.2, accept delivery when the Goods are delivered to that place of delivery, the Buyer providing at its own expense adequate and appropriate equipment and manual labour for unloading the Goods.

6.2 Where the delivery address stated in the Order is situated outside the Domestic Territory the Seller will deliver the Goods FOB. The Buyer shall make known to the Seller the identity of the ship upon which and the English port at which the Goods are to be loaded as freight and the Buyer shall be responsible for all costs of loading freight and shipping and all other costs over and above the delivery FOB of the Goods by the Seller (unless agreed in writing by the Managing Director of the Seller).

6.3 If the Buyer refuses or fails to take delivery of the Goods tendered in accordance with the Contract or the Seller is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents,

licences or authorisations:

6.3.1 the Seller shall be entitled to immediate payment in full for the Goods so tendered;

6.3.2 the Seller shall be entitled to store at the risk of the Buyer (including for loss or damage caused by the Seller's negligence) any Goods, which the Buyer refuses or fails to take delivery of:

6.3.3 the Buyer shall in addition to the purchase price pay all costs of storage and any other costs incurred as a result of its refusal or failure to take delivery;

6.3.4 the Seller shall be entitled, at the end of two months from the date upon which the price became payable, to dispose of the Goods in such a manner as the Seller may decide, without affecting any rights the Seller may have against the Buyer for breach of contract or otherwise.

6.4 Where the Buyer collects, or arranges collection of the Goods from the Seller's premises it shall do so at its sole risk.

6.5 The quantity of any consignment of Goods as recorded by the Seller upon despatch from the Seller's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can produce conclusive evidence proving the contrary.

6.6 The Seller shall not be liable for any non-delivery of the Goods (even if caused by the Seller's negligence).

6.7 Any liability of the Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

#### 7 *Instalment Deliveries*

The Seller shall be entitled to deliver the Goods by instalments. Each instalment shall be treated as a separate contract. Any failure or defect in the delivery of any one or more instalments shall not entitle the Buyer to cancel the Contract for any instalments already delivered or to be delivered in the future. Each instalment shall be paid for separately under these conditions as a separate contract.

#### 8 *Risk*

Risk in the Goods shall pass to the Buyer upon delivery or, if the Goods are to be collected by the Buyer, on the earlier of 7 days after the Seller notifies the Buyer that the Goods are available for collection or the time for collection.

#### 9 *Price*

9.1 All prices are subject to change without notice. Unless otherwise agreed by the Seller in writing, the price charged for the Goods will be that set out in the Seller's price list published on the date of delivery. Unless otherwise specified, VAT and any other tax or duty payable by the Buyer, and all costs or charges in relation to loading, unloading, carriage and insurance, will be added to, and are payable in addition to, the price.

9.2 In the case of Goods to be delivered within the Domestic Territory, unless otherwise specified all prices include delivery of the products to the delivery address specified on the Order.

9.3 In the case of Goods to be delivered FOB, unless otherwise specified all prices include delivery of products FOB.

#### 10 *Payment*

10.1 Payment of invoices relating to Goods to be delivered within the Domestic

Territory shall (unless otherwise agreed in writing) be made in full without any

deduction, whether by way of set-off, counter-claim, discount, abatement or otherwise, within 30 days of date of invoice and time for payment shall be of the essence. No payment shall be deemed to have been received until the Seller has received cleared funds.

10.2 Payment relating to Goods ordered outside the Domestic Territory shall (unless otherwise agreed by the parties in writing) be made by way of confirmed irrevocable letter of credit deposited at the Corresponding Bank and payable on sight. The only document to be presented by the Seller to the Corresponding Bank will be (unless otherwise agreed between the parties) a "received for shipment" Bill of Lading. The Seller will specify to the Buyer at the time of acceptance which United Kingdom bank is to be the Corresponding Bank for that Order.

