

TERMS AND CONDITIONS OF SALE OF GRAYFORD INDUSTRIAL LIMITED

1. INTERPRETATION

a) In these Conditions (unless the context otherwise requires) the following definitions shall apply:

Buyer	The purchaser of Goods and/or Services.
Company	Grayford Industrial Ltd.
Contract	The agreement between the Buyer and the Company for the supply of Goods and/or the provision of Services.
Conditions	These Terms and Conditions.
Confidential Information	All information in respect of the business and financing of the Parties including but not limited to: any business methods, financial information, prices, discounts; business, financial, marketing, development or manpower plans; customer lists or details; computer systems and software know-how or other matters connected with the Goods or other products or Services manufactured for, marketed, provided or obtained by either Party; information concerning either Party's relationships with actual or potential clients or customers and the needs and requirements of such persons.
Goods	Goods supplied or to be supplied by the Company to the Buyer pursuant to the Contract.
Non-Returnable Goods	Goods supplied which the Company is unable to accept by return due to the nature of the Goods as more particularly described in Section 6.
Parties	The Buyer and the Company.
Services	Services carried out or to be carried out by the Company for the Buyer pursuant to the Contract.

Words used in the singular shall include the plural and vice versa. References to any gender shall include all other genders. References to legal persons shall include natural persons and all other legal entities.

2. BASIS OF THE CONTRACT

- a) Any quotation given by the Company to the Buyer shall not constitute an offer but merely an invitation to treat and shall not be binding on the Company unless and until an order from the Buyer is accepted in writing by the Company.
- b) The Buyer may make and the Company may accept an order transmitted by the Buyer by means of the postal service, facsimile machine, e mail, by the Company's internet sales service or over the telephone. Acceptance may be formally in writing or by the supply of the Goods or performance of the Services.
- c) Any Contract formed as in clause 2. b) above is subject solely to these Conditions which shall override any terms and conditions of the Buyer which may at any time be transmitted to the Company in whatever form and the Buyer waives any rights which it might otherwise have to rely on any other Terms & Conditions whatsoever.
- d) No variation or qualification to these Conditions shall be binding upon the Parties unless agreed in writing by an authorised representative of the Company.
- e) Any typographical, clerical or other error or omission in any quotation, sales literature, acceptance of an offer, letter, invoice or any other document whatsoever and howsoever transmitted to the Buyer shall be subject to correction without any liability on the part of the Company.
- f) No information, including but not restricted to, statements, descriptions, particulars of weights and/or dimensions, warranties, conditions or recommendations contained in any catalogue, price list, advertisement or any other written statement or verbal communication whatsoever or howsoever transmitted shall be incorporated

into the Contract nor shall it be deemed to vary or override these Conditions in any way.

- g) Each Party acknowledges that each Contract together with any variations and/or qualifications made pursuant to these Conditions contains the whole agreement between the Parties and that it has not relied upon any oral or written representation made to it by the other Party or the other Party's employees or agents

3. PRICE

- a) The Price payable shall be the list price of the Company at the time of despatch unless otherwise agreed between the Parties.
- b) The Company reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods and/or Services to reflect any increase in the cost to the Company which is due to any factor beyond its control including but not restricted to alteration of duties, fluctuation in exchange rates, significant increase in the costs of labour, materials or other costs including, without limitation, any increase in the prices charged to the Company by its suppliers. The Company accordingly reserves the right to adjust the invoice price by the amount of any increase in such costs after the price is quoted and the invoice so adjusted shall be payable as if the price set out therein were the original contract price.
- c) The Buyer shall indemnify the Company in respect of any loss, cost or expense incurred by the Company as a result of, either directly or indirectly, the Buyer requesting a change in the delivery date, quantity or specifications of the Goods, the Buyer causing delay or the Buyer failing to give the Company adequate information or instructions.
- d) All prices are exclusive of VAT
- e) The Company reserves the right to impose a minimum order charge at its discretion.

