

Horizon Foodservice Equipment Limited
Standard Trading Terms & Conditions of Sale

1. Definitions:

- 1.1 "The Seller" Horizon Foodservice Equipment Limited.
"Buyer" means any person, firm or company who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the seller.
"Goods" means the article, matter or things or any of them described in the Order which the Seller is to supply in accordance with these Conditions and the term shall be construed where the context so admits as including materials, products, services and/or work.
"Order" means the order placed by the Buyer (whether on the Buyer's own order form or otherwise) for the supply of goods and/or services.
"Conditions" means the entire undertakings, terms, conditions and clauses embodied herein.
"Contract" means the contract for the purchase and sale of Goods and/or services. Any reference in these conditions to any provisions of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.3 Any references to the masculine gender shall be deemed to include a reference to the feminine and neuter where the context so admits.
1.4 The headings to these Conditions shall not affect the meaning or interpretation of this agreement.

2. Conditions:-

- 2.1 These conditions shall form the basis of the Contract between the Seller and the Buyer. Notwithstanding anything to the contrary in the Buyer's conditions of purchase, order form or other document, these Conditions shall apply except insofar as any variation which may be expressly agreed in writing by a director or authorised representative of the Seller.

3. Acceptance of orders

- 3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order submitted to the Buyer, and for giving the Seller any necessary information relating to the Goods within sufficient time to enable the Seller to perform the Contract in accordance with its terms.
3.2 No Order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the buyer shall indemnify the Seller in full against all loss (including loss of profit), costs, damages charges and expenses incurred by the Seller as a result of such cancellation.

4. Quotations

- 4.1 Any quotation provided by the Seller is for information purposes only and shall be binding on the Seller only if, and to the extent that, it is incorporated in an Order which the Seller has previously accepted in writing. The Seller shall accept no liability for any errors or mistakes contained in any documents which it may issue in the regard.

5. Price and Price Variation

- 5.1 The price of the Goods shall be the Seller's quoted price. All prices quoted are valid for thirty (30) days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.
5.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as without limitation, any alteration of duties, significant increases in the cost of labor, materials or other costs of production) and any changes in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
5.3 The price is exclusive of any applicable Value Added Tax, which the Buyer shall be additionally liable to pay to the Seller.

6. Design and Other Preliminary Work

- 6.1 All preliminary and additional work carried out at the Buyer's request whether of a design or experimental nature or otherwise and specifically included in any quotation will be charged for at the rate specified by the Seller from time to time.
6.2 Designs submitted by the Seller remain the property and copyright of the Seller unless otherwise agreed in writing.
6.3 Proofs or artwork may be submitted for the Buyer's approval and the Seller shall incur no liability for any errors not corrected by the Buyer in proofs necessitated thereby shall be charged extra. When style type or layout is left to the Seller's judgement, changes therefrom made by the Buyer shall be charged extra. A charge may also be made to cover any additional work involved where copy supplied is not clear or legible.

7. Buyer's Property

- 8.1 Except in the case of a Buyer who is not contacting in the course of a business nor holding himself out as doing so Buyer's property and all the property supplied to the Seller by or on behalf of the buyer shall while it is in the possession of the Seller or in transit or from the Buyer be deemed to be at the Buyer's risk unless otherwise agreed in writing and the Buyer should insure accordingly.
8.2 The Seller shall be entitled to make a reasonable charge for the storage of any Buyer's property left with the Seller before receipt of the order or after notification to the Buyer of completion of the work.

8. Delivery and Payment

- 12.1 The Goods properly packed and secured in such a manner as to reach their destination in good condition under normal conditions of transport, shall be delivered by the Seller at, or dispatched for delivery to the place or places and in the manner specified in the Order or as subsequently agreed or alternatively the Goods may be collected by the Buyer at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection. Risk and Property in the Goods shall pass to the Buyer on delivery without prejudice to any right of rejection, which may accrue to the Buyer under these Conditions.
12.2 The Seller shall be entitled to make a charge for delivery in order to cover any costs involved unless otherwise specified in the price quoted.
12.3 Should delivery of the Goods be suspended at the request of, or delayed through any default on the part of the Buyer for a period of more than seven (7) days, the Seller shall then be entitled to payment for any materials specially ordered and for other additional cost including storage and insurance of the Goods.
12.4 Subject to any special terms agreed in writing by the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after the delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
12.5 Unless otherwise agreed in writing the Buyer shall pay the price of the Goods within thirty (30) days (unless otherwise stated) of the date of the Seller's invoice, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
12.6 If the Buyer fails to make any payment on the due date then, without prejudice to any other rights or remedy available to the Seller, the Seller shall be entitled to:-
12.7.1 Cancel the Contract or suspend any further deliveries to the Buyer
12.7.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the buyer) and charge the Buyer interest (both before and after any judgement) on the amount unpaid at the rate of four (4) per cent per annum above Nat West bank base rate from time to time, until payment is made in full, (a part month aging treated as a full month for the purpose of calculating interest).

