

# GESIPA BLIND RIVETING SYSTEMS TERMS OF TRADING

The Customer's attention is in particular drawn to the provisions of condition 9

## 1. Interpretation

- 1.1 The following definitions and rules of interpretation apply in these conditions:
- Contract: any contract between the Company and the Customer for the sale and purchase of the Goods, incorporating these conditions.
- Company: Gesipa Blind Riveting Systems Ltd
- Customer: means the person, firm or company who purchases the Goods from the Company
- Goods: any goods agreed in the Contract to be supplied to the Customer by the Company (including any part or parts of them).
- 1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it. Words in the singular include the plural and vice versa unless the context demands otherwise. Condition headings do not affect the interpretation of these conditions.

## 2. Application of the Terms

- 2.1 Subject to any variation under condition 2.2 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 These conditions apply to all Company 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 a Director of the Company. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not confirmed in writing by a Company Director.
- 2.3 Each order or acceptance of a quotation for Goods by the Customer from the Company shall be deemed to be an offer by the Customer to buy Goods subject to these conditions. No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order (which may be by e-mail or facsimile) is issued by the Company or (if earlier) the Company delivers the Goods to the Customer. The Customer shall ensure that the terms of its order and any applicable specification including RAL number colour requirement) are complete and accurate.

## 3. Description of Goods

- 3.1 The quantity and description of the Goods shall be as set out in the Company acknowledgement of order. All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company catalogues or brochures and all intellectual property rights in them remain the property of the Company & may not be used, copied or reproduced without the Company's permission and are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

## 4. Delivery

- 4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Company's place of business. The Company may arrange delivery to customer designated premises upon request and at separate cost unless specified otherwise. Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice.
- 4.2 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 60 days.
- 4.3 If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because of any Customer default, risk in the Goods shall pass to the Customer, the Goods shall be deemed to have been delivered; and the Company may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.4 If the Company delivers to the Customer a quantity of Goods of up to 10% more or less than the quantity ordered and accepted by the Company, the Customer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate provided that the Customer notifies the Company within 7 days of delivery if the quantity delivered is less than the quantity ordered and accepted.
- 4.5 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
- 4.6 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Customer gives written notice to the Company of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received. Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note for undelivered Goods.
- 4.7 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.

## 5. Passing of Property and Risk

- 5.1 The Goods are at the risk of the Customer from the time of delivery. Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of the Goods and all other sums which are or which become due to the Company from the Customer on any account.
- 5.2 Until ownership of the Goods has passed to the Customer, the Customer shall:
- 5.2.1 hold the Goods on a fiduciary basis as the Company's bailee;
- 5.2.2 store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;
- 5.2.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 5.2.4 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks. On request the Customer shall produce the policy of insurance to the Company.
- 5.3 The Customer may resell the Goods before ownership has passed to it on the condition that any sale shall be effected in the ordinary course of the Customer's business at full market value; and any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale, and inform the buyer of the position as to ownership.
- 5.4 The Customer's right to possession of the Goods shall terminate immediately if:
- 5.4.1 The Customer goes into liquidation (whether voluntary or compulsory) or bankruptcy whether compulsory or voluntary or if an administrator or receiver is appointed over the whole or any part of its assets or if the Customer enters in to any arrangement for the benefit of or compounds with its creditors generally or threatens to do any of these things or any judgment is made against the Customer or any similar occurrence under any jurisdiction affects the Customer.
- 5.4.2 The Customer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade or the Customer encumbers or in any way charges any of the Goods.
- 5.5 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company. The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.
- 5.6 Where the Company is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by the Company to the Customer in the order in which they were invoiced to the Customer. On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights in this condition 5 shall remain in effect.

## 6. Price

- 6.1 All quotations, estimates and price-lists are subject to alteration without notice. On acceptance of an order the price stated by the Company will be the Contract price unless there is an error or omission or changes occur that affect or make the Contract uneconomic for the Company's to fulfill at that price, for example, but not limited to; exchange or interest rate fluctuations or material or commodity price rises in which case the Company reserves the right to amend the Contract price accordingly for the relevant Goods, or rescind the Contract on written notice to the Customer. Prices quoted will only apply to the quantities specified and material costs at the time of quotation. The price for the Goods shall be exclusive of any value added tax, delivery and any export duties, fees or tariffs which shall be the Customers responsibility.

## 7. Payment

- 7.1 Subject to condition 7.3, unless otherwise agreed in writing payment of the price for the Goods is due in pounds sterling 30 days from month end following delivery or deemed delivery of the Goods. A deposit may be required.
- 7.2 Time for payment shall be of the essence. No payment shall be deemed to have been received until the Company has received cleared funds. The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- 7.3 If the Customer fails to pay the Company any sum due pursuant to the Contract, the Customer shall be liable to pay interest to the Company on such sum from the due date for payment accruing on a daily basis until payment is made, whether before or after any judgment at the rate of interest under the Late Payment of Commercial Debts (Interest) Act 1998 together with any charges under this agreement or otherwise permitted under the Act.

## 8. Quality

- 8.1 The Company warrants that (subject to the other provisions of these conditions) upon delivery the Goods shall:
- 8.1.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
- 8.1.2 be reasonably fit for purpose; and
- 8.1.3 be reasonably fit for any particular purpose for which the Goods are being bought if the Customer had made known that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Customer to rely on its skill and judgement.
- 8.2 The Company warrants that the Customer shall be entitled to the right to quiet possession implied by Section 2 of the Supply of Goods and Services Act 1982.
- 8.3 The Company shall not be liable for a breach of any of the warranties in conditions 8.1 and 8.2, unless the Customer gives written notice of any defect to the Company within 10 days of the time when the Customer discovers or ought to have discovered the defect; and the Company is given a reasonable opportunity of examining such Goods and the Customer (if asked to do so) returns such Goods to the Company's place of business for examination. The Customer and the Company agree that in the event of any issue being raised regarding returned or faulty goods the procedure to be followed and extent of liability shall be as stated in the Company's Returns Policy as varied from time to time. Returns Policy terms include: returns will not be accepted without a valid Company issued Customer returns number, return shipping shall be at the Customers cost (reimbursed if defect accepted as valid by the Company) and redelivery of non faulty returns shall be subject to delivery charges and a 15% restocking charge.
- 8.4 The Company shall not be liable for a breach of any of the warranties in conditions 8.1 and 8.2 if the Customer makes any further use of such Goods after giving such notice; or the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are no instructions) good trade practice; or the Customer alters or repairs such Goods without the written consent of the Company, or where Goods consist of painted rivets in which case the Company shall not be liable for colour variation within the tolerances of any Company accepted RAL specification.
- 8.5 Subject to condition 8.3 and 8.4, if any of the Goods do not conform with any of the warranties in conditions 8.1 and 8.2, the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract price or in accordance with its Returns Policy. The Company shall have no further liability for a breach of any of the warranties in conditions 8.1 and 8.2 in respect of such Goods.

## 9. Liability

- 9.1 Subject to conditions 4 and 8, this clause 9 sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of any breach of these conditions, any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods and any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 9.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract. Nothing in these conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence; or under section 2(3), Consumer Protection Act 1987; or for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or for fraud or fraudulent misrepresentation.
- 9.3 Subject to condition 9.2:
- 9.3.1 The Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
- 9.3.2 The Company shall not be liable to the Customer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## 10. Termination

- 10.1 The Company may terminate the Contract forthwith on notice to the Customer if the Customer defaults on any payment or fails to take any delivery when due or if any of the events referred to in clause 5.4 occur or at any time before the Goods are delivered

## 11. Assignment

- 11.1 The Company may assign the Contract or any part of it to any person, firm or company. The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

## 12. Force Majeure

- 12.1 The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes outside of the Company's control (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 60 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

## 13. General

- 13.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 13.2 Neither party will disclose to any third party details of any Contract which by their nature can be considered to be commercially confidential.
- 13.3 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 13.4 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 13.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 13.6 The formation, existence, construction, performance, validity and all aspects of Contract shall be governed by English law the parties submit to the exclusive jurisdiction of the English courts.
- 13.7 Any notice under or relating to the Contract shall be in writing and served upon the recipient at its registered address/address as notified to the other party either by hand or by first class post, email or facsimile, and shall be deemed served 48 hours after posting if sent by post, on delivery if delivered by hand or on completion of transmission if sent by facsimile or e-mail