4. DELIVERY

- a) Delivery and/or dates for performance of Services quoted are approximate only and time of delivery shall not be of the essence of the Contract. The Buyer will accept the Goods and/or performance of Services even if they are delivered late and late delivery will not entitle the Buyer to terminate the Contract. The Company may deliver Goods early without notice.
- b) Where delivery is by instalments or where Goods are held by the Company to be called off by the Buyer as required then, in the event that the Company fails to deliver any one or more of the instalments or goods called off in accordance with any agreed dates or in the event that the Buyer makes any claim whatsoever in respect of any one or more instalments or Goods called off, the Buyer shall not be entitled to repudiate the Contract.
- c) Unless otherwise agreed by the Company in writing the Goods will be delivered ex works and the price of the Goods is exclusive of carriage, packing and insurance to the Buyer's premises.
- d) If the Buyer fails to take delivery of Goods or fails to accept performance of Services or fails to give the Company adequate delivery instructions in advance of the delivery date then, without prejudice to any other right or remedy available to it, the Company may:
 - i) store the Goods until delivery can be effected and charge the Buyer the reasonable costs of storage and insurance; or
 - ii) sell the Goods at the best price readily obtainable in which event the Buyer shall be liable for any shortfall between the price which would have been payable under the Contract and that actually obtained. These rights shall also apply where the Buyer has arranged to collect the Goods from the Company but fails to do so within twenty-one days of notification by the Company that such Goods are ready for collection. In any or all of the eventualities specified in this clause 4. d), the Company shall be entitled to treat the Contract as being repudiated and thereby terminated.
- e) Goods should be examined by the Buyer immediately on delivery. Notification of short delivery of Goods and/or of lost or damaged Goods in transit must be made either by giving to the carrier a note detailing the shortage and/or damage at the time of delivery and confirming to the Company in writing within **three** days of delivery or if no note is given to the carrier then by written notification to the Company within the said **three** days of the date of delivery of the Goods.
- f) Any claim that Goods are not as specified in the Buyer's order must be made by written notification to the Company within **fourteen** days of the date of delivery.
- g) Goods ordered in error or inaccurately by the Buyer may only be returned with the written permission of the Company and the Company is

entitled to require payment of any losses it has suffered due to the Buyer's error. Duly authorised returns shall be sent to the Company's premises at the Buyer's expense.

- h) Where Goods are held by the Company to be called off by the Buyer as required, the Company may notify the Buyer that it must complete collection or accept delivery of all the remaining Goods, whichever is appropriate, within a period of six months from the date of such notification. Payment for Goods still remaining with the Company at the expiry of this period shall be due immediately.
 - i) The Company shall be entitled to cancel any accepted order or withhold delivery of any Goods or performance of any Services if the Buyer is in breach of any obligation to the Company.
 - j) The Company shall be entitled to assume that any person signing a delivery note on behalf of the Buyer and who appears or claims to have authority to accept delivery shall in fact have that authority.
 - k) The Buyer shall be responsible for the safety and protection of all Company personnel who enter the Buyer's premises to make delivery.

5. PAYMENT

- a) The time of payment shall be of the essence of the Contract.
- b) The Company may check the following records about the Buyer, the Buyer's business and the Buyer's business partners:
 - a) the Company's own records;
 - b) business records at the credit reference agencies (CRA's). (When CRA's receive a search they will place a search on the Buyer's business credit file that may be seen by other lenders. These agencies supply business and fraud prevention information);
 - c) records at Fraud Prevention Agencies (FPA's);
 - d) the Company may seek confirmation from CRA's, that the residential addresses of the Buyer's directors are the same as those shown on the restricted register of directors' usual addresses at Companies House. The Company also reserve the right to make further periodic searches as it considers appropriate.
- c) If credit terms are permitted, payment must be made as stipulated on the relevant invoice.
- d) If the Buyer has selected electronic invoicing, invoices and statements will be delivered electronically.
- e) If the Buyer fails to make any payment due under any Contract between it and the Company then the Company shall be entitled to terminate any Contract between it and the Buyer forthwith and shall not be liable to perform any part of any Contract still incomplete at that time nor shall the Company be bound by any warranty.
- f) If the Buyer fails to adhere to the terms of payment of any invoice then the Company may at its sole discretion demand immediate payment of any or all liabilities whether or not payment of these is due.
- g) If the Buyer fails to make any payment on the due date then the Company, without prejudice to any other right or remedy available to it, shall be entitled to charge the Buyer interest, both before and after any Judgment, from the date on which the payment became overdue on the amounts unpaid at the rate of eight per cent above the HSBC plc base rate in force at the time of imposition of the interest until payment in full is made (a part of a month shall be treated as a full month for the purpose of calculating interest). In the event that legal action has to be taken or the Company has to pass the debt to solicitors or any other agent for the recovery of any outstanding debt then the Company shall be entitled to charge the Buyer an administration fee of £100.
- h) The Company reserves the right to set off any debts whatsoever which the Buyer owes under any Contract against any amounts which the Company owes to the Buyer for any reason whatsoever.
- i) Payment shall be made in the currency of the invoice unless otherwise agreed in writing.

