

Lydney Containers Limited

STANDARD CONDITIONS OF SALE

1. Preamble.

The “seller” means Lydney Containers Limited a company incorporated under the laws of United Kingdom, having its place of business at Ashwell Grange, Stroath, Chepstow NP16 7LS. The “buyer” means the immediate purchaser of any goods under a contract of sale with the seller. The “stated price” means the agreed price (stated in a contract of sale to which these conditions apply) at the time such contract came into effect.

2. Formation of Contract.

2.1 Unless otherwise stated, a quotation shall not remain open for more than 30 days from the date thereof. The seller shall have the right to alter or vary any quotation prior to the date of an order.

2.2 Each order for goods placed by the buyer whether or not based on a quotation, is subject to written confirmation by the seller and is deemed to be made subject to these conditions of sale. The placing of an order by the buyer shall be conclusive evidence that the buyer having checked the quotation is fully satisfied that the quotation is in accordance with its requirements.

2.3 The purchase price for the goods shall be the price stated on the order form on which the order is placed (“the stated price”).

2.4 After confirmation of the order by the seller, however occasioned, the contract may not be cancelled by the buyer without the seller’s written consent, which shall be conditional on the seller being indemnified by the buyer against all loss or damage which is or may be sustained by the seller arising out of such cancellation.

3. Terms

3.1 Payments shall be made within 30 days of the date of invoice of the goods or as otherwise specified by the seller. Prices specified in the contract are net. When deliveries are spread over a period, each consignment, at the option of the seller, will be invoiced as despatched and each invoice will be treated as a separate account and be payable accordingly.

3.2 The seller reserves the right to charge interest on overdue accounts at the rate of 2% per annum above to be then ruling rate of the Bank of England, accruing from day to day from the date the account becomes overdue until the date payment in full is received.

3.3 Without prejudice to any other rights or remedies of the seller any default of the buyer in making payment on the due date shall entitle the seller to suspend deliveries under this contract or any other contract so long as the default continues and to treat this contract as repudiated by the buyer and determined if the buyer has not within 7 days of receiving written notice from the seller paid all sums due to the seller.

4. Delivery Date and Passing of Risk

4.1 Any delivery dates quoted for goods are estimates only and are not the subject of guarantee, warranty or representation. In no circumstances will the seller be responsible for any loss of profits or other consequential loss arising out of delay in delivery or failure to deliver goods however occasioned. Time for delivery shall not be of the essence.

4.2 Delivery shall take place when the goods are unloaded at or delivered to the buyer's premises or other delivery location agreed with the seller and the buyer accepts that, if the buyer collects or arranges collection of the goods from the seller's premises or nominates a carrier for the goods, delivery shall take place when the goods are loaded at the seller's premises.

4.3 If delivery of all or some of the goods is hindered, prevented or delayed by force majeure, the seller shall not be liable for any loss or damage caused thereby and shall have the option to cancel the contract wholly or in part or to suspend or delay delivery or further delivery without incurring any liability to the buyer. By force majeure is meant all events or circumstances beyond the control of the seller which could not reasonably have been foreseen including but not limited to loss, delay, and/or damage during transit, trade disputes and other industrial action, accident, failure by subcontractors or Act of God.

4.4 Risk in the goods will pass to the buyer when the goods are delivered as in 4.2 above, either to the buyer or to a third party acting with the buyer's authority or to a carrier for transmission to any point of delivery nominated by the buyer. If the goods are sold on an F.O.B. basis, risk shall pass when the goods are placed on board ship and the seller shall be under no obligation to give the buyer the notice specified in Section 32(3) of the Sale of Goods Act 1979.

4.5 Notwithstanding the above, the seller reserves the right to claim compensation from the buyer in respect of storage costs, interest and insurance premiums where the buyer fails to accept delivery or arrange for collection of the goods on the due date.

4.6 The quantity of the goods delivered under each order shall be recorded by the seller upon despatch from the seller's factory or warehouse and the seller's record shall be accepted by the buyer as conclusive evidence of the quantity delivered.

4.7 It is the buyer's responsibility to notify the seller if the buyer has not received the goods within 7 days of the date of receipt of the seller's invoice. If no notification is made, the buyer shall be deemed to have received the goods.

5 Carriage.

5.1 Unless otherwise agreed in writing, the stated price does not include delivery charges. These will be charged extra to the buyer and invoiced separately.

5.2 Payment for delivery charges shall be on the same basis as payment for the goods as specified in Clause 3 above.

6 Property

6.1 Property (both legal and beneficial) in the goods shall remain in the seller until all sums owing to the seller for the goods or any other goods sold or supplied prior to the date of delivery of the goods (the indebtedness) shall have been paid in full. Until such time the buyer shall hold the goods as bailee for the seller.

6.2 the events specified in Clause 7 may in the ordinary course of the business sell the goods and pass property on them (the Resale) subject to the stipulations ("the Stipulation") imposed in 6.3.

6.3 The Stipulations are that the indebtedness has been fully discharged:-

- a. the goods shall not be converted into another product or admixed with other goods to make another product ("the new product") nor will the buyer sell the new product and pass property in it ("the sale"), but, if the buyer in breach of the above provision

does convert or admix the goods, property in the new product shall at the earliest moment that such vesting is possible, vest and remain in the seller whether or not property in the goods is at the moment extinguished;

b. the resale shall be for the account of the seller and, unless the seller by written notice requires the payment to it of the proceeds of the resale ("the proceeds") to the extent of the indebtedness, in which case the buyer shall forthwith on receipt of such notice or as soon as thereafter as it shall receive the proceeds make such payment, the buyer shall retain the proceeds in a separate bank account to the order of the seller and not mix them with any other monies;

c. in the event of a breach by the buyer of its obligations under (a) the seller shall have the right to trace the proceeds into any other monies with which they may have been mixed and the buyer shall indemnify the seller on a full indemnity basis against loss, damage, costs or expenses incurred in such trading;

d. until the resale the seller shall have the right to repossess the goods or take possession of the new product at any time and for this purpose, shall have the right to enter on any premises or land in the ownership or possession of the buyer and remove the goods and/or the new products notwithstanding that they are affixed to such premises or land and the buyer shall indemnify the seller on a full indemnity basis against all loss, damage, costs or expenses so arising including loss, damage, costs or expenses in respect of third party claims;

e. the goods and the new products shall, until their resale or sale, be stored separately and shall be clearly marked as the property of the seller.

7 Bankruptcy, Receivership or Liquidation of the Buyer

Without prejudice to any other provision in these terms and conditions in the event that:-

a. the giving of any notice to the buyer that a receiver, manager, administrative receiver, supervisor, nominee, administrator or other similar person is to be or has been appointed over any of the property or assets of the buyer or that a petition to wind up the buyer is to be or has been presented or that an application for an administration order is to be or has been made or of any notice of a resolution to wind up the buyer (save for the purposes of a bona fide reconstruction or amalgamation);

b. a decision by the buyer that the buyer intends to make any arrangement or composition with its creditors generally;

c. where the buyer, pursuant to Section 123 or 268 of the Insolvency Act 1986, appears to be unable to pay a debt or appears to have no reasonable prospect of being able to pay a debt;

d. any distress or execution levied or threatened to be levied on any property or assets of the buyer;

e. the inability of the buyer to pay its debts as they fall due.

The seller may in its absolute discretion, elect either to discharge the contract of sale or not to deliver the goods or any of them except against payment in cash of the purchase price of the goods in full.

8. Warranty

The seller warrants all goods supplied to the buyer to be reasonably free from defects in material and workmanship, the seller's obligation and liability under this warranty being limited to replacing free of charge at its place of business any part proving defective under normal use or service within three months from the date of delivery to the buyer provided the buyer has satisfied all warranty and service requirements that have been made or may from time to time be issued by the seller. This warranty does not extend to faults caused by wilful damage, negligence, incorrect storage or application, movement, installation (except by the seller, its servants or agents) or defects caused by wear and tear, and is expressly in lieu of and to the exclusion of any other representations, guarantees, condition or warranties whatsoever whether expressed or implied, statutory or otherwise as to quality of the goods or their fitness for any particular purpose nor shall it apply if the buyer shall not have paid by the due date for payment for the goods in question or any other goods supplied between the seller and the buyer.

9. Notification.

In the event of any claim by the buyer of shortage of or defect to any of the goods, the buyer shall notify the seller, at its place of business, of such claim by telephone within 48 hours of delivery of the goods confirmed by Recorded Delivery letter (or email equivalent where the place of delivery is outside the United Kingdom) posted within 72 hours of delivery of the goods.

10. Infringement

The Buyer shall indemnify and keep indemnified the seller against all damages, penalties, costs, claims and liability in respect of the infringements of any patent right or registered design, copyright or trademark resulting from the carrying out of work or the supplying of goods in accordance with the buyer's specification or instructions expressed or implied.

11. Specifications

11.1 If goods are supplied in accordance with the buyer's specifications ("the Specifications") the buyer shall be solely responsible for the specifications and ensuring that they are accurate.

11.2 The buyer shall be responsible for supplying the specifications within a sufficient time to enable the seller to supply the goods in accordance with the specifications.

11.3 The specifications and designs of the seller which without prejudice to the generality of the foregoing shall include illustrations, drawings, weights and dimensions are, unless expressly stated otherwise, subject to modification or improvement and must be regarded as approximate representations only and are not binding in detail unless expressly stated to be so and such title and copyright in the specification submitted by the seller shall remain vested in the seller.

11.4 The buyer agrees that it shall not disclose to any third party any of the information relating to the seller's specifications without the prior written consent of the seller or the party to whom title and copyright in the specifications is vested.

12. Packing.

Packaging of the goods shall be at the discretion of the seller which shall have the right to pack the goods in such manner and with such materials and in such quantities as it in its absolute discretion thinks fit unless detailed packaging instructions are received from the buyer prior to agreeing a price for the goods.

13. Export sales

13.1 In respect of sales of the goods outside the United Kingdom ("export sales") the provisions of these conditions shall apply unless inconsistent with the terms of this clause.

13.2 Unless otherwise specifically agreed between the seller and the buyer, all export sales shall be made C.I.F. to the Buyer's premises and the seller prices shall be the stated price increased to cover the seller's costs in making such deliveries.

13.3 The buyer warrants that, if an import licence or permit is required for the importation of the goods into the Country of destination, then such import licence or permit has been obtained or will be prior to shipment.

14. Subcontracting

The seller shall be entitled to sub-contract the whole or any part of the buyer's order without the buyer's written consent.

15. Waivers

No waiver by the seller of any breach of the terms and conditions relating to each order for goods by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

16. General Indemnity

The buyer shall indemnify and keep the seller indemnified in respect of any loss or damage including consequential loss or damage incurred or sustained by the seller other than that incurred through the seller's negligence or for which the seller may be liable arising directly or indirectly out of the use of the goods by the buyer.

17. Interpretation

The headings in these Terms and Conditions being for convenience only shall not effect the construction hereof. Each sub-clause, paragraph and sub-paragraph in these Conditions, shall be separate and severable and enforceable accordingly.

18. Notices

Any notice demand or other written communication required or permitted to be given hereunder shall be deemed to have been validly given if served or sent to the party to be served by first class pre-paid post or facsimile if served from outside the United Kingdom. Any such notice demand or other written communication shall be conclusively deemed to have been served 48 hours after the time of posting where sent by post or after the time of issue of the facsimile where sent by facsimile or at the time of delivery if delivered by hand.

19. Variations

No variations of the Terms and Conditions shall be valid unless in writing and signed by the buyer and seller.

20. Date of Effect

These conditions shall be effective on and from 1st November 2017

21. Governing Law

These Terms and Conditions shall be governed by and construed in accordance with the Law of England and Wales. Both the seller and the buyer prorogate the non-exclusive jurisdiction of the English Courts.