9. Warranty

- 13.1 The Seller warrants that the Goods shall conform as to quality and description with the particulars stated in the Order.
13.2 No representation or warranty is given as to the suitability or fitness of the Goods for any particular purpose and the Buyer shall satisfy itself in this respect and shall be totally responsible therefore.
13.3 The Seller shall have no liability under the warranty given 13.1 if the total price of the Goods has not been paid by the due date or at the date when the Buyer claims that there has been a breach of such warranty.
13.4 If the Goods are in such a state as would but for this condition entitle the Buyer to repudiate the contract and/or claim damages from the Seller, the Seller reserves the right to replace or reprint the Goods in question.

10. Claims

- 14.1 The Buyer shall notify the seller in writing of any damage to, delay or partial loss of the Goods in transit within three (3) clear days of delivery and any claim in respect thereof must be made in writing to the Seller within seven (7) clear days of the Goods' delivery.
14.2 The Buyer shall notify the Seller in writing of non-delivery of any Goods within five (5) clear days of their despatch and any claim in respect thereof must be made by the Buyer in writing to the Seller within seven (7) clear days of such despatch.
14.3 The Seller shall not be liable in respect of any claim unless the aforementioned requirements have been complied with except in any particular case where the Buyer can prove that:-
14.3.1 It was not possible to comply with the requirements, and
14.3.2 Advice (where required) was given and the claim made as soon as was reasonably possible.
14.4 Where the Buyer can prove to the Seller's satisfaction that the Goods ordered had been damaged or lost in transit the Seller will reprint or replace such goods free of charge within a reasonable time thereafter.

11. Liability

- 15.1 The Seller shall not be liable for any consequential or indirect loss suffered by the Buyer, including loss or profits or loss of contracts, whether this loss arises from breach of a duty in contract or in tort or in any other way.
15.2 Subject to the warranty given in sub-clauses 15.1, the Liability of the Seller under these Conditions in relation to defective Goods supplied under this Agreement shall be limited to the invoice value of the Goods replaced or repaired.
15.3 Notwithstanding sub-clause 15.2 above, the Seller shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, abnormal use or alteration of the Goods without the Seller's approval.
15.4 All express or implied warranties or conditions of statutory or otherwise as to the quality or fitness for any particular purpose of the Goods, (except to the extent that this provision is held to be unenforceable under or by virtue of any provision contained in the sale of Goods Act, 1979 or the Unfair Contract Terms Act, 1977 or the Supply of Goods and Services Act, 1982 or any statutory modification or re-enactment thereof for the time being in force) are hereby expressly excluded.
15.5 All goods supplied but not manufacturer thereof and the sole liability of the Seller in respect thereof shall be given to the Buyer such benefits as the Seller shall receive under any contract with the seller has with such manufacturer. In the event of any failure by such manufacturer for whatever reason to meet such liability which may arise by reason of any defects in such goods, the Seller shall be under no liability to the Buyer in respect of such defect.
15.6 If the Buyer wishes to rely upon any representations made by or on behalf of the Seller but not expressly embodied in any tender, quotation or contract to which these Conditions apply, the Buyer shall give the Seller written notice of such reliance before the Seller incurs any obligation consequent upon such representation and shall not otherwise be entitled to rely upon such representation.
15.7 We exclude any liability as far as it has not been regulated by Law. Our liability shall never exceed the total amount of the order involved. Except for general legislation of public order and good faith, we exclude any liability for compensation of damages of any kind, direct or indirect, including Industrial/commercial damages, to movables and/or immovables and/or persons, concerning both the principal as any third party.

