

**Definitions**

In these Conditions the "Seller" means James Walker Asia Pacific Private Limited, the "Purchaser" means the person, firm or company purchasing the Goods, the "Goods" means the goods or materials and/or services which shall be the subject of the contract between the Seller and the Purchaser.

**1. Formation of contract**

- 1.1 Any order sent to the Seller by the Purchaser shall be accepted entirely at the discretion of the Seller, and, if so accepted, will only be accepted upon these conditions (hereafter referred to as the "Conditions") and by means of the Seller's Order Acknowledgement (hereinafter referred to as the "Acceptance").
- 1.2 Each order, which is so accepted shall constitute an individual legally binding contract between the Seller and the Purchaser (hereafter referred to in these Conditions as the "Contract").
- 1.3 No order which has been accepted by the Seller may be cancelled by the Purchaser except with the agreement in writing of the Seller and on terms that the Purchaser shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller or wasted as a result of cancellation.
- 1.4 These Conditions shall override any contrary different or additional terms or conditions (if any) contained on or referred to in an order form or other documents or correspondence from the Purchaser, and no addition alteration or substitution of these terms will bind the Seller or form part of any Contract unless they are expressly accepted in writing by a person authorised to sign on the Seller's behalf.

**2. Specification**

- 2.1 All Goods supplied by the Seller shall be in accordance with (i) the current edition of the relevant product specification as published from time to time by the Seller (copies of which are available from the Seller upon request) and (ii) those further specifications or descriptions (if any) expressly listed or set out on the face of the Acceptance. In the case of any conflict between (i) and (ii), (ii) shall override (i). No other specification, descriptive material, written or oral representation, correspondence or statement, promotional or sales literature shall form part of or be incorporated by reference into the Contract.
- 2.2 Where the Seller is supplying only services, such services shall be performed in a proper and workmanlike manner and in accordance with good practice in the sealing industry.
- 2.3 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.
- 2.4 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EU requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality of performance.
- 2.5 Any jigs, tools, dies, patterns, moulds, gauges, components, materials or any other items of whatsoever nature which are manufactured by the Seller in connection with the Contract whether made on a part cost basis which shall be charged to the Purchaser or included in the price of the Goods shall become the absolute property of the Seller. The Seller may at its discretion keep such items for a reasonable time in anticipation of future orders but without any liability on the part of the Seller.
- 2.6 The Purchaser shall indemnify the Seller against any and all liabilities, claims and costs incurred by or made against the Seller as a direct or indirect result of manufacturing, or carrying out of any work required to be done on or to, the Goods in accordance with the requirements or specifications of the Purchaser involving any infringement or alleged infringement of any rights of any third party.

**3. Acceptance of Goods**

- 3.1 The Purchaser shall be deemed to have accepted all Goods upon the expiry of 48 hours after their delivery by the Seller and/or after completion of any services to be provided by the Seller.

**4. Delivery and Risk**

- 4.1 Delivery of the Goods is ex works loaded in accordance with Incoterms 2010. Any time or date for delivery given by the Seller is given in good faith, but is an estimate only and is not of the essence of the Contract. If the Purchaser fails to take delivery of the Goods within 48 hours of notification that the Goods are ready for delivery, delivery shall be deemed to have taken place and the Goods will be invoiced by the Seller.
- 4.2 Risk in the Goods shall pass to the Purchaser upon delivery or, if the Purchaser wrongfully fails to take delivery of the Goods, the time when the seller has tendered delivery of the Goods or, if the Purchaser fails to take any action on its part necessary for shipment or delivery, when the Goods are ready for shipment or delivery.
- 4.3 The Purchaser shall be responsible for the suitability of any special packaging it requests. The Purchaser shall notify the Seller of all packaging and markings required in respect of the Goods by any applicable system of law other than Singapore law.

**5. Prices, Payment and Title**

- 5.1 The price of the Goods is ex works loaded and unpacked and does not include the cost of packaging and carriage. Where incurred, such costs shall be added to the price of the Goods. Unless otherwise specified in writing by the Seller: GST and any other applicable taxes or duties shall be added to the price of the Goods.
- 5.2 Unless otherwise stated in the Acceptance, the Purchaser shall pay the price of the Goods within 30 (thirty) days of the date of the Seller's invoice. If the Purchaser has a query in relation to an invoice, such query must be raised within 21 (twenty-one) days of the date of invoice. If the Purchaser fails to make the payment before or on the due date the Seller shall be entitled to (a) charge the Purchaser interest accruing monthly on the amount unpaid at the reference rate specified in the Late Payment of Commercial Debts

(Interest) Act 1998 as amended from time to time from the date 30 days after the relevant invoice until payment in full is made (a part month being treated as a full month for the purpose of calculating interest) and/or (b) cancel the contract or suspend any further deliveries to the Purchaser and to recover damages from the Purchaser as a result of the cancellation or suspension.