10.3 Any extension of credit allowed to the Buyer may be changed or withdrawn by the Seller at any time. Interest may be payable by the Buyer on overdue amounts at the rate of 2% per annum above the prevailing Bank of England base rate and will accrue from day to day from the due date for payment until receipt by the Seller of the full amount whether before or after any judgment. The Seller reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998. In addition, the Buyer shall reimburse the Seller for any expenses incurred by the Seller in the collection of overdue payment. Without affecting any other remedies of the Seller, any failure by the Buyer to make payment in full when due shall entitle the Seller to withhold further deliveries under the Contract or any other contract with the Buyer and to make further deliveries subject to such conditions as to payment as the Seller may decide are appropriate. In any event, the parties agree that all payments payable to the Seller under the Contract shall become due immediately upon termination of the Contract despite any other provision.

## 11 *Property*

11.1 Legal and beneficial title to the Goods shall remain with the Seller until it receives payment of the full price of the Goods, irrespective of whether or not the Goods have been incorporated into other goods.

11.2 Until ownership of the Goods has passed to the Buyer it shall hold the Goods on a fiduciary basis as bailee for the Seller and shall store the Goods (at no cost to the Seller) in such a way as to enable them to be identified as the property of the Seller. If the Goods have been incorporated into other goods then the Buyer shall hold such goods as bailee for the Seller and shall make all efforts to help the Seller identify the Goods in which the Seller has property.

11.3 Notwithstanding the above, if the Buyer is purchasing the Goods for resale the Buyer may, as agent for the Seller, sell and deliver the Goods to a third party in the ordinary course of the Buyer's business.

11.4 It is a condition of the Buyer's agency that until payment for the Goods is made to the Seller, the Buyer shall hold all proceeds of sale of the Goods in trust for the Seller and in a separate account.

11.5 The Seller may revoke the Buyer's right to sell the Goods as agent for the Seller at any time immediately on notice and reserves the right to repossess any Goods in respect of which payment in full has not been made. In any event, the

Buyer's right to possession of the Goods shall terminate immediately if it goes into any form of bankruptcy or liquidation or if it encumbers or in any way charges any

of the Goods.

11.6 The Buyer grants an irrevocable right and licence to the Seller, its agents and employees to enter upon all or any part of any premises where the Goods are or may be stored, with or without vehicles, during normal business hours, for the purpose of exercising its right to inspect or to repossess the Goods. This right shall continue even though the Contract has terminated.

11.7 The Seller may sue for the price of the Goods notwithstanding that title to the Goods has not passed to the Buyer.

## 12 *Variations*

The Seller shall be treated as having fulfilled its contractual obligation in respect of any delivery of the Goods though the quantity may be 10% more or less than the quantities specified in the Contract. In that event the Buyer shall pay for the actual quantity received at the pro rata Contract rate.

## 13 *Specifications*

Unless expressly agreed in writing by the Seller, all drawings, designs, specifications and particulars of weights and dimensions put forward by the Seller in promotional material or otherwise are subject to tolerance and the Seller shall have no liability in respect of any deviation from them within the tolerances expressed.

## 14 *Warranties and Liability*

14.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond materially with their specification and will be free from material defects in material and workmanship at the time of delivery.

14.2 The above warranty is given by the Seller subject to the following conditions:

14.2.1 the Seller shall be under no liability in respect of any defects in the Goods arising, whether wholly or in part, from any document including any drawing, design or specification supplied by the Buyer;

14.2.2 the Seller shall be under no liability in respect of any defect in the Goods arising whether wholly or in part from:

14.2.2.1 wilful damage to or negligence in respect of the Goods attributable in any way to the Buyer;

14.2.2.2 the Buyer's storing or dealings with the Goods;

14.2.2.3 the Buyer failing to follow the Seller's instructions (whether oral or in writing) in respect of treatment and storage of the Goods;

14.2.2.4 any attempt by the Buyer to combine the Goods with materials not manufactured by the Seller.

14.3 Any claim by the Buyer which is based on any defects in the quality or condition of the Goods or their failure to correspond with specifications shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 28 days from the deemed date of delivery. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay for the Goods as if they had been delivered in accordance with the Contract.

14.4 No claim for damaged Goods, for short delivery or for non-delivery will be accepted by the Seller unless:

14.4.1 in the case of Goods to be delivered within the Domestic Territory the Goods

are returned to the Seller at the Buyer's expense and risk within 14 days of the date of delivery; or

14.4.2 in the case of Goods to be delivered outside the Domestic Territory both the Seller and any carrier receive notice of the alleged damage or shortage from the Buyer within 14 days of receipt of the Goods by the Buyer; or

14.4.3 in respect of non-delivery of Goods both inside and outside the Domestic Territory the Seller receives the notification of non-delivery from the Buyer within 14 days of the date on which the Goods would in the normal course of events have been expected to be received by the Buyer.

14.5 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification, or damage, short delivery or non-delivery is notified to the Seller in accordance with this condition 14, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price) but the parties agree that the Seller shall have no further liability to the Buyer.

14.6 The Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees, its agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or re-sale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods paid by the Buyer, except as expressly provided.

#### 15 *Licences and Consents*

If any licence or consent of any government or other authority is required for the acquisition, carriage, use or re-sale of the Goods by the Buyer, then the Buyer shall obtain this at its own expense and if necessary or if requested to do so by the Seller provide evidence of it to the Seller. Failure to do so shall not entitle the Buyer to withhold or delay payment of the price. If any additional expenses or charges are incurred by the Seller resulting from the Buyer's failure to obtain any requisite consent, these shall be for the Buyer's full account.

#### 16 *Withdrawal of Products*

The Seller will use its reasonable endeavours to give prior warning of the withdrawal of a Product or Product line but is not under any legal obligation to do so. The Seller cannot guarantee continuity of supply of any particular Product or Product line.

#### 17 *Confidentiality of Technical Information*

All know-how, samples, formulae, designs, drawings related to the Goods or their development or creation are strictly confidential and shall remain the property of the Seller (whether or not commissioned by the Buyer). The Buyer shall not copy, use or disclose them or any part of them, without the prior written consent of the Seller.

#### 18 *Intellectual Property*

18.1 The Seller has no actual knowledge of any infringement of patent, or any other intellectual property right, likely to result from the sale or use of the Goods.

The Seller shall bear no liability for the infringement of any patent, or any other intellectual property right, caused, whether wholly or in part, by the use of the Goods in combination with other articles or materials or in any process not supplied by the Seller.

18.2 The Buyer acknowledges that any and all intellectual property rights in the Goods and their packaging belong to the Seller and shall notify the Seller immediately of any claim made or action brought against the Buyer for infringement of patent, or any other intellectual property right, by the Seller, or any potential claims of which the Buyer is aware, and the Seller shall be at liberty with the assistance of the Buyer to conduct all negotiations for the settlement of any litigation which may arise.

#### 19 *Trade Marks*

19.1 The Buyer shall make sure that any trade mark of the Seller, or other words or marks affixed to or used in relation to the Goods, are not obliterated, obscured or omitted without the Seller's prior written consent.

19.2 The Buyer shall not add, affix or use any additional words or marks to, or in relation to, the Goods without the Seller's prior written consent.

19.3 The Buyer shall not process or alter the Goods without the Seller's prior written consent.

#### 20 *Samples and Descriptions*

20.1 The providing by the Seller of samples for analysis by the Buyer, or the inspection of samples by the Buyer, shall not render any sale a sale by sample.

20.2 No guarantee or warranty is given that supplies will correspond exactly to the description or sample. The use of a description or sample shall not constitute the Contract a sale by description or sample or a sale by sample and description.

#### 21 *Material supplied by Buyer*

21.1 Any material or other property supplied by the Buyer to the Seller for the purposes of the Contract shall be held by the Seller at the risk of the Buyer and the Buyer shall remain responsible for insurance.

21.2 Notwithstanding any of these conditions, the Seller accepts no liability for defects in the Goods caused directly or indirectly, whether wholly or in part, by any materials or property supplied by the Buyer.