6. WARRANTIES, CONDITIONS AND NON-RETURNABLE GOODS

- a) The Company undertakes at its option to replace or refund the purchase price of any Goods sold or supplied in the following circumstances only:
 - a) Where the Goods do not correspond to any written identifying description applied to them.
 - b) Where the Goods prove to be unfit for a particular purpose which has been expressed in writing by the Company, provided that they have not been technically approved by the buyer and confirmed as acceptable.

- c) Where the Goods prove to be defective and not fit for their ordinary purposes within 12 months of delivery. The Company's liability under this clause shall be accepted by the Customer in lieu of any warranty or condition whether expressed or implied by law. All warranties are passed on from the OEM manufacturer warranty "See clause 6d".
- b) Subject to clauses 3 e) and 3 f) the Company (whether in contract, tort or otherwise) shall have no liability for any loss of or damage to or discernible defect in the quality or condition of Goods arising prior to delivery or for any claim that any item delivered pursuant to the Contract is defective or otherwise not in accordance with the Contract (being a defect or loss, damage or non-compliance which would be obvious upon a reasonable inspection of the Goods) or for non-delivery unless claims to that effect are notified to the Company in writing within **fourteen** days of the date of delivery.
- c) In the case of Service performed by the Company if within 12 months of performance of the Service a defect in materials or workmanship appears therein being a defect which would not be obvious on reasonable inspection thereof (whether such an inspection was carried out or not) the Company will at its own discretion either credit the Buyer with the full price paid by the Buyer to the Company for such Service or it will re-perform the Service always provided that the Service has been accepted and paid for.
- d) In the case of Goods the Company shall pass on to the Buyer to the extent that it is able any benefits obtainable under any warranty and/or guarantee given by the Company's suppliers always provided that the Goods have been accepted and paid for.
- e) In order to exercise its rights under clauses 6 c) or 6 d) the Buyer shall inform the Company within **fourteen** days of the date when a defect appeared or ought reasonably to have been discoverable and shall at the Company's written request return the defective Goods carriage paid to the Company's Premises.
- f) In the event of a valid claim for defect, loss, damage, non-compliance with the Contract, non-delivery or non-performance the Company undertakes at its option either to repair, reprocess or replace the Goods concerned.
- g) The Company shall have no liability in respect of any defect arising from any act, omission or error by the Buyer, its employees or its agents including but not restricted to fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow any instructions provided by the Company or the manufacturer of the Goods, misuse, improper installation or repair or the use of incorrect lubricants.
- h) The Company shall have no liability for any advice or recommendation given by its employees, representatives, agents or sub-contractors to the Buyer as to the storage, application or use of Goods or for any statement whatsoever on any matter whatsoever relating to Goods or Services which has not been confirmed in writing.
- i) Where samples are supplied to the Buyer and an order(s) is subsequently placed for these same items and/or such items are accepted by the Buyer subsequent to the receipt of the samples then the Buyer is reliant entirely on its own judgment of the samples and the sale of these Goods shall not be considered to be a sale by sample. The Company shall have no liability whatsoever for any claim that these Goods are not fit for the purpose for which they are intended but this shall not affect the Buyer's right to claim for defect, loss, damage or non-delivery as provided under these Conditions.
- j) Where the Buyer has purchased Non-Returnable Goods, which for the avoidance of doubt are (i) any Goods of a bespoke nature to the Buyer or (ii) Goods which the Company have supplied which are outside of its normal product range or not within its catalogue or (iii) Goods which for any reason are not returnable to the Company's supplier or (iv) which at the time of Order the parties agree are Non-Returnable Goods, then subject to the Buyer's rights as set out in this Section 6 in relation to defects, such Good shall not be capable of return to the Company.

7. INDEMNITY

- a) The Buyer shall keep the Company fully and effectively indemnified at all times against all and any costs, claims, demands, losses or liabilities whatsoever brought or made against the Company or otherwise suffered or incurred by the Company arising directly or indirectly out of any infringement or alleged infringement of patents, trade marks, copyright, design right or other intellectual property right occasioned by the importation, manufacture or sale of the Goods if made to the specification or special requirements of the Buyer.

- b) The Buyer shall keep the Company fully and effectively indemnified against any loss or liability whatsoever which is suffered or incurred by the Company as a result of the acts or omissions of the Buyer, its employees or agents in the course of collection of Goods from the Company.

8. RISK AND PROPERTY

- a) The Goods shall remain the property of the Company until the Buyer has paid in full for all Goods and Services supplied or to be supplied under the Contract. Until that time the Buyer shall hold the Goods as bailee, keep them separate from like Goods belonging to the Buyer or any third party and keep them properly stored and protected and labelled as belonging to the Company.
- b) The Goods shall be at the Buyer's risk from the time of delivery to either the Buyer or a third party nominated by the Buyer or on the expiry of seven days from the date on which the Company gives notice to the Buyer that the Goods are available for collection. Risk shall also pass should the Buyer or a third party nominated by the Buyer fail without due cause to accept delivery of the Goods, from the date and time of the abortive delivery.
- c) The Buyer shall at all times comprehensively insure the Goods against loss or damage and in the event of such loss or damage shall hold the proceeds of such insurance on behalf of the Company as trustee for the Company until such time as the Goods are paid for in full.
- d) The Buyer's right to possession of the Goods shall cease:
 - if the Buyer has not paid for the Goods in full by the due date as described in clause 5 b) above or any alternative date agreed between the Company and the Buyer or
 - if, payment in full not having been made, any of the events as described below in Clause 10 a), sub clauses i) to vi) inclusive shall occur on cessation of the Buyer's right to possession of the Goods in accordance with this clause the Buyer shall at its own expense make the Goods available to the Company and permit the Company to repossess them.
- e) The Buyer hereby grants the Company, its employees, agents and sub-contractors an irrevocable licence to enter any premises where the Goods are stored in order to repossess them or inspect them at any time.
- f) In the event that the Buyer shall hold in its premises consignment stock belonging to the Company then the Company reserves the right to enter upon the Buyer's premises at any time to remove such stock should it consider that this stock is at risk of non-payment, unauthorised use or removal.

9. CONFIDENTIAL INFORMATION

Each Party hereby agrees in respect of all Confidential Information:

- to keep the Confidential Information in strict confidence and secrecy;
- not to use the Confidential Information save for enjoying its rights and complying with its obligations under this Contract;
- not to disclose the Confidential Information to any third party save only as is required by law. Any company within the Grayford organisation shall not be classified as a third party;
- to restrict the disclosure of Confidential Information to relevant and necessary information required by such of its employees and others who of necessity need the same in the performance of their duties as envisaged by the Contract and to ensure that such employees and others are aware of the confidential nature of such Confidential Information.

10. TERMINATION AND CANCELLATION

- a) The Contract may be terminated by the Company:
 - if the Buyer is declared bankrupt or makes any proposal to his creditors for a composition or other voluntary arrangement;
 - if a receiver, liquidator, administrator, administrative receiver or any other like practitioner is appointed in respect of the Buyer's business;
 - if the Buyer ceases, or threatens to cease, to carry on business;
 - if an attachment order is made against the Buyer or any legal process is levied on any property of the Buyer;
 - if the Company reasonably apprehends that any of the events in clauses 10. a) i) to

- iv) are about to occur and gives notice to the Buyer;
 - vi. if the Buyer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - vii. by either Party if the other commits a material breach of the of the Contract and has not remedied the breach within ninety days of a written request to do so but without prejudice to any other rights or remedies a Party may be entitled to under these Conditions or at law or to any accrued rights or liabilities of a Party;
 - viii. if payment by the due date of the full amount of any invoice correctly levied by the Company on the Buyer has not been made.
- b) Any right which the Company has to terminate the Contract under any of the provisions of this clause 10. shall include the right to suspend any further deliveries and/or Services to be performed under the Contract and upon such termination the Company shall not incur any liability to the Buyer. Furthermore, upon such termination then, if any Goods have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement regarding payment or the normal terms under clause 5. b) above. The Company shall also retain its rights under Clause 5. f) above.
- c) The Buyer may not cancel any order which has been accepted by the Company except with the agreement in writing of the Company. In the event of any cancellation or termination for any reason whatsoever, the Buyer shall indemnify the Company against all loss including but not restricted to loss of profit, costs, damages, charges and expenses howsoever incurred by the Company as a result of such cancellation or termination.

11. FORCE MAJEURE

The Company shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of its obligations under the Contract, if the delay or failure was due to any cause beyond the Company's reasonable control, including but not restricted to the following:

- Act of God, explosion, flood, tempest, fire or accident;
- war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind enacted by any parliamentary or local government;
- import or export regulations or embargoes
- strikes, lock-outs or other industrial actions or trade disputes whether involving employees of the Company or of a third party;
- power failure or breakdown in machinery;
- difficulties in obtaining or shortages or failures of any supplies whatsoever including shortages or failures caused by the Company's own suppliers.

These same rights shall apply equally and in all respects to the Buyer.

12. LIMITATION OF LIABILITY

- a) The Company's liability in contract, tort, (including negligence or breach of statutory duty) or otherwise in connection with the Contract (except in relation to death or personal injury caused by the negligence of the Company or its employees whilst acting in the course of their employment) shall be limited to the value of the Goods and/ or Services upon which such liability is based.
- b) Save as above the Company shall not be liable in any circumstances for
 - any loss of use, production or profit, (direct or indirect);
 - any loss of business, contracts, revenues or anticipated savings;
 - any increase in operating costs or any other financial or economic loss;
 - any indirect or consequential loss or damage whatsoever
 - personal injury which is not caused by negligence whether sustained by the Buyer or by any third party and whether in contract, tort, (including negligence or breach of statutory duty as permitted under law), or otherwise in connection with the Contract.
- c) If the Company undertakes to perform Services to the Buyer's own design and/or specification and/or instruction, it shall have no liability for any loss whatsoever arising in whole or in part from the unsuitability or inadequacy of any such design, specification or instructions nor shall the Company's right to payment be in any way diminished in such circumstances.
- d) Nothing herein shall have the effect of excluding or restricting the liability of the Company for:

- i. death or personal injury resulting from its negligence;
- ii. fraud and/or fraudulent misrepresentation and
- iii. the Consumer Protection Act 1987, in so far as all the foregoing is prohibited by United Kingdom Statute.

13. GENERAL

- a) The Buyer may only assign the benefit of the Contract with the prior written consent of the Company, such consent not to be unreasonably withheld.
- b) No party not itself a party to the Contract shall have any rights whatsoever under the Contract nor any right of enforcement thereof.
- c) Any notice required or permitted to be given by either Party to the other shall be in writing, addressed to the other Party at its principal place of business or any other address previously provided as being that to which correspondence should be sent. Such notice should be delivered by hand or sent by first class post and shall be deemed to have been received by the Party to whom it is sent 48 hours after the date of posting.
- d) In the event that the Goods supplied are of US origin and are intended for re-export outside the EU, then the Purchaser shall provide details to the Company as to the destination and purchaser of such Goods. Similarly, if the Company reasonably believes that the Goods are intended for export outside of the EU then, if requested by the Company, the Purchaser shall provide the same information in relation to destination and purchaser. The Purchaser shall demonstrate to the Company that all necessary export licences have been obtained. The Company reserves the right not to supply the Goods in the event of failure to provide any of the information referred to in this Clause 13 d) when so required.
- e) No waiver by the Company of any breach of the Contract by the Buyer shall be considered as a waiver of this breach in the future or a waiver of any other breach whatsoever.
- f) Any reference in these Conditions to a provision of a Statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- g) If any court or competent authority finds that any provision or part of any provision of these Terms is invalid, illegal or unenforceable then that provision or part of a provision shall, to the extent required, be deemed to be deleted and the validity and enforceability of the other provisions of these Terms shall not be affected.
- h) If any invalid, unenforceable or illegal provision of these Terms would be valid, enforceable and legal if some or any part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- i) This Contract shall be governed by English law and subject to the exclusive jurisdiction of the English Courts.
- j) The headings in these Conditions are for convenience only and shall not affect the interpretation of the Contract.
- k) A credit check may be carried out by the Company and such a search will show in the records of individuals.
- l) The Company supplies information to a third party Credit Information Agency.
- m) The company operates within the global shipping and banking regulations including Incoterms and adheres to all International Documentation and Customs Compliance requirements.