- 5.3 Title to the Goods shall not pass to the Purchaser until the Purchaser has paid their price and all sums due from the Purchaser under other contracts with the Seller have been paid to the Seller, but, even though title has not passed, the Seller shall be entitled to sue for their price once its payment has become due. Until such payment is received the Purchaser shall be in possession of the Goods solely as bailee for the Seller and in a fiduciary capacity shall protect and insure the Goods and shall store the Goods in such a way as to enable them to be identified as the property of the Seller.
- 5.4 The Seller reserves the immediate right of repossession of any Goods to which it has retained title as aforesaid and thereafter to re-sell the same. For this purpose the Purchaser hereby grants an irrevocable right and licence to the Seller's employees or agents to enter all or any of the Purchaser's premises with or without vehicles during normal business hours. This right shall continue notwithstanding termination of the Contract for any reason and is without prejudice to any other rights of the Seller.
- 5.5 The Seller shall be entitled to suspend further deliveries wholly or in part and/or to terminate the Contract and any other contract then subsisting between the parties without prejudice to any other rights of the Seller if:- the Purchaser fails to make any payment when it becomes due or is in breach of any terms of the Contract or any other contract with the Seller; or the Purchaser enters into any composition or arrangement with creditors; or the Purchaser has a receiver, administrative receiver or administrator appointed or shall enter into liquidation or permits the Goods over which the Seller retains title to become subject to any lien, pledge, charge or other encumbrance or suffers or permits any similar or analogous process or encumbrance under the laws of any jurisdiction; or the Seller has grounds to believe that the Purchaser may be unable to pay the sums due under the Contract; or the Seller is unable to perform the Contract by reason of any cause within Condition 8 below. If due to such a cause the Seller has insufficient stocks to meet all its commitments the Seller may apportion available stocks between its purchasers at its sole discretion.

**6. Storage**

- 6.1 If the Purchaser fails to take delivery of the Goods after notification that the Goods are ready for delivery, the Seller shall be entitled (without prejudice to the Seller's other rights) to arrange storage on behalf of the Purchaser. All risk in the Goods shall pass to the Purchaser. All charges incurred by the Seller for storage shall be paid by the Purchaser within 30 days of submission of an invoice.

**7. Damage in Transit**

- 7.1 Where the Seller arranges carriage on behalf of the Purchaser, such carriage shall be at the Purchaser's risk and cost and in accordance with the selected carrier's conditions of carriage, which contain limitations on the carrier's liability in respect of loss or damage to the Goods carried. If the Goods are lost or damaged in transit it is the responsibility of the Purchaser to notify the carrier of the same within the time limits for claims specified in the conditions of carriage. The Seller will not be liable for Goods lost or damaged in transit unless such damage results from incorrect packaging by the Seller.

**8. Force Majeure**

- 8.1 The Seller shall not be under any liability for any failure to perform any of its obligations under the Contract due to Force Majeure. Following notification by the Seller to the Purchaser of such cause, the Seller shall be allowed a reasonable extension of time for the performance of its obligations.
- 8.2 In these Conditions, "Force Majeure" means any cause beyond the reasonable control of the Seller including, without limitation, Act of God, explosion, flood, tempest, fire, war or threat of war, terrorism, sabotage, rebellion, civil disturbance or legislation or measures of any kind by any governmental, parliamentary, local or supranational authority, lock-outs, industrial action or disputes (whether involving employees of the Seller or a third party), difficulties in obtaining raw materials, labour, fuel, parts or machinery, power or machinery failures or breakdowns, accidents, transport delays or import or export regulations or embargoes.

**9. Termination**

- 9.1 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 Purchaser, and if the Goods have been delivered but not paid for the price shall become immediately due and payable, if:-
  - 9.1.1 the Purchaser commits a breach of any of these Conditions and fails to remedy that breach within thirty (30) days of receipt of the Seller's written notice of the breach; or
  - 9.1.2 the Purchaser goes into liquidation or a receiver is appointed of any of the property or assets of the Purchaser or the Seller reasonably believes either of these events or any similar event is about to occur and notifies the Purchaser accordingly.