#### 22 *Tolerances*

The Seller shall be entitled to claim reasonable tolerances in respect of the Goods and reserves the right to make adaptations to Goods supplied by it due to technical developments. The Seller gives no condition or warranty that the Goods are fit for any particular purpose for which the Buyer may require them. The Buyer shall satisfy itself before ordering the Goods that the Goods are fit and suitable for the purpose for which the Buyer requires them.

#### 23 *Insolvency and Default*

If the Buyer:

23.1 shall convene a meeting of its creditors; or

23.2 shall be the subject of a proposal for a voluntary arrangement within Part 1 of the Insolvency Act 1986; or

23.3 shall be the subject of any other proposal for any composition, scheme of arrangement with, or assignment for, the benefit of its creditors; or

23.4 shall be unable to pay its debts within the meaning of section 123 of the

Insolvency Act 1986; or

23.5 shall have a trustee receiver or administrative receiver or similar officer appointed in respect of all or any part of its business or assets; or

23.6 shall be subject to a petition presented for its winding up or for the making of an administrative order; or

23.7 shall cease to carry on, or shall threaten to cease to carry on, its business or any substantial part of its business; or

23.8 shall convene a meeting, or be the subject of a meeting convened, for any of the foregoing purposes; or

23.9 shall suffer an event analogous to the foregoing under any jurisdiction; or

23.10 shall commit any breach of the Contract or any other contract between the Seller and the Buyer; the Seller may, without affecting any of its other rights, stop any Goods in transit and/or by notice to the Buyer immediately terminate the Contract.

#### 24 *Force Majeure*

Notwithstanding any other of these conditions, the Seller shall not be liable to the Buyer for any loss or damage which may be suffered by the Buyer as a direct or indirect result of the supply of goods by the Seller being prevented, hindered, delayed or rendered uneconomic by reason of circumstances or events beyond the Seller's reasonable control including:

24.1 act of God, war, riot, strike, lock-out, trade dispute or labour disturbance, accident, breakdown of plant or machinery, fire, flood, storm; or

24.2 difficulty or increased expense in obtaining labour, materials or transport, or other circumstances affecting the supply of Goods or of raw materials by the Seller's normal source of supply, or the manufacture of the Goods by the Seller's normal means, or the delivery of the Goods by the Seller's normal route or means of delivery.

#### 25 *Waiver*

Failure by the Seller to enforce or exercise any of its rights shall not be treated as a waiver of any rights of the Seller nor operate so as to bar the exercise or enforcement of them at any later time.

#### 26 *Notices*

Any notice shall be treated as properly given if sent by prepaid first class post or facsimile or Email to the party concerned at the address notified to a party by the other party. Notices sent by first class post shall be deemed to have been served two working days after the day of despatch and notices sent by facsimile or email shall be deemed to have been given four hours after there being sent, provided that the time of receipt is on a normal working day. If not, then receipt shall be deemed to take place at 12 noon on the next normal working day.

#### 27 *Sub-contracting and assignment*

The Seller reserves the right to sub-contract or to assign or to otherwise transfer the whole or any part of the Contract without the need to obtain the consent of the Buyer.

#### 28 *Severability and Indulgence*

28.1 Each of these conditions are severable one from the others and shall be enforceable accordingly.

28.2 Any time or indulgence given by the Seller in the enforcement of any



condition shall not amount to a waiver thereof.

29 *Governing Law*

29.1 These terms and conditions shall be governed and construed in accordance with the laws of England and the parties submit to the non-exclusive jurisdiction of the English Courts.

29.2 Where the Buyer resides outside the Domestic Territory the English version of these conditions of sale shall take precedence over any translation.

30 *Successors*

These conditions shall be binding upon and ensure for the benefit of the successors in title of the parties.

31 *Third Party Rights*

For the avoidance of doubt, nothing in these conditions shall confer on any third party any benefit or the right to enforce any of these conditions.