

CONDITIONS FOR THE SUPPLY OF GOODS BY SPOOK FIREWORKS LTD

1 GENERAL

- (a) In these conditions "the Company" means Spook Fireworks Ltd and "the Customer" means the individual, firm or other party with whom the Company contracts. "Supply" includes (but is not limited to) any supply under a contract of sale.
- (b) No order in pursuance of any quotation or otherwise shall be binding on the company unless and until such order is accepted by the Company on the Company's standard Acknowledgement of Order Form. Any contract made between the Company and the Customer (herein called "the Contract") shall be subject to these conditions and save as aftermentioned no representative or Agent of the Company has the authority to agree to any terms or make any representations inconsistent with them or to enter into any contract except on the basis of them, any such terms representation or contract will bind the Company only if in writing and signed by the managing director.
- (c) Unless otherwise agreed in writing by the Company these conditions shall override any terms and conditions stipulated or referred to by the Customer in his order or precontract negotiations or any inconsistent terms implied by law or trade customs, practice or course of dealing.
- (d) Any description contained in the Company's catalogues, samples, price lists or other advertising materials (as appropriate) is intended to present a general picture of the Company's products and shall form a representation or part of the Contract.
- (e) In the event that the Company has not given a written Acknowledgement of Order these conditions, provided the Customer shall have had prior notice of them, shall nevertheless apply to the Contract.
- (f) The Company reserves the right to correct any clerical or typographical errors made by its employees at any time.

2 INFRINGEMENT OF PROPRIETARY RIGHTS

If and insofar as the use of any goods, materials, information or instruction supplied by the Company infringes any patent or other rights (wherever situate or registered) the Company shall be under no liability therefor, and the Customer shall indemnify the Company and hold the Company harmless against any claims awards or liabilities arising out of such goods, materials, information or instructions or any copies thereof, whether such use is made by the Customer or by any other person.

3 PRICE

- (a) Subject to any agreement to the contrary the Company's quotations are provisional and may be altered to take account of any changes taking place between the date of quotation and the Company's acceptance of the customer's order in the price of raw materials, rates of wages and other costs of production or in the Customer's specification, instructions or design or in the event that the Customer orders part only of the quantity referred to in any quotation.
- (b) The Company shall be entitled to increase its prices at any time to take account of any increase to the cost to the Company of purchasing any goods or materials or manufacturing working on or supply of any goods (including any such increase arising from any error or inadequacy in any specification, instruction or design provided by the Customer or any modification carried out by the Company at the Customer's request) and such increased prices ruling at the date of despatch by the Company shall be substituted for the previous Contract price. All prices quoted are exclusive of VAT and the Customer shall pay any and all taxes duties and other government charges in respect of the goods.

4 DELIVERY, RISK AND FORCE MAJEURE

- (a) Unless otherwise agreed in writing by the Company: -
- (i) the Customer shall take delivery of the goods or any instalment thereof at the Company's premises within 14 days after receiving notification from the Company that such goods are ready and at a time and on a date previously notified to the Company whereupon risk in the goods or the said instalment shall forthwith pass to the Customer and
- (ii) if the Company agrees to deliver goods elsewhere the Customer shall when so be required by the Company forthwith give to the Company all necessary instructions; the Company shall be entitled to add to the Contract price a reasonable charge for packing and delivery, off loading shall be at the Customer's risk and expense. PROVIDED THAT the Company reserves the right to deliver or require the collection (as the case may be) of some of the goods to be supplied under the Contract as soon as they are ready for delivery and the Company shall be entitled to invoice the Customer separately for such goods.
- (b) Subject to any agreement in writing by the Company the risk in goods which the Company agrees to supply shall pass to the Customer on the relevant date on which the goods are ready for delivery.
- (c) The Company shall not be liable for any loss or damage sustained by any goods left with The Company howsoever caused and whether or not attributable to negligence on the part of the Company or negligence or wilful default on the part of any servant or agent of the Company.
- (d) Should the Company be delayed in or prevented from making delivery of the goods due to war, governments or parliamentary restrictions, strikes, lock-outs, fire, floods, explosions, labour disturbances, trade disputes, damage to or destruction of the goods (whether at source of supply, during transportation to the Company, or while held by the Company), breakdown of machinery, shortages of labour or of raw materials or Act of God or due to any other cause whatsoever beyond the reasonable control of the Company, the Company shall be at liberty to cancel or suspend the order placed by the Customer without incurring any liability for any loss or damage arising from therefrom.
- (e) While the Company will endeavour to deliver the goods by any date or within any period agreed upon, such dates and periods are estimates only given in good faith and the Company shall not be liable for any failure to deliver by such a date or within such a period. Moreover, the Company shall be entitled to defer delivery until any monies due from the Customer have been received.