**10. Guarantee and Limitation of Liability**

- 10.1 Any samples, illustrations or descriptive material including, but not limited to, information contained in the Seller's or its agents' brochures, advertising material or elsewhere shall be treated as approximate and for guidance only. The Purchaser shall not rely on them and the Seller shall not be liable for their accuracy. The Seller shall not be liable for gratuitous advice given whether in relation to the sale of the Goods or otherwise.
- 10.2 For Goods which are manufactured by the Seller or which bear one of the Seller's trade marks and/or where services are provided, the Seller grants the following guarantee:-

- 10.2.1 The Seller shall free of charge repair or, at its option, replace defective Goods or re-perform the services where the defects appear under proper use within 12 months from the date of delivery or completion of the performance of the service, PROVIDED THAT: (a) notice in writing of the defects complained of shall be given to the Seller upon their appearance, and (b) such defects shall be found to the Seller's reasonable satisfaction to have arisen solely from the Seller's faulty design, workmanship or materials, and (c) the defective Goods shall be returned to the Seller's factory at the Purchaser's expense if so requested by the Seller.
- 10.2.2 Any repaired or replaced Goods or any re-performed services shall be redelivered or re-performed by the Seller free of charge to the original point of delivery but otherwise in accordance with and subject to these Conditions of Sale save that the period of 12 months referred to in Condition 10.2.1 shall be replaced by the un-expired portion of that period only.
- 10.2.3 Alternatively to Condition 10.2.1, the Seller shall be entitled at its absolute discretion to refund the price of the defective Goods in the event that such price shall already have been paid by the Purchaser to the Seller, or, if such price has not been so paid, to relieve the Purchaser of all obligation to pay the same by the issue of a credit note in favour of the Purchaser in the amount of such price.
- 10.2.4 Where as part of services provided, the Seller has recommended Goods and the Purchaser does not purchase such Goods, the Seller shall have no further liability to the Purchaser in relation to the performance of the goods purchased instead of the Goods.

10.3 Nothing in these conditions shall operate or be construed to operate so as to exclude or restrict the liability of the Seller or be construed to operate so as to exclude or restrict liability of the Seller for death or personal injury caused the reason of the negligence of the Seller or of its employees. Nothing in these conditions shall limit or exclude liability for any fraudulent representation or any other representation or matter for which liability may not be lawfully excluded. WHERE THE GOODS ARE SOLD TO A PERSON DEALING AS A CONSUMER THE STATUTORY RIGHTS OF THE PURCHASER ARE NOT AFFECTED BY THESE CONDITIONS.

10.4 In respect of all Goods manufactured and supplied to the Seller by third parties or services performed by third-parties as sub-contractors to the Seller, the Seller will pass on to the Purchaser (in so far as it is able to) the benefit of any warranty given to the Seller by such third parties and will (on request) supply to the Purchaser details of the terms and conditions of such warranty and copies of any relevant product information sheets, technical data sheets or product leaflets issued by such third parties and the Purchaser shall be solely responsible to the entire exclusion of the Seller for complying with all of these.

10.5 Subject to Condition 10.3 above, the Seller's entire liability in connection with defective Goods is set out in Condition 10.2. Except in the case of liability in connection with defective Goods, notwithstanding anything contained in these Conditions (other than Condition 10.3) or the Purchaser's order or the Acceptance, the Seller's liability to the Purchaser in respect of the Contract or supply of the Goods in contract, tort (including negligence or breach of statutory duty) or howsoever otherwise arising, shall not exceed the price of the Goods specified in the Acceptance.

10.6 Subject to Condition 10.3 above, the Seller's liability under this Condition 10 shall be to the exclusion of all other liability to the Purchaser whether in contract, tort (including negligence or breach of statutory duty) or otherwise for defects in the Goods or for any loss or damage to or caused by the Goods, and liability in respect of all other conditions, warranties, stipulations or other statements whatsoever concerning the Goods, whether express or implied, by statute, at common law or otherwise howsoever, is hereby excluded; in particular (but without limitation of the foregoing) the Seller grants no warranties regarding the fitness for purpose, performance, use, nature or satisfactory quality of the Goods, whether express or implied, by statute, at common law or otherwise howsoever.

**11. Economic loss**

Notwithstanding anything contained in these Conditions, the Acceptance or the Purchaser's order, in no circumstances shall the Seller be liable, in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof, (i) for any loss of profit, business, production, contracts, revenues, or anticipated savings, or (ii) for any economic, special, indirect or consequential loss or damage of any nature whatsoever, whether known of or in the reasonable contemplation of the Seller.

**12. General**

- 12.1 The Contract shall be considered a contract made in Singapore and shall be governed in all respects by the law of Singapore and the parties agree to submit to the exclusive jurisdiction of the Singapore Courts.
- 12.2 Any notice to be given hereunder shall be in writing or by some secure form of electronic transmission and addressed to that other party at its address specified overleaf, and such notice shall be deemed to have been served if sent by post, forty eight hours after posting or if sent by electronic transmission, on receipt by the other party.
- 12.3 No waiver by the Seller of any breach of the Contract by the Purchaser shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.4 If any provision (or part of a provision) in these Conditions or any contract is invalid or unenforceable to any extent or for any purpose, this shall not affect its validity or enforceability for other purposes or the remaining provisions (or the rest of the provision in question); but it shall be deemed to be severed to that extent for that purpose.
- 12.5 Neither the Uniform Laws on International Sales nor the Convention on Contracts for the International Sale of Goods shall apply to any contract.