

# GULMAY LTD - CONDITIONS OF SALE

## 1. Interpretation

- 1.1 In the Conditions:  
"BUYER" means the person who accepts a quotation of Gulmay for the sale of the Goods or whose order for the Goods is accepted by Gulmay.  
"GOODS" means the Goods (including any instalment of the Goods or any parts of them) which Gulmay is to supply in accordance with these Conditions.  
"GULMAY" means Gulmay Limited registered in England and Wales under Company Number 1264416.  
"CONDITIONS" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and Gulmay.  
"CONTRACT" means the contract for the purchase and sale of the Goods.  
"WRITING" includes cable, facsimile transmission and other electronic means of communication.
- 1.2 Any reference in the Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

## 2. Basis of the Sale

- 2.1 Gulmay shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of Gulmay which is accepted by the Buyer, or any written order of the Buyer which is accepted by Gulmay, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and Conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.
- 2.2 No variation in these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and Gulmay.
- 2.3 Gulmay employees or agents are not authorised to make any representations concerning the Goods unless confirmed by Gulmay in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 2.4 Any advice or recommendation given by Gulmay or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is confirmed in writing by Gulmay is followed or acted upon entirely at the Buyer's own risk, and accordingly Gulmay shall not be liable for any such advice or recommendation which is not confirmed.
- 2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance offer, invoice or other document or information issued by Gulmay shall be subject to correction without any liability on the part of Gulmay.

## 3. Orders and Specifications

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by Gulmay unless and until confirmed in writing by the Gulmay authorised representative.
- 3.2 The Buyer shall be responsible to Gulmay for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving Gulmay any necessary information relating to the Goods within a sufficient time to enable Gulmay to perform the Contract in accordance with its terms.
- 3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Gulmay quotation (if accepted by the Buyer) or the Buyers order (if accepted by Gulmay).
- 3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by Gulmay in accordance with the specification submitted by the Buyer, the Buyer shall indemnify Gulmay against all loss, damages, cost and expenses awarded against or incurred by Gulmay in connection with or paid or agreed to be paid by Gulmay in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from Gulmay's use of the Buyers specification.
- 3.5 Gulmay reserves the right to make any changes in the specification of the Goods which are required to conform to any applicable safety or other statutory requirements or, where the Goods are to be supplied to Gulmay's specification, which do not materially affect their quality or performance.
- 3.6 No order which has been accepted by Gulmay may be cancelled by the Buyer except with the agreement in Writing of Gulmay and on terms that the Buyer shall indemnify Gulmay 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 Gulmay as a result of cancellation.

## 4. Price of Goods

- 4.1 The price of the Goods shall be Gulmay's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in Gulmay's published price list current at the date of acceptance of the order. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by Gulmay without giving notice to the Buyer.
- 4.2 Gulmay reserves the right, by giving notice to the Buyer at any time before delivery to increase the price of the Goods to reflect any increase in the cost to Gulmay which is due to any factor beyond the control of Gulmay (such as, without limitation, any foreign exchange fluctuation, currency regulations, alteration of duties, significant increase in the cost of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods that is requested by the Buyer, or any delay caused by instruction by the Buyer or failure of the Buyer to give Gulmay adequate information or instructions.
- 4.3 Except as otherwise stated under the terms of any quotation or in any price list of Gulmay, and unless otherwise agreed in Writing between the Buyer and Gulmay, all prices are given by Gulmay on an ex-works basis, and where Gulmay agrees to deliver the Goods otherwise than at Gulmay's premises, the Buyer shall be liable to pay Gulmay's charges for transport, packaging and insurance.
- 4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay Gulmay.
- 4.5 The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided that they are returned undamaged to Gulmay before the due payment date.

## 5. Terms of Payment

- 5.1 Subject to any special terms agreed in writing between the Buyer and Gulmay, Gulmay shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event Gulmay shall be entitled to invoice the Buyer for the price at any time after Gulmay has notified the Buyer that the Goods are ready for collection or (as the case may be) Gulmay has tendered supply of the Goods.
- 5.2 The Buyer shall pay the price of the Goods within 30 days of the date of Gulmay's invoice, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment shall only be issued upon request.
- 5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to Gulmay, Gulmay shall be entitled to:
  - 5.3.1 cancel the Contract or suspend any further deliveries to the Buyer,
  - 5.3.2 appropriate any payment by the Buyer to such of the Goods (or other goods supplied under any other Contract between the Buyer and Gulmay) as Gulmay may think fit (notwithstanding any purported appropriation by the Buyer),
  - 5.3.3 charge the Buyer interest (both before and after any judgement) on the amount paid, at the rate of 3 per cent per annum above the NatWest Bank Plc base rate from time to time, until payment is made (a part of a month being treated as a full month for the purpose of calculating interest).

## 6. Delivery

- 6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at Gulmay's premises at any time after Gulmay has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by Gulmay, by Gulmay delivering the Goods to that place.
- 6.2 Any dates quoted for delivery of the Goods are approximate only and Gulmay shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of essence unless previously agreed by Gulmay in Writing. The Goods may be delivered by Gulmay in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate Contract and failure by Gulmay to deliver any one or more of the instalments in accordance with the Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.4 If Gulmay fails to deliver the Goods for any reason other than cause beyond Gulmay's reasonable control or the Buyer's fault, and Gulmay is accordingly liable to the Buyer, Gulmay's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 6.5 If the Buyer fails to take delivery of the Goods or fails to give Gulmay adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of Gulmay's fault) then, without prejudice to any other right or remedy available to Gulmay, Gulmay may:
  - 6.5.1 Store the Goods until actual delivery and charge the Buyer for the reasonable cost (including insurance) of storage or
  - 6.5.2 Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for the shortfall below the price of the Contract.