General Lien

12. Without prejudice to any other remedies the Seller may have under these Conditions, the Seller in respect of all unpaid debts due from the Buyer shall have a general lien on all goods and property of the Buyer in its possession and until such time as the unpaid debts have been paid in full, the Seller shall have the right to withhold delivery of such Goods to the Buyer.
16.2 The Seller shall have a lien on the Goods so long as the Seller is in possession of them.
16.3 The Seller shall have a right of stoppage in transit in respect of such Goods and to apply the proceeds of sale towards such unpaid debts.
16.4 For the avoidance of doubt, it is hereby declared that nothing in this clause shall affect the rights given to the Seller by sections 38-48 of the Sales of Goods Act 1997.

Insolvency of Buyer

- 17.1 This clause shall apply if:
17.1.1 The Buyer makes any voluntary agreement 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
17.1.2 an encumbrance takes possession, or a receiver or and administrative receiver is appointed, or any of the property or assets of the buyer; or
17.1.3 the Buyer ceases, or threatens to cease to carry on business; or
17.1.4 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.
17.2 If this clause implies 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 Goods have been delivered but not paid for the price shall become immediately due and payable not withstanding any previous agreement to the contrary.

Force Majeure

- 18.1 The Seller shall be under no liability to the Buyer for any loss or damage which may be suffered by the Buyer as a result directly or indirectly 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 but not limited to an Act of God, legislation, war, riot, civil disobedience, strike, lock-out, trade dispute or labour disturbance, accident, breakdown of plant or machinery, fire, flood, a storm, difficulty or increased expense in obtaining materials or transport or other circumstances affecting the supply or Goods or of the materials required for Contract from the Sellers normal source of supply. During the continuance of such a contingency, the Buyer may be written notice to the Seller effect to terminate the contract but shall otherwise accept delivery of the Goods when the same are available.

Remedies

- 19.1 Termination of this Agreement for whatever reason shall not affect the rights or remedies of either party hereto in respect of any antecedent breach or in respect of any sum of money owing by one party to the other.

Notices

- 20.1 Any notice given under this agreement shall be deemed to have been duly given if sent by prepaid, first-class post to the party concerned at its last known address. Notices sent by first-class post shall be deemed to have been served 48 hours after the same have been posted.

Indemnity

- 21.1 The Buyer shall keep the Seller fully and effectively indemnified against all costs, expenses, damage and losses incurred in respect of any third party claims or proceedings whatsoever brought in respect of the Goods sold and this includes, but is not limited to, any claim or proceeding relating to libel, the infringement of any letters patent, copy right, design right, Trademarks, registered designs, trade names or any other intellectual, proprietary, personal or industrial property rights of third parties. The indemnity shall extend to any amounts paid in settlement of any claim.

Law

- 22.1 This conditions shall be governed and construed in accordance with the laws of England.

Illegal Matter

- 23.1 The Seller shall not be required to print any matter such in its reasonable opinion is or may be of an illegal or libelous nature or an infringement of the proprietary or other rights of any third party and which would otherwise involve any criminal or tortious liability of any kind.

Regulations Codes and Standards

- 24.1 The Seller deems itself bound by Codes of Practice which require that the Seller ensure, so far as it is possible or practicable to do so, that no material or services produced or offered by the Seller offends or breaches the regulations codes or standards from time to time set or imposed by regulatory bodies including (but without limitations), The British Code of Advertising Practice, The British Code of Sales Promotion Practice, and the code of the Independent Committee for the Supervision of Standards of Telephone Information Service and the Buyer should ensure that the Goods comply in all respects with such regulations codes or Standards and the Seller therefore reserves the right to take such steps as may be necessary to ensure compliance including if necessary cancellation of this Agreement without any liability for the Seller

Property Rights

- 25.1 All goods supplied remain our property until full payment, inclusive of inventural interest and costs, has taken place. In case of bankruptcy, suspension of payment, liquidation of the principal or decease (in case the principal is a natural person), we shall be entitled to cancel the order completely or partly, without serving a formal summons or applying for judicial interventions, and to claim back the part of the goods left unpaid. Cancellation and taking back of goods leave our right to compensation of loss or damage intact. In these cases any claim of ours on the principal will be due for payment immediately and completely.