

## H W Anderson Products Limited – Terms and Conditions of Sale

### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this **condition 1** apply in these terms and conditions ("**Conditions**").

**"Customer"**: the person, firm or company who purchases the Goods and/or Services from the Company.

**"Company"**: H W Andersen Products Limited (a company registered in England and Wales with company number 01113943) whose registered office is at 820 The Crescent, Colchester Business Park, Colchester, Essex CO4 9QY.

**"Contract"**: any contract between the Company and the Customer for the purchase of Goods and/or Services, incorporating these Conditions.

**"Delivery Point"**: the place where delivery of the Goods is to take place under **condition 4**.

**"Goods"**: any goods agreed in the Contract to be supplied to the Customer by the Company (including any part or parts of them).

**"Incoterms"**: the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made.

**"Serviced Goods"**: any item which has been repaired or serviced by the Company as part of the Services.

**"Services"**: any services agreed in the Contract to be supplied to the Customer by the Company.

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 Condition headings do not affect the interpretation of these Conditions.

### 2. APPLICATION OF CONDITIONS

2.1 Subject to any variation under condition 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 Customer 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 Customer'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 or Services shall have no effect unless expressly agreed in writing and signed by the Managing Director of the Company. The Customer 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 condition 2.3 shall exclude or limit the Company's liability for fraudulent misrepresentation.

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- 2.4 Each order or acceptance of a quotation for Goods or Services by the Customer from the Company shall be deemed to be an offer by the Customer to buy Goods or Services subject to these Conditions.
- 2.5 No order placed by the Customer shall be deemed to be accepted by the Company:
- (a) until a written acknowledgement of order or (where payment is to be cash in advance) an invoice is issued by the Company; or
  - (b) (if earlier) the Company delivers the Goods to the Customer or starts to perform the Services;
- when a contract for the supply and purchase of Goods or Services on these Conditions will be established.
- 2.6 The Customer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.7 Any quotation is given on the basis that no Contract shall come into existence except in accordance with condition 2.5. Any quotation is valid for a period of 30 days only from its date, unless stated otherwise, provided that the Company has not previously withdrawn it.
- 3. DESCRIPTION**
- 3.1 The quantity of the Goods and the description of the Goods or Services shall be as set out in the Company's quotation or the Customer's order (if accepted by the Company).
- 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 or Services described in them. They shall not form part of the Contract and this is not a sale by sample.
- 4. DELIVERY OF GOODS**
- 4.1 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- 4.2 Unless otherwise agreed in writing by the Company, the Goods shall be delivered DDU.
- 4.3 Where the Goods are supplied for export from the United Kingdom, the Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them
- 4.4 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.
- 4.5 Subject to the other provisions of these Conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 4.6 If for any reason the Customer 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 Customer has not provided appropriate instructions, documents, licences or authorisations:
- (a) risk in the Goods shall pass to the Customer (including for loss or damage caused by the Company's negligence);

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- (b) the Goods shall be deemed to have been delivered; and
  - (c) the Company may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.7 If the Company delivers to the Customer a quantity of Goods of up to 5% more or less than the quantity accepted by the Company, the Customer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.
- 4.8 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.
- 4.9 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.
- 5. NON-DELIVERY OF GOODS**
- 5.1 The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer 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 Customer gives written notice to the Company of the non-delivery within 7 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 OF GOODS**
- 6.1 The Goods are at the risk of the Customer from the time of delivery at the Delivery Point.
- 6.2 Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- (a) the Goods; and
  - (b) all other sums which are or which become due to the Company from the Customer on any account.
- 6.3 Until ownership of the Goods has passed to the Customer, the Customer shall:
- (a) hold the Goods on a fiduciary basis as the Company's bailee;
  - (b) store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;
  - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
  - (d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company.
- 6.4 The Customer may resell the Goods before ownership has passed to it solely on the following conditions:

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- (a) any sale shall be effected in the ordinary course of the Customer's business at full market value; and
- (b) any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.

6.5 The Customer's right to possession of the Goods shall terminate immediately if:

- (a) (being an individual) the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
  - (a) the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
  - (b) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which he/it is subject that has an effect equivalent or similar to any of the events mentioned in **condition 6.5(a) and (b)**; or
  - (c) the Customer fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Customer; or
  - (d) the Customer ceases to trade; or
  - (e) the Customer encumbers or in any way charges any of the Goods.

6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

6.7 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

6.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by the Company to the Customer in the order in which they were invoiced to the Customer.

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

## 7. SUPPLY OF SERVICES

7.1 The Company shall use reasonable endeavours to provide the Services in accordance in all material respects with the Contract.

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- 7.2 The Company shall use reasonable endeavours to meet any performance dates agreed in writing with the Customer, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 7.3 The Customer shall:
- (a) co-operate with the Company in all matters relating to the Services;
  - (b) provide the Company, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to the Customer's premises, office accommodation, and other facilities as required by the Company;
  - (c) be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from any of its premises in accordance with all applicable laws, before and during the supply of the Services at those premises, and informing the Company of all of the Customer's obligations and actions under this condition 7.2(c); and
  - (d) inform the Company of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises.
- 7.4 If the Company's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.
- 7.5 The Customer shall be liable to pay to the Company, on demand, all reasonable costs, charges or losses sustained or incurred by the Company (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Customer in writing.
- 8. PRICE**
- 8.1 Unless otherwise agreed by the Company in writing, the price for the Goods and Services shall be the price set out in the Company's published price lists current on the date of acceptance of the Customer's order.
- 8.2 The price for the Goods and Services 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 Customer shall pay in addition when it is due to pay for the Goods and Services.
- 8.3 The Company reserves the right, by giving written notice to the Customer at any time before delivery of the Goods or commencement of performance of the Services, to increase the price of the Goods or the Services to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery or performance dates, quantities or specifications for the Goods or Services which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.
- 9. PAYMENT**
- 9.1 Subject to condition 9.4, payment of the price for the Goods and Services is due in pounds sterling in accordance with the payment terms agreed in writing by the Company.

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- 9.2 Time for payment shall be of the essence.
- 9.3 No payment shall be deemed to have been received until the Company has received cleared funds.
- 9.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 9.5 The Customer 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 Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.
- 9.6 If the Customer fails to pay the Company any sum due pursuant to the Contract, the Customer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 3% 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.
- 10. QUALITY OF GOODS**
- 10.1 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Company.
- 10.2 The Company warrants that (subject to the other provisions of these Conditions) on delivery and for a period of 12 months from the date of delivery the Goods shall:
- (a) be of satisfactory quality within the meaning of the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982;
  - (b) be reasonably fit for any particular purpose for which the Goods or Services are being bought if the Customer had made known that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Customer to rely on the skill and judgement of the Company.
- 10.3 The Company shall not be liable for a breach of any of the warranties in condition 10.2 unless:
- (a) the Customer gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit to the carrier, within 7 days of the time when the Customer discovers or ought to have discovered the defect; and
  - (b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.
- 10.4 The Company shall not be liable for a breach of any of the warranties in **condition 10.2** if:
- (a) the Customer makes any further use of such Goods after giving such notice; or
  - (b) the defect arises because the Customer 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; or
  - (c) the Customer alters or repairs such Goods without the written consent of the Company.
- 10.5 Subject to **condition 10.3** and **condition 10.4**, if any of the Goods do not conform with any of the warranties in **condition 10.2** 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] provided that, if the Company so requests, the Customer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.

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- 10.6 If the Company complies with **condition 10.5** it shall have no further liability for a breach of any of the warranties in **condition 10.2** in respect of such Goods.
- 10.7 Any Goods replaced shall belong to the Company and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the 12 month period.
- 11. LIMITATION OF LIABILITY – THE CUSTOMER’S ATTENTION IS DRAWN TO THIS CONDITION**
- 11.1 Subject to **condition 4, condition 5, condition 7** and **condition 10**, 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 Customer in respect of:
- (a) any breach of these Conditions;
  - (b) any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods;
  - (c) any use made by the Customer of the Services or the Serviced Goods;
  - (d) 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 these Conditions excludes or limits the liability of the Company:
- (a) for death or personal injury caused by the Company's negligence; or
  - (b) under section 2(3), Consumer Protection Act 1987; or
  - (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
  - (d) for fraud or fraudulent misrepresentation.
- 11.4 Subject to **condition 11.2** and **condition 11.3**:
- (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
  - (b) the Company shall not be liable to the Customer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 12. TERMINATION**
- 12.1 Either party may terminate the Contract without liability to the other immediately on giving notice to the other if:
- (a) the other party commits a material breach of any of the terms and conditions of the Contract; or
  - (b) any distress, execution or other process is levied upon any of the assets of the other party or
  - (c) the other party (being an individual) has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into

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liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the other party or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the other party or for the granting of an administration order in respect of the other party, or any proceedings are commenced relating to the insolvency or possible insolvency of the other party; or

- (d) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in **condition 12.1(c)**; or
- (e) the other party ceases or threatens to cease to carry on its business.

### 12.2 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Goods or Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt; and
- (b) the accrued rights and liabilities of the parties as at termination shall survive and the conditions which expressly or impliedly have effect after termination shall continue to be enforceable.

### 12.3 On termination of the Contract (however arising), the following conditions shall survive and continue in full force and effect:

- (a) **condition 6;**
- (b) **condition 11;**
- (c) **condition 12;**
- (d) **condition 16.6.**

## 13. FORCE MAJEURE

The Company reserves the right to defer the date of delivery of the Goods or performance of the Services or to cancel the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) 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 180 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

## 14. VARIATION

The Company may, from time to time and without notice, change the Goods or Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the Contract price or the quality or performance of the Goods or the nature or scope of the Services.

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### 15. ASSIGNMENT

- 15.1 The Company may assign the Contract or any part of it to any person, firm or company.
- 15.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

### 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 held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
- 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 Customer 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 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with 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 or sent by fax:
  - (a) (in case of communications to the Company) to Andersen Products Ltd, Davy Road, Gorse Lane Ind Est, Clacton-on-Sea, CO15 4XA, United Kingdom or such changed address as shall be notified to the Customer by the Company; or
  - (b) (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Customer.
- 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 delivered by email, on the date and time on the sent email; or
  - (d) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.