## 7. Risk and Property

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
  - 7.1.1 In the case of Goods to be delivered at Gulmay's premises, at the time when Gulmay notifies the Buyer that the Goods are available for collection or
  - 7.1.2 in the case of Goods to be delivered otherwise than at Gulmay's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when Gulmay has tendered delivery of the Goods.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these conditions, the property in the Goods shall not pass to the Buyer until Gulmay has received in cash or cleared funds payment in full of the price of the Goods and all other Goods agreed to be sold by Gulmay to the Buyer for which payment is then due.
- 7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as Gulmay's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and indemnified as Gulmay's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of business, but shall account to Gulmay for the proceeds of the sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), Gulmay shall be entitled at any time to require the Buyer to deliver up the Goods to Gulmay and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Gulmay, but if the Buyer does so all moneys owing by the Buyer to Gulmay shall (without prejudice to any other right or remedy of Gulmay) forthwith become due and payable.

## 8. Warranties and Liability

- 8.1 Subject to the conditions set out below Gulmay warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of their initial use or 15 months from delivery, whichever is the first to expire.
- 8.2 The above warranty is given by Gulmay subject to the following conditions:
  - 8.2.1 Gulmay shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer,

- 8.2.2 Gulmay shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow Gulmay's instructions (whether oral or in Writing), misuse or alteration or repair of the Goods without Gulmay's approval,
- 8.2.3 Gulmay shall be under no liability under the above warranty (or any other warranty, conditions or guarantee) if the total price for the Goods has not been paid by the due date for payment,
- 8.2.4 The above warranty does not extend to parts, materials or equipment not manufactured by Gulmay in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Gulmay.
- 8.3 Subject as expressly provided in these Conditions, and subject where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by Statute or Common Law are excluded to the fullest extent permitted by law.
- 8.4 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these conditions.
- 8.5 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with the specification shall (whether or not delivery is refused by the Buyer) be notified to Gulmay within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify Gulmay accordingly, the Buyer shall not be entitled to reject the Goods and Gulmay shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.6 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or conditions of the Goods or their failure to meet specification is notified to Gulmay in accordance with these Conditions, Gulmay shall be entitled to replace the Goods (or the part in question) free of charge or, at Gulmay's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price) but Gulmay shall have no further liability to the Buyer.
- 8.7 Except in respect of death or personal injury caused by Gulmay's negligence, Gulmay shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at Common Law, or under the express terms of the Contract for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of Gulmay, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.
- 8.8 Gulmay shall not be liable to the Buyer or deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of Gulmay's obligations in relation to the Goods, if the delay or failure was due to any cause beyond Gulmay's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond Gulmay's reasonable control:
  - 8.8.1 Act of God, explosion, flood, tempest, fire or accident,
  - 8.8.2 war or threat of war, sabotage, insurrection, civil disturbance, act of terrorism or threat of terrorism,
  - 8.8.3 acts, restraints, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority,
  - 8.8.4 import or export regulations or embargoes,
  - 8.8.5 strikes, lockouts or other industrial actions or trade disputes (whether involving employees of Gulmay or of a third party),
  - 8.8.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery,
  - 8.8.7 power failure or breakdown in machinery.

## 9. Indemnity

- 9.1 If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright design, trade mark or other industrial or intellectual property rights of any other person, Gulmay shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:
  - 9.1.1 Gulmay is given full control of any proceedings or negotiations in connection with any such claim,
  - 9.1.2 the Buyer shall give Gulmay all reasonable assistance for the purpose of any such proceeding or negotiations,
  - 9.1.3 except pursuant to a final award, the Buyer shall not pay or accept such claim, or compromise any such proceedings without the consent of Gulmay (which shall not be unreasonably withheld),
  - 9.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do),
  - 9.1.5 Gulmay shall be entitled to the benefit of, and the Buyer shall accordingly account to Gulmay for, all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer which (consent not to be unreasonably withheld) is to be paid by any other party in respect of any such claim,
  - 9.1.6 without prejudice to any duty of the Buyer in Common Law, Gulmay shall be entitled to require the Buyer to take such steps as Gulmay may reasonably require to mitigate or reduce any such loss, damages, costs and expenses for which Gulmay is liable to indemnify the Buyer under this clause.

## 10. Insolvency of Buyer

- 10.1 This clause applies if:
  - 10.1.1 the Buyer makes any voluntary arrangements with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction)
  - 10.1.2 an incumbrancer takes possession, or a receiver is appointed, or any of the property or assets of the Buyer
  - 10.1.3 the Buyer ceases, or threatens to cease to carry on business

- 10.1.4 Gulmay reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 10.2 If this clause applies then, without prejudice to any other right or remedy suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement to the contrary.

## 11. General

- 11.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to the provision to the party giving notice.
- 11.2 No waiver by Gulmay of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.3 If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected thereby.
- 11.4 Any dispute arising under or in connection with these Conditions or the sale of the Goods shall be referred to arbitration in England by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Law Society.
- 11.5 The Contract shall be governed by the laws of England.