

# TERMS & CONDITIONS

CAPS

GROUP

## 1. DEFINITIONS

- 1.1 "Seller" shall mean CAPS Group Associates Ltd and its subsidiaries, successors and assigns.
- 1.2 "Buyer" shall mean the Buyer or any person or Seller acting on behalf of and with the authority of the buyer.
- 1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Buyer if a Limited Liability Buyer on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by the Seller to the Buyer (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.5 "Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Services as defined supra).
- 1.6 "Price" shall mean the cost of the Goods/Services as agreed between the Seller and the Buyer subject to clause 4 of this contract.

## 2. OFFER AND ACCEPTANCE

- 2.1 No quotation given by the Seller shall constitute an offer. An order placed by the Buyer (whether or not pursuant to any such quotation) is not binding on the Seller unless and until agreed to in writing by the Seller.
- 2.2 Where no purchase order has been received by the Seller, correspondence sent by the Buyer shall be deemed as legally binding upon the Buyer, including but not limited to emails, faxes, phone conversations and any discussion between the Buyer and the Seller. The Buyer will take full responsibility for all Goods and Services employed by the Seller to meet forecasts distributed by the Buyer. The Seller reserves the right to demand payment in full at any time for Goods manufactured on the basis of a forecast or bulk order requested by the Buyer.
- 2.3 Where no official quotation has been requested by the Buyer, the Goods / Services requested shall be priced at the Seller's discretion.
- 2.4 Any instructions received by the Seller from the Buyer for the supply of Goods and/or the Buyer's acceptance of Services and/or Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
- 2.5 Upon acceptance of these terms and conditions by the Buyer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Seller.
- 2.6 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.
- 2.7 In the event of Goods / Services being supplied outside of the purchase order or quotation, whether the request be verbal or written, any personnel representing or employed by the Buyer shall be deemed as having the appropriate power and authority to request such Goods / Services, making the Buyer wholly liable for the resulting cost to the Seller.

## 3. GOODS

- 3.1 The Goods shall be as described on the invoices, quotation, work authorisation, sales order or any other work commencement forms as provided by the Seller to the Buyer.
- 3.2 The Buyer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that:
  - (a) such discrepancy in quantity shall not exceed 5%, and
  - (b) the Price shall be adjusted pro rata to the discrepancy.

## 4. PRICE AND PAYMENT

- 4.1 At the Seller's sole discretion, the Price shall be as indicated on invoices provided by the Seller to the Buyer in respect of Goods/Services supplied.
- 4.2 The Seller may, by giving notice to the Buyer at any time up to seven (7) days before delivery, increase the Price of the Goods/Services to reflect any increase in the cost to the Seller beyond the reasonable control of the Seller.
- 4.3 At the Seller's sole discretion a deposit may be required. The deposit amount or percentage of the Price will be stipulated at the time of the order of the Goods / Services and shall become immediately due and payable.
- 4.4 Time for payment for the Services/Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be on delivery of the Goods/Services.
- 4.5 At the Seller's sole discretion payment may be due at the date of this agreement.
- 4.6 The Seller may withhold delivery of the Goods/Services until the Buyer has paid for them, in which event payment shall be made before the delivery date.
- 4.7 At the Seller's sole discretion, payment for approved Buyers shall be made by instalments in accordance with the Sellers delivery/payment schedule.
- 4.8 The Price shall be increased by the amount of any other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Seller.
- 4.9 Variations in rates of exchange, freight, insurance, duty and cartage on imported equipment or components, affecting the amounts paid by the Seller for the actual equipment or components supplied shall be to the Buyer's account.
- 4.10 The Seller reserves the right to review credit accommodation towards the Buyer at any time without notice.

## 5. DELIVERY OF GOODS / SERVICES

- 5.1 Delivery of the Goods/Services shall be made to the Buyer's address. The Buyer shall make all arrangements necessary to take delivery of the Goods/Services whenever they are tendered for delivery, or delivery of the Goods shall be made to the Buyer at the Seller's address.
- 5.2 Delivery of the Goods to a carrier, either named by the Buyer or failing such naming to a carrier at the discretion of the Seller for the purpose of transmission to the Buyer, is deemed to be a delivery of the Goods to the Buyer.
- 5.3 The costs of carriage and any insurance which the Buyer reasonably directs the Seller to incur shall be reimbursed by the Buyer (without any set-off or other withholding whatsoever) and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Buyer's agent.
- 5.4 Where there is no agreement that the Seller shall send the Goods to the Buyer, delivery to a carrier at limited carrier's risk at the expense of the Buyer is deemed to be delivery to the Buyer.
- 5.5 The Seller may deliver the Goods/Services by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract of sale.
- 5.6 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.
- 5.7 When the Goods at the date of this agreement are in possession of a third person, there is no delivery by the Seller to the Buyer unless and until such third person acknowledges to the Buyer that the Goods are being held on behalf of the Buyer subject to the issue or transfer by the Seller of documents of title to the Goods.
- 5.8 Should the Seller agree to defer delivery of any Goods at the request of the

Buyer, a storage fee equivalent to 2.0% of the invoiced value thereof shall be payable to the Seller for each month or part thereof of that delivery of the Goods is deferred. This charge will be payable as per the Seller's trading terms.

5.9 Shortages in delivery must be reported to the Seller within seven (7) days of the date of receipt of the goods by the Buyer, failing which the Seller will not be liable for such shortages, nor for any losses which the Buyer may otherwise sustain.

## 6. RISK

- 6.1 If the Seller retains title in the Goods nonetheless all risk for the Goods passes to the Buyer on delivery.
- 6.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, the Seller is entitled, without prejudice to any of its other rights or remedies under these terms and conditions (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable in respect of the Goods. This applies whether or not the Price has become payable under these terms and conditions. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

## 7. DEFECTS/RETURNS

- 7.1 The Buyer shall inspect the Goods/Services on delivery or installation and shall within seven (7) days of delivery or installation notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods and installation within a reasonable time following delivery. If the Buyer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- 7.2 For defective Goods which the Seller has agreed in writing that the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods provided that:
  - (a) the Buyer has complied with the provisions of clause 7.1;
  - (b) the Seller will not be liable for Goods which have not been stored or used in a proper manner;
  - (c) Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonable possible in the circumstances.

## 8. WARRANTY

- 8.1 The only applicable warranty on Goods supplied by the Seller shall be that agreed to in writing by the Buyer and Seller at the time of contract.

## 9. BUYERS DISCLAIMER

- 9.1 The Buyer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Seller and the Buyer acknowledges that he buys the Goods relying solely upon his own skill and judgement and that the Seller shall not be bound by nor responsible for any term, condition, representation or warranty as to any Goods other than the warranty given by the Manufacturer and that all warranties given shall be personal to the Buyer and shall not be transferable to any subsequent Buyer.
- 9.2 The Buyer waives any conflicting conditions in its own terms and conditions of trade.

## 10. DEFAULT & CONSEQUENCES OF DEFAULT

- 10.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgement.
- 10.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of the Seller's nominees' costs of collection, including, but not limited to, any commission applied to the invoice amount.
- 10.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods/Services to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.
- 10.4 In the event that: (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or (b) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer; then (ii) the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and (iii) all amounts owing to the Seller shall, whether or not due for payment, immediately become payable; the Seller may collect any delivered Goods under clause 12 below.

## 11. TITLE

- 11.1 It is the intention of the Seller and agreed by the Buyer that title in the Goods shall not pass until: (a) The Buyer has paid all amounts owing for the particular Goods; and (b) The Buyer has met all other obligations due by the Buyer to the Seller in respect of all contracts between the Seller and the Buyer, and that the Goods, or proceeds of the sale of the Goods, shall be kept separate until the Seller shall have received payment and all other obligations of the Buyer are met.
- 11.2 It is further agreed that:
  - (a) The Buyer shall not deal with the money of the Seller in any way which may be adverse to the Seller. (b) Until such time as ownership of the Goods shall pass from the Seller to the Buyer the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease. (c) If the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused. (d) The Buyer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller. (e) The Seller may require payment of the Price or the balance of the Price due together with any other amounts due from the Buyer to the Seller arising out of these terms and conditions, and the Seller may take any lawful steps to require payment of the amounts due and the Price. (f) The Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer.

## 12. SECURITY AND CHARGE

- 12.1 Notwithstanding anything to the contrary contained herein or any other rights which the Seller may have howsoever: (a) Where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and/or the Guarantor agree to mortgage and/or charge

all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Buyer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.

(b) Should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.

(c) To give effect to the provisions of clause [12.1 (a) and (b)] inclusive hereof the Buyer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Buyer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and conditions as the Seller and/or the Seller's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Buyer and/or the Guarantor in any land, realty or asset in favour of the Seller and in the Buyer's and/or Guarantor's name as may be necessary to secure the said Buyer's and/or Guarantor's obligations and indebtedness to the Seller and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Seller's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

## 13. CANCELLATION

- 13.1 The Seller may cancel these terms and conditions or cancel delivery of Goods/ Services at any time before the Goods/Services are delivered by giving written notice. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
- 13.2 In the event of a request for Goods / Services being terminated by the Buyer, the Seller reserves the right to demand payment in full of any costs incurred as a result of the request being terminated, including storage costs of Goods.

## 14. UNPAID SELLERS RIGHTS TO DISPOSