

# MEXTRU Terms and Conditions

COMPANY: Mextru Ltd and their agents

PURCHASER: The person who accepts a quotation from the Company for the sale of goods or services and whose order to purchase said goods or services is accepted by the company.

GOODS: The goods, which the company is to supply in accordance with the conditions.

SERVICES: Design works carried out by the company or its agents on behalf of the Purchaser.

CONTRACT: The contract for the purchase and sale of the goods or services.

WRITING: Includes e-mail, text messages, facsimile transmissions, letters. Notwithstanding, proof of sending by the purchaser does not constitute proof of receipt by Mextru.

## 1. APPLICATION:

- a) All Goods supplied by the Company are sold subject only to these Conditions and acceptance by the Purchaser of any such Goods shall be deemed to constitute full acceptance of those Conditions.
- b) The Purchaser accepts that these Conditions shall govern relations between themselves and the Company to the exclusion of any other terms including without limitation conditions and warranties written or oral express or implied even if contained in any of the Purchaser's documents which purport to provide that the Purchaser's own terms shall prevail.
- c) The Purchaser shall not be entitled to rely or to seek to rely upon any statement warranty or representation made by an employee or agent of the Company.
- d) No variation or qualification of these Conditions or of any quotation or contract arising here-from shall be valid unless agreed in writing by a Director of the Company.

## 2. ACCOUNTS:

- a) Purchasers who have had no previous transactions with the Company must provide such information as may be required by the Company to open an account and set up a credit limit and payment terms for the Purchaser.
- b) Any order must be made in writing.
- c) No contract between the Company and the Purchaser shall arise unless and until the Company has accepted in writing the Purchaser's order.

## 3. QUOTATIONS:

- a) Quotations remain valid for 15 days from the date supplied to the potential customer.
- b) Any variations to quotations will only be acceptable if supplied in writing.
- c) Quotations will be rendered void if the exchange rate changes by more than 7% during the validity period

## 4. PRICE:

- a) The price of goods shall be the Company's quoted price.
- b) The company reserves the right to increase the price of the goods after acceptance of the order to reflect an increase in the cost of production since the date of quotation. The company will notify the purchaser as soon as reasonably practicable of any increase, however, any increase up to 5% of the contract price will not be a reason for the Purchaser to terminate the contract.
- c) The price given to the Purchaser is on ex-works basis unless otherwise stated and any additional charges for delivery, Insurance, packing and the like and payable by the Purchaser.
- d) All prices are quoted excluding VAT. Any VAT liability which attaches is payable by the Purchaser.
- e) Where goods are sold in a currency other than Sterling, the Company reserves the right to re-calculate the price payable at the due date, should the exchange rate prevailing at the time, result in a negative fluctuation from the quoted price greater than 2.5%.

## 5. PAYMENT:

- a) Unless otherwise agreed in writing by Mextru payment terms are as follows:
  - i) Where the contract value is less than £50,000, payment in full is due 30 days from the end of the month after the invoice date.
  - ii) Where the full contract value exceeds £50,000, a deposit of 20% of the full value will be required upon placing the order, with a further 30% of the full value being payable when the goods are ready to be packed prior to despatch. The remaining 50% is then due for payment 30 days from the invoice date.
- b) Any outstanding monies not paid within 15 days of the due date will incur interest at 8% per annum until payment is received.
- c) Any dispute concerning payment must be advised to Mextru within 48 hours of delivery of the goods. If no issues are raised during this period, the Purchaser will be deemed to have accepted the goods as being fully acceptable and will be bound by the payment terms outlined.

## 6. CANCELLATION:

- a) No order which has been accepted by the Company may be cancelled by the Purchaser except with the agreement in writing of the Company and on terms that the Purchaser shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used) damages, charges and expenses incurred by the Company as a result of cancellation. The Company shall not be obliged to accept cancellation. The Company reserves the right to claim interest and compensation under the Late Payment of Commercial Debts (Interest) Act 1998. The Purchaser agrees to fully indemnify the Company against all third-party costs incurred in the pursuit of payment.
- b) Cancellation of standard products ordered by the Purchaser must be made in writing within 7 days of order acknowledgement;
  - i) Goods cancelled by the Purchaser within 7 days of the Company's order acknowledgement will incur no cancellation fee.
  - ii) Goods cancelled by the Purchaser after 7 days of the Company's order acknowledgement shall incur a 50% cancellation fee.
- c) Once material is produced for bespoke products, it is not possible to cancel the order without incurring a 100% charge.

## 7. DELIVERY:

- a) Time of delivery shall not be of the essence of the Contract and any time stated for delivery is an estimate and is stated by the way of general information only.
- b) The Purchaser shall carefully examine the Goods on receipt of the same and shall by written notice to be received by the Company within 2 days of receipt of the Goods notify the Company of any short delivery, over delivery or defects reasonably discoverable on careful examination. In the absence of receipt of such notice the Company shall be discharged from all liability in respect of such defects or short or over delivery.
- c) This contract is divisible. Each delivery made hereunder shall be deemed to arise from a separate contract and shall be invoiced separately; any invoice for a delivery shall be payable in full in accordance with the terms of payment provided for herein, without reference to and notwithstanding any defect of default in delivery of any other instalment.
- d) Delivery shall be deemed to occur and the risk of loss or damage in the Goods shall pass to the Purchaser on collection by or on behalf of the Purchaser or by a carrier for despatch to the Purchaser (whether or not such carrier be the Company's agent or servant).
- e) The Purchaser shall pay to the Company the Company's reasonable charges for arranging for the Goods to be despatched and such charges to be included on the invoice for the Goods rendered under Condition 4 above.
- f) All goods despatched by the Company at its own expense shall be sent by the cheapest means and route available. If by any means or routes are specified by the Purchaser any additional cost thereby incurred by the Company shall be payable by the Purchaser at the time and in the manner previously specified in this condition. Any such services provided by the Company whether at the Company's own expense or at the Purchaser's expense shall be performed subject to these conditions
- g) In the event that such services are to be provided by Carrier or other third party, then the Company shall, in arranging for the provision of the same, act only as the agent of the Purchaser and the Purchaser shall indemnify the Company against any cost charge liability or expense thereby incurred by the Company.
- h) Where delivery of the Goods is affected by the Company (whether at the request of the Purchaser or not) by more than one consignment then each such consignment shall be deemed to be a separate contract subject to these Conditions of Sale and the Purchaser shall pay in full the amount payable under the Invoice for each consignment notwithstanding any rights which the Purchaser may claim to have against the Company in respect of any other consignment or under any other contract between the Company and the Purchaser.
- i) Insurance of delivered goods in transit is the Purchaser's responsibility.
- j) Dispatch of goods will only be delayed if agreed in advance by the Company. Delayed deliveries will attract a storage charge of 1% of the goods value per calendar month or part thereof. If the dispatch delay is not requested or caused by the Company, then the Company reserve the right to invoice the goods on the original agreed delivery date.

## 8. PROPERTY:

- (i) Until full payment has been made of the price of the Goods and of any other sums whatsoever which are or may become outstanding from the Purchaser to the Company, whether accrued due or not and whether under this Contract or howsoever and including debts and liabilities before and after the date of the Contract –
  - a) The property in the Goods shall not pass to the Purchaser and the Purchaser shall keep the Goods as bailee for the Company (returning the same to the Company upon request).
  - b) Should the Goods (or any of them) be converted into a new product (referred to for the purpose of this Clause only as "The Products"). Whether or not such conversion involves the admixture of any other goods or thing whatsoever and in whatever proportions, the conversion shall be affected by the Purchaser solely as agent for the Company and the Company shall have full legal and beneficial ownership of the products.
  - c) Subject to (d) and (e) below, the Purchaser shall be at liberty to sell the Goods and the Products in the ordinary course of business on the basis that the proceeds of the sale shall belong to the Company to whom the Purchaser shall account on demand, provided that the Purchaser shall have no authority to enter into any Contract of Sale on behalf of the Company and any Contracts of Sale shall accordingly be concluded in the name of the Purchaser.
  - d) The Company may at any time revoke the Purchaser's power of sale by notice to the Purchaser if the Purchaser is in default for longer than 7 days in the payment of any sum whatsoever due to the Company (whether in respect of the Goods or any other goods supplied, or services rendered at any time by the Company to the Purchaser or for any other reason whatsoever) or if any bill of exchange, cheque or other negotiable instrument drawn or accepted by the Purchaser in favour of the Company is dishonoured on presentation for payment, or if the Company has bona fide doubts as to the solvency of the Purchaser.
  - e) The Purchaser's power of sale shall automatically cease if a receiver is appointed over any of the assets or the undertaking of the Purchaser or a winding up order is made against the Purchaser or the Purchaser goes into voluntary liquidation (otherwise than for the purpose of reconstruction or amalgamation) or calls a meeting or makes any arrangement or composition with creditors or commits any act of bankruptcy;
  - f) Upon determination of the Purchaser's power of sale under (d) or (e) above, the Purchaser shall place the Goods and the Products at the disposal of the Company who shall be entitled to enter upon any premise of the Purchaser for the purpose of removing such Goods and Products from the premises;
  - (ii) Where payment is made by means of a bill of exchange, cheque or other negotiable instrument, the company shall be deemed not to have received payment until the bill of exchange, cheque or instrument has been honoured on presentation for payment notwithstanding that the Company may have negotiated it and received value therefor.
  - (iii) The Purchaser will keep the Goods and the Products free from and will indemnify the Company against any charge, lien or other encumbrance thereon;

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## 9. WARRANTY:

- a). The Company warrants that the Goods manufactured by it will be of good materials and workmanship so that upon the Purchaser giving written notice to the Company that the Goods have not been supplied as aforesaid if in the Company's opinion the same be established and provided that the Purchaser has not tampered with the Goods the Company will at its expense as its option to repair or replace such defective Goods. The above warranty shall apply in respect of matters whereof the Purchaser gives written notice within seven days of delivery after which any claims in respect thereof shall be absolutely barred.
- b). Such replacement or repair will be the absolute limit of the Company's liability and the Company will not be liable in any circumstance whatsoever for loss or damage of any kind suffered by the Purchaser or by any third party howsoever caused unless the same shall relate to personal injury or death and only then if the same shall arise out of the Company's negligence:
- c). Save as aforesaid, the Company shall be under no liability whatsoever and any condition or warranty which might otherwise be implied or incorporated in the Contract or by reason of Statute or common law is hereby excluded.
- d). Without prejudice to the foregoing, the Company should in no circumstances be liable:
  - i) for any consequence or special loss or damage or claim by the Purchaser including without limitation, delay, detention, loss of production, loss of profit loss of time, charges or liabilities to third parties;
  - ii) for any loss or damage in excess of the Contract Price and these limitations will apply even in the case of breach of a fundamental term or repudiation by the Company and even if further performance of the Contract is frustrated the Purchaser shall indemnify the Company against all actions, claims or demands by third parties whether in tort or otherwise howsoever arising directly or indirectly in connection with the use, functioning or state of the Goods
- e). The Company will not be liable for damage occasioned through wear & tear, extreme weather conditions, force majeure, negligence of the Purchaser, abnormal working conditions.
- f). The Company reserves the right to examine any damaged/defective goods in the event of a claim being made under the warranty.
- g). The Goods shall only be used for their intended purpose. Any infringement of this automatically renders the warranty obsolete.
- h). The warranty excludes defects and damage arising from any installation work carried out by the purchaser or his agent.
- i). The use of any pattern parts within the equipment will invalidate any warranty.
- j). Notwithstanding a)-i) above, the purchasers statutory rights are not affected.

## 10. DESIGN:

- a). The Company shall if required by the buyer design equipment for the use of the buyer at a cost to be agreed between the parties prior to the commencement of any design work. An estimate of the cost of such work shall be prepared by the Company and the Purchaser shall accept such estimate in writing before the commencement of any work by the Company. Such design shall be submitted by the Company within a time schedule agreed with the Purchaser in advance but shall not be liable for any loss incurred by the Purchaser caused by delay in submitting the required design.
- b). Where Mextru or their agents are subsequently manufacturing the goods designed, the purchaser shall confirm in writing that the goods are to be manufactured in accordance with the design supplied and no variations will be permitted unless details are approved in writing by the Purchaser and Company.
- c). Designs carried out by Mextru in order to supply goods where the Purchaser has not commissioned and paid for the design remain the intellectual property of Mextru.

## 11. MANUFACTURE:

- a). The Company shall manufacture and fabricate goods to a design either supplied by or approved by the Purchaser. From time to time the Company may sub-contract part or all of the contract to other manufacturers. For the purposes of these conditions, goods manufactured under any such sub-contract arrangement will be treated in the same manner as those wholly manufactured by Mextru and will be subject in full to Mextru's terms and conditions.
- b). Mextru accept no liability for any losses incurred by the Purchaser as a result of delay in supplying goods.

## 12. INSTALLATION:

- a). The Company shall if required by the Purchaser supervise and advise upon the installation of the goods at the address nominated by the Purchaser for the delivery of the goods or equipment. The Purchaser will be responsible for payment of all reasonable expenses of Mextru on this instance.
- b). The Company shall not be liable for any damage caused by unsatisfactory installation of the goods or equipment by the company if such damage is attributable in whole or part to any latent defect in the premises or any negligence on the part of any third party.
- c). The Purchaser shall be solely responsible for the state and condition of the premises. In the event that the Company's representative considers that the conditions for work are unsafe, Mextru reserve the right to withdraw their labour. Any costs incurred will remain the responsibility of the Purchaser.
- d). The Purchaser shall indemnify Mextru for any injury or damage caused to Mextru or its Employees or equipment howsoever caused whilst Mextru are on the Purchasers own premises or on the Purchasers customers premises.
- e). Mextru will indemnify the Purchaser for any damage or injury caused by Mextru as required by statute.

## 13. INSOLVENCY OF THE PURCHASER:

- a). The Company shall be entitled to cancel the contract or suspend any further deliveries under the contract if
  - i) The Purchaser enters into a voluntary arrangement with its creditors or goes into liquidation, or administration.
  - ii) A receiver is appointed over any of the property or assets of the Purchaser or an encumbrancer takes possession.
  - iii) The Purchaser ceases trading or threatens to cease trading.

## 14. LAW:

The contract shall be deemed to have been made in England under English Law.