

TERMS AND CONDITIONS

The Buyer's attention is in particular drawn to the provisions of clause 11.4.

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in these conditions.
Buyer: the person, firm or company who purchases the Goods from the Company.
Company: the company referred to in any order acknowledgement issued to the Buyer as described in clause 2.5, being either Valentine Equipment Limited (a company registered in England and Wales with company number 689763) or Cuisine Equipment Limited (a company registered in England and Wales with company number 07918778) both of whose registered offices are situated at 4 Trafford Road, Reading, Berkshire, RG1 8JS).
Contract: any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions.
Delivery Point: the place where delivery of the Goods is to take place under clause 4.1.
Goods: any goods agreed in the Contract to be supplied to the Buyer 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.
- 1.3 Words in the singular include the plural and in the plural include the singular.
- 1.4 A reference to one gender includes a reference to the other gender.
- 1.5 Clause headings do not affect the interpretation of these clauses.

2. APPLICATION OF TERMS

- 2.1 Subject to any variation under clause 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These conditions apply to all the Company's 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 the Managing Director of the Company. The Buyer 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 set out in the Contract. Nothing in this clause shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.4 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.
- 2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until an acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.
- 2.6 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate and a purchase order number should be supplied by the Buyer to the Company.
- 2.7 Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it or previously delivered the Goods, the subject of the quotation.

3. DESCRIPTION

- 3.1 The quantity and description of the Goods shall be as set out in the Company's quotation.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures 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.
- 3.3 The Company reserves the right to amend the specifications for the Goods if required by any applicable statutory or regulatory requirement, and the Company shall notify the Buyer in any such event.

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 or an address communicated to the Company by the Buyer in accordance with clause 17.
- 4.2 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. If no dates are so specified, delivery shall be within a reasonable time.
- 4.3 Subject to the other provisions of these conditions the Company shall not be liable for any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 4.4 If for any reason the Buyer 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 the Buyer has not provided appropriate instructions, documents, licences or authorisations:
- risk in the Goods shall pass to the Buyer;
 - the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance); and
 - a re-delivery fee will be levied.
- 4.5 The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading and, if appropriate, unloading the Goods.
- 4.6 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.
- 4.7 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

5. NON-DELIVERY

- 5.1 The quantity of any consignment of Goods as recorded by the Company upon dispatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within seven days of the date when the Goods would in the ordinary course of events have been received.
- 5.3 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 at the pro rata Contract rate against any invoice raised for such Goods.

6. RISK/TITLE

- 6.1 The Goods are at the risk of the Buyer from the time of delivery in accordance with clause 4, at which point the Buyer is responsible for insuring them.
- 6.2 Ownership of the Goods shall not pass to the Buyer until:
- the Company has received in full (in cash or cleared funds) all sums due to it in respect of the Goods all other sums which are or which become due to the Company from the Buyer on any account; and
 - the Buyer resells the Goods, in which case title to the Goods shall pass to the Buyer at the time specified in clause 6.4.
- 6.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
- store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
 - not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - maintain the Goods in satisfactory condition and keep them insured to the reasonable satisfaction of the Company against all risks for their full price from the date of delivery. On request the Buyer shall produce the policy of insurance to the Company;
 - notify the Company immediately if it becomes subject to any of the events listed in clause 12.1(b) to clause 12.1(d); and
 - give the Company such information as the Company may reasonably require from time to time relating to the Goods and the ongoing financial position of the Buyer.
- 6.4 Subject to clause 6.5, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Company receives payment for the Goods. However, if the Buyer resells the Goods before that time it does so as principal and not as the Company's agent and title to the Goods shall pass from the Company to the Buyer immediately before the time at which resale by the Buyer occurs.
- 6.5 At any time before title to the Goods passes to the Buyer, the Company may:
- by notice in writing, terminate the Buyer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and
 - require the Buyer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

- 6.6 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 6 shall remain in effect.

7. PRICE

- 7.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Company's price list published on the date of delivery or deemed delivery/quotation provided to the Buyer.

- 7.2 The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.

- 7.3 The Company may, by giving notice to the Buyer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the specification of the Goods; or
- any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate or accurate information or instructions.

8. PAYMENT

- 8.1 Subject to clause 8.4, payment of the price for the Goods is due in pounds sterling within 30 days following the date of the Company's invoice.
- 8.2 Delivery of the Goods shall not take place until the Company has received payment in full.
- 8.3 No payment shall be deemed to have been received until the Company has received cleared funds.
- 8.4 Time for payment shall be of the essence.
- 8.5 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 8.6 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 8.7 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank Plc, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

9. QUALITY

- 9.1 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company. Please contact the Company for details of the warranty terms of the relevant manufacturer.
- 9.2 The Company warrants that (subject to the other provisions of these conditions) upon delivery the Goods shall:
- conform in all material respects with their description and any applicable specification; and
 - be free from material defects in design, material and workmanship.
- 9.3 The Company shall not be liable for a breach of the warranty in clause 9.2 if:
- the Buyer makes any further use of the Goods after giving the Company notice in accordance with clause 10;
 - the defect arises due to incorrect or poor installation (and for this reason professional installation is highly recommended);
 - the defect arises due to lack of maintenance or lack of cleaning;
 - the defect arises because the Buyer 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 none) good trade practice;
 - the Buyer alters or repairs the Goods without the prior written consent of the Company;
 - the defect arises as a result of the Company following any drawing, design or specification supplied by the Buyer;
 - the defect arises as a result of fair wear and tear, misuse, willful damage, negligence, or abnormal storage or working conditions; or
 - the Goods differ from their description and any applicable specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 9.4 Subject to clause 9.3 and clause 9.5 and to the Buyer complying with the procedure set out in clause 10, if any of the Goods do not conform with the warranty in clause 9.2 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 rate.
- 9.5 Machines with special options or tailor-made cannot be returned or a refund given. In these cases the Buyer's sole remedy will be to have the machine repaired.
- 9.6 If the Company complies with clause 9.4 it shall have no further liability for a breach of the warranty in clause 9.2 in respect of such Goods.

10. WARRANTY CLAIMS AND RETURN OF GOODS

- 10.1 The Company shall not be liable for a breach of the warranty in clause 9.2 unless the Buyer follows the procedure in this clause 10.
- 10.2 The Buyer shall inspect the Goods on delivery or, if that is not practicable, within 24 hours of delivery and any patent (obvious) defects or non-conformity with the warranty in clause 9.2 must be notified to the Company, by telephone and in accordance with clause 18, immediately after the inspection.
- 10.3 Any latent (hidden) defects must be notified to the Company, by telephone and in accordance with clause 18, immediately after they are discovered.
- 10.4 After receiving notice from the Buyer in accordance with clause 10.2 or clause 10.3, the Company shall be given a reasonable opportunity to examine the Goods at the Buyer's premises and the Buyer shall (if asked to do so by the Company and at the Company's cost) return the Goods to the Company's place of business for the examination to take place there.
- 10.5 The Buyer may not return Goods to the Company without its prior authorisation in writing.
- 10.6 If a warranty claim is rejected, the return costs and any administrative handling fees will be payable by the Buyer and the Company will submit an invoice for such amounts which will be payable by the Buyer in accordance with clause 8.

11. LIMITATION OF LIABILITY

- 11.1 Subject to clause 4, clause 5 and clause 9, the following provisions set 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 Buyer in respect of:
- any breach of these conditions;
 - any use made or resale by the Buyer 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.
- 11.2 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.
- 11.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- death or personal injury caused by negligence;
 - fraud or fraudulent misrepresentation;
 - breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - defective products under the Consumer Protection Act 1987.
- 11.4 Subject to clause 11.3, the Company's total liability to the Buyer shall not exceed the price of the Goods.
- 11.5 Subject to clause 11.3, the Company's liability for the following types of loss is wholly excluded:
- loss of profits;
 - loss of sales or business;
 - loss of agreements or contracts;
 - loss of anticipated savings;
 - loss of use or corruption of software, data or information;
 - loss of or damage to goodwill; and
 - indirect or consequential loss.

- 11.6 This clause 11 shall survive termination of the Contract.

12. TERMINATION

- 12.1 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Buyer if:
- the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
 - the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- (c) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the Buyer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 12.2 Without limiting its other rights or remedies, the Company may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Company if the Buyer becomes subject to any of the events listed in clause 12.1(b) to clause 12.1(d), or the Company reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under the Contract on the due date for payment.
- 12.3 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.
- 12.4 On termination of the Contract for any reason the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Buyer immediately on receipt.
- 12.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 12.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.
- 13. ASSIGNMENT**
- 13.1 The Company may assign the Contract or any part of it to any person, firm or company.
- 13.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 14. FORCE MAJEURE**
- 14.1 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 Buyer (without liability to the Buyer) 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 (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 Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.
- 15. CONFIDENTIALITY**
- 15.1 Each party undertakes that it shall not at any time during the Contract and for a period of two years after termination of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 15.2.
- 15.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 15; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 15.3 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
- 16. GENERAL**
- 16.1 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.
- 16.2 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.
- 16.3 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.
- 16.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 16.5 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.
- 16.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
- 17. COMMUNICATIONS**
- 17.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by email:
- (a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or
- (b) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.
- 17.2 Communications shall be deemed to have been received:
- (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- (b) if delivered by hand, on the day of delivery; or
- (c) if sent by email at the time at which a read receipt is delivered to the sender.
- 17.3 Communications addressed to the Company shall be marked for the attention of the Managing Director.