5 TERMS OF PAYMENT

- (a) Unless credit terms have been expressly agreed by the Company in writing payment for goods shall be made in full prior to or on delivery.
- (b) Unless otherwise specified in writing by the Company, payment for goods or any instalment thereof shall be made by the Customer net cash not later than thirty days after the date of invoice unless specified on the face of the invoice. Time for payment shall be of essence of the Contract. Without prejudice to any other rights of the Company interest will be payable on all overdue accounts at 8% per month or part month above the base rate of Barclays Bank plc, compounded and for the purposes of paragraphs 6 and 9 hereof, the full purchase price of the goods shall include any interest payable hereunder.

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(c) To help prevent money laundering, the Company has set a cash payment limit of £8,000. No cash payments above £8,000 will be accepted for payment for goods from Customers. The company considers any such payments to be; a single cash payment of £8,000 or more for goods; or several cash payments for a single transaction totalling £8,000 or more, including a series of payments and payments on account; or cash payments totalling £8,000 or more which appear to have been broken down into smaller amounts so that they come below the high value payment limit.

Please note all accounts beyond our credit terms will be passed to our debt collection agency, Sinclair Goldberg Price Ltd. All accounts, without exception, will be subject to a surcharge of 15% plus vat to cover our costs in recovery. These accounts will also be subject to any legal costs incurred in obtaining settlement

6 DEFAULT IN PAYMENT AND CANCELLATION

(a) If the Customer shall fail to make payment when it becomes due or shall enter into any composition or any arrangement with his creditors or if being an incorporated company shall have a receiver appointed or shall pass a resolution for winding up or a Court shall make an order to that effect or if there shall be any breach by the Customer of any of the terms and conditions hereof the Company may defer or cancel any deliveries and treat the contract of which these conditions form part as determined but without prejudice to its rights to the full purchase price for the goods already delivered and damages for any loss suffered in consequence of such determination.

(b) Cancellation by the Customer will only be accepted at the discretion of the Company and not in any case on condition that any costs or expenses incurred by the Company up to the date of cancellation and all loss or damage resulting to the Company by reason of such cancellation will be paid by the Customer forthwith. Acceptance of such cancellation will only be binding on the Company if in writing and if cancellation of an order is so accepted by the Company then this order cannot in whole or in part be reinstated.

(c) A charge will be made for any costs incurred by the Company due to suspension or deferment of any order by the Customer or in the event that the Customer defaults in collecting, or giving different instructions for delivery of any goods.

7 CUSTOMER'S OBLIGATIONS

(a) In connection with the goods the Customer shall comply with the following obligations: -

(i) the Customer shall ensure that all information and instructions relating to and warnings in respect of the goods supplied by the Company are passed on to and, in a proper and responsible manner, drawn to the attention of all end users of the goods.

(ii) the Customer shall ensure (so far as he is able) that all persons using or proposing to use the goods are fully acquainted with the potential dangers of the misuse of the goods.

(iii) The Customer shall comply with all legal requirements from time to time in force, and all recommendations or instructions from time to time issued by the Company, relating to the storage of the goods.

