



Credit Account Facility - Terms & Conditions

1. INTERPRETATION

1.1

In these Conditions the following words and phrases shall have the following meanings unless the context otherwise requires:

'Buyer' means the person firm or company with whom the Contract is made and who accepts a quotation of the Company for the sale of the Goods or whose order for the Goods is accepted by the Company.

'Goods' means the goods (including any instalment of the goods or any parts of them) described in the Company's quotation or Buyer's order (as the case may be) which the Company is to supply in accordance with these Conditions.

'Company' means GCL Products Ltd (registered in England and Wales under number 4489912) and shall include where the context so permits its assigns and sub-contractors.

'Company Premises' means the premises mentioned in the Company Quotation or other contractual document or, if not so mentioned means the Company's works at Unit 1-2 Carrwood Road, Chesterfield, S41 9QB

'Condition' means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Company

'Contract' means the contract for the purchase and sale of the Goods.

'VAT' means Value Added Tax and any other like tax duty or impost.

1.2

Unless the context otherwise requires:-

1.2.1

Words importing the singular shall include the plural and vice versa;

1.2.2

Words importing the masculine gender shall include the feminine gender and vice versa;

1.2.3

References to persons shall include bodies of persons whether corporate or incorporate.

1.3

Unless the context otherwise requires references to clauses shall be construed as references to clauses of the Conditions.

1.4

Headings are inserted for convenience only and shall not affect the construction of interpretation of these Conditions.

2. BASIS OF THE SALE

2.1

The Company shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Company which is accepted by the Buyer or any written order of the Buyer which is accepted by the Company in writing, subject to these conditions, which shall govern the Contract and be incorporated therein to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer. Notwithstanding that the Buyer may order the Goods on its standard form of purchase order and whether or not incorporating the Buyer's own terms and conditions, any such order shall be treated solely as a request to deliver the Goods and have no other contractual effect whatsoever.

2.2

No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Company and signed by a director of the Company.

2.3

The Company's employees or agents are not authorised to make any representations concerning the goods unless confirmed by the Company in writing and signed by a director of the Company. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations, which are not so confirmed.

2.4

Any advice or recommendations given by the Company or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Buyer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.

2.5

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 Company shall be subject to correction without any liability on the part of the Company.

3. ORDERS AND SPECIFICATIONS

3.1

No order submitted by the Buyer shall be deemed to be accepted by the Company unless and until confirmed in writing by one of the Company's directors.

3.2

The Buyer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

3.3

The quantity, quality and description of and any specification for the Goods shall be those set out in the Company's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Company).

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3.4

If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the buyer, the Buyer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Buyer's specification.

3.5

The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements which do not materially affect their quality or performance.

3.6

No quotation which has been accepted by the Buyer nor any order which has been accepted by the Company may be cancelled by the Buyer except with the agreement in writing of the Company and on terms that the Buyer shall indemnify the Company in full against all loss (including loss of profit), cost (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

4. PRICE OF THE GOODS

4.1

The price for the Goods shall in absence of any written agreement between the Company and the Buyer be the Company's list price for such goods on the date the Goods are dispatched to the Buyer and are subject to alteration at any time without notice.

4.2

Notwithstanding any written agreement as to price, the Company 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 Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by the instructions of the Buyer to give the Company adequate information or instructions.

4.3

Except as otherwise agreed in writing between the Buyer and the Company, all prices are given by the Company on an ex works basis, and where the Company agrees to deliver the Goods otherwise than at the Company's charges for transport, packaging and insurance.

4.4

The price is exclusive of any applicable VAT, which the Buyer shall be additionally liable to pay to the Company.

5. TERMS OF PAYMENTS

5.1

Subject to any special terms agreed in writing between the Buyer and the Company, the Company shall be entitled to invoice the Buyer for the price of the Goods on or at any time after 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 Company shall be entitled to invoice the Buyer for the price at any time after the Company has notified the Buyer that the Goods are ready for collection or (as the case may be) the Company has tendered delivery of the Goods.

5.2

The Buyer shall pay the price of the Goods within 30 days of the date of the company's invoice unless otherwise in writing and stated on the invoice, and the Company shall be entitled to recover the price, 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.

5.3

If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:

5.3.1

Cancel the contract or suspend any further deliveries to the Buyer;

5.3.2

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 Company) as the Company may think fit (notwithstanding any purported appropriation by the Buyer); and

5.3.3

Charge the Buyer interest (both before and after any judgement) on the amount unpaid including VAT) at the rate of three percent per annum above the base lending rate of Barclays Bank Plc from time to time from the date the amount became due for payment until payment in full is made both before and after judgement and shall be calculated on a daily basis.

6. DELIVERY

6.1

Any dates quoted for delivery of the Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Company in writing. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

6.2

Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.3

If the Company fails to deliver the Goods for any reason other than any cause beyond the Company's reasonable control or the Buyer's fault, and the Company is accordingly liable to the Buyer, the Company's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

6.4

If the Buyer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may;

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GCL Products Ltd
Unit 1-2 Carrwood Road
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Chesterfield
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6.4.1
Store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

6.4.2
Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Buyer for any shortfall below the price for the Goods under the Contract.

7. RISK AND PROPERTY

7.1
Risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods.

7.2
Notwithstanding delivery and/or the passing risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Company has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Company to the Buyer for which payment is then due.

7.3
Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected, insured against loss or damage by accident, fire theft or other risks usually covered by insurance in their full replacement value and clearly identified as the Company's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Company for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including

Insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

7.4
Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Company shall be entitled at any time to require the Buyer to deliver up the Goods to the Company and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

7.5
The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness of the Goods which remain the property of the Company, but if the Buyer does so all moneys owing by the Buyer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

8. WARRANTIES AND LIABILITY

8.1
Subject to the conditions set out below the Company warrants that the Goods will correspond with the specification on their packaging at the time of delivery and will be free from defects in material

And workmanship for a period of 12 months from the date of their delivery.

8.2
The above warranty is given by the Company subject to the following conditions:

8.2.1
The Company shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

8.2.2
The Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Company's approval;

8.2.3
The Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;

8.2.4
The above warranty does not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company insofar as the Company is able to pass on the benefit of any such warranty or guarantee.

8.3
Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.4
Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements Order 1976) the statutory rights of the Buyer are not affected by these Conditions.

8.5
Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with their specification must (whether or not delivery is refused by the Buyer) be notified to the Company and the courier who delivered or attempted to deliver the Goods within 3 days from the date of delivery. Any claim by the Buyer for non-delivery of the whole or any part of the consignment must be made to the Company within 3 days of the date of invoice. If delivery is not refused, and the Buyer does not notify the Company accordingly, the Buyer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract. It is the Buyer's responsibility to check all Goods immediately on delivery and any delivery notes endorsed 'unexamined' or 'unchecked' will not be accepted as a basis for any claim.

8.6
Where any valid claim is 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 their specification is notified to the Company in accordance with these Conditions, the Company shall be entitled to replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Buyer the price of the Goods (or proportionate part of the price), but the Company shall have no further liability to the Buyer.

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GCL Products Ltd
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8.7
Except in respect of death or personal injury caused by the Company's negligence, the Company 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 consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provide in these Conditions.

8.8
The Company shall not be liable to the Buyer or be deemed to be in breach of the Contract by the reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:

8.8.1
Act of God, explosion, flood, tempest, fire or accident;

8.8.2
war or threat of war, sabotage, insurrection, civil disturbance or requisition;

8.8.3
Acts, restrictions, regulations, bye-laws, prohibitions or measure of any kind on the part of any governmental, parliamentary or local authority;

8.8.4
Import or export regulations or embargoes;

8.8.5
Strikes, lock-outs or other industrial actions or a trade disputes (whether involving employees of the Company or of a third party);

8.8.6
Difficulties in obtaining raw materials, labour, fuel, parts or machinery;

8.8.7
Power failure or breakdown in machinery.

9. INSOLVENCY OF BUYER

9.1
This clause applies if:

9.1.1
The Buyer makes any voluntary arrangement 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; or

9.1.2
An encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

9.1.3
The Buyer ceases, or threatens to cease, to carry on business; or

9.1.4
The Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Company accordingly.

9.2
If this clause applies then, without prejudice to any other right or remedy available to the Company, the Company 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 notwithstanding any previous agreement or arrangement to the contrary.

10. RETURNS

The Buyer shall not be entitled to return any goods supplied in accordance with the Contract without the Company's prior written permission signed by a director for the Company and all Goods which are so returned shall be sent to the Company Premises at the expense of the Buyer.

11. GENERAL

11.1
The Company may perform any of its obligation or exercise any of its rights hereunder by itself or through any subsidiaries, associated companies, agent or sub-contractors.

11.2
Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to an making specific reference to this provision to the party giving the notice.

11.3
No waiver by the Company of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.4
If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part it shall be severed here from and the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

11.5
The Contract shall be governed by the laws of England and the parties hereto submit to the non-exclusive jurisdiction the English Courts.

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