(iv) The Customer must obtain a Licence to sell and store fireworks under the Explosives Regulations 2014 and thereafter provide a copy of the said Licence to the Company.

(v) it is the Customers sole responsibility to manage, order and accept goods in accordance to their issued Licence and should not exceed the requirements of this issued Licence, unless they have provisions in place that will allow them to do so. In the circumstances that goods are accepted that exceed the issued Licence the customer is aware full liability is theirs and not the of the Company.

(b) The Customer shall indemnify the Company against all costs, claims, demands, liabilities and expenses of whatsoever nature incurred or suffered by the Company by reason, in whole or in part, of the failure of the Customer to comply with its obligations under Clause 7(a) hereof.

8 LIABILITY

(a) No claim for damage in transit, shortage of delivery or loss of goods will be entertained unless the Customer shall have given to the Company notice of such damage, shortage of loss with reasonable particulars thereof within 3 days of receipt of the goods or (in the case of total loss) of receipt of the invoice or other notification of despatch. The Company's liability, if any, shall be limited to replacing such goods (in so far as replacements at that time are available) or providing a credit note to the Customer for the value of the goods which have not been supplied and it shall be a condition precedent to any such liability that the Customer shall if so requested have returned the damaged goods to the Company within 14 days of such request. The Customer shall not be entitled to make any claim against the Company for consequential loss arising out of such damage shortage or loss as aforesaid.

(b) the Customer shall inspect the goods immediately upon receipt. Save as otherwise provided in these conditions and subject always to appropriate storage of the goods by the Customer in accordance with the requirement of the appropriate licensing authority (which requirements the Customer is deemed to be aware of) the Company's liability in respect of any defect in or failure of goods supplied or work done is limited to replacing or paying for the replacement of goods which within one month of delivery to the Customer are found not to be in accordance with BS 7114: Part 2: 1988 or BS EN15947 other description which has formed a representation or part of a contract; the Company's liability in respect of any direct loss or damage sustained by the Customer as a result of such error shall not exceed the price of the goods in respect of which the description is incorrect. Conditions precedent to the Company's liability hereunder shall be that as soon as reasonably practicable the Customer

(i) shall give the Company full particulars of the defect, failure or error forthwith and in any event within 3 days of discovery of the same or within 3 days of the date when such defect ought to have been discovered; and

(ii) shall have either returned the goods to the Company or provided authority for the Company's servants or agents to inspect them, as the Company may request.

(c) Where the Company agrees to replace goods in accordance with the foregoing provisions of this paragraph any time specified for delivery under the contract shall be extended for such period as the Company may reasonably require.

(d) Provided that the Customer has complied with its obligations under clause 7(a), the Company shall indemnify the Customer against: -

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- (i) liability for personal injury to or death of any person and damage to property intended for private use and in fact so used, arising by reason of the goods proving defective within the meaning of the Consumer Protection Act; and
- (ii) liability for personal injury to or death of any person and loss of or damage to property caused by the negligent act or omission of the Company or its employees in the cause of their employment, provided that the liability of the Company in respect of loss or damage to property shall not in any event exceed £500,000 for any event or connected series of events.
- (e) The Company shall have no liability for loss of profits or contracts or other economic indirect or consequential loss whether arising from negligence, breach of contract, breach of statutory duty or otherwise howsoever PROVIDED THAT these conditions shall not affect the Statutory Rights of a consumer and nothing in these conditions shall exclude or restrict any liability that the Company may have by virtue of the Consumer Protection Act 1987.
- (f) All goods sold by the Company are supplied with the terms implied by section 12 of the Sale of Goods Act 1979 Subject thereto and whether or not the contract is a contract of sale, all other conditions, warranties and other terms express or implied, statutory or otherwise, are expressly excluded, save insofar as contained herein or as otherwise expressly agreed by the Company in writing PROVIDED that if and insofar as any legislation or any order made thereunder shall make or have made it unlawful to exclude or purport to exclude from the contract and term or shall have made unenforceable any attempt to exclude any such term.

9 TITLE, LICENCE TO SELL AND INSURANCE

The following provisions shall apply to all goods which under the Contract the Company agrees to supply to the Customer. No failure by the Company to enforce strict compliance by the Customer with such provisions shall constitute a waiver thereof in respect of all goods supplied to the Customer under the Contract or any other contract and no termination of the Contract shall prejudice limit or extinguish the Company's rights under this paragraph.

- (i) Upon delivery of the goods the Customer shall hold the goods solely as bailee for the Company and the goods shall remain the property of the Company until such times as the Customer shall have paid to the Company the full purchase price thereof. Until such time the Company shall be entitled to recover the goods or any part thereof and for the purpose of exercising such rights the Company its employees and agents with appropriate transport may enter upon the Customers premises and any other location where the goods are situated.
- (ii) The Customer is hereby licensed to sell on the goods and any products incorporating any of them PROVIDED THAT the Customer shall fully indemnify the Company in respect of any use of the goods not strictly in compliance with BS 7114: Part 2: 1988 or BS EN15947. The Customer shall immediately on receipt of the proceeds of sale and whether or not payment has become due under paragraph 5 hereof, remit to the Company the full purchase price of the goods sold on less any part thereof which has already been paid and until such amount has been so remitted shall hold such amount as trustee and agent for the Company.
- (iii) The Customer shall maintain all appropriate insurance in respect of the goods from the date or dates on which the risk therein passes to him. In the event of any loss or damage accruing while the goods remain the property of the Company the Customer shall immediately on receipt of the insurance monies, remit to the Company the full purchase price of the goods lost or damaged less any part thereof which has already been paid and until such payment has been remitted shall hold such amount as trustee and agent for the Company. The licence so granted under sub-paragraph
- (ii) above shall be terminable forthwith at any time upon notice by the Company to the Customer.

10 EXCLUSION OF LIABILITY

Save as hereinbefore provided and subject to the provision of Section 2(l) of the Unfair-Contract Terms Act 1977 the Company shall not be liable to the Customer for any damage or for any direct or consequential loss incurred by the Customer in consequence of any negligence on the part of its servants or agents or in connection with the supply of any goods or in the design or manufacture thereof or in carrying out of any work.

11 ACCEPTANCE OF GOODS AND RETURNED GOODS

- (a) The Company shall not be responsible for any loss or damage in the following circumstances: -
 - (i) where the Customer, the Customers agents or any third party signs a carrier's delivery note indicating that the goods were in good condition on delivery.
 - (ii) where the Customer, the Customers agents or any third party signs a carrier's delivery note but qualifies it indicating that the goods were faulty on delivery but fails to send particulars of the alleged faults to the Company within the specified times.
 - (iii) loss caused to the Customer arising from late delivery where the Customer fails to notify the Company of such late delivery within the specified times.
 - (iv) loss arising from insufficient quantities being delivered where the Customer fails to notify the Company of such insufficient quantities within the specified times.
- (b) Where the Customer is entitled to return goods to the Company any goods must be delivered at the Customers expense to the Company's Storage Depot and will only be accepted when accompanied by an authority in writing from the Company's Head Office which will be the Customers responsibility to obtain. The Customer shall be entitled to receive a credit note or acknowledgement of delivery within 14 days of the date the goods were returned to the Storage Depot.

12 COPYRIGHT

The copyright and all other rights of a similar nature in all goods supplied to the Customer shall remain vested in the Company and without prejudice to any other rights which the Company may have, it shall be a condition of such supply that no part thereof shall be sold or otherwise disposed of to any other person, firm or company without prior written consent.

13 PROPER LAW

The proper law of all contracts with the Company shall be English law which shall govern in respects the construction and effect of such contracts and these Conditions. The Customer agrees that in event of any dispute arising out of the Contract or the performance thereof he will submit to the jurisdiction of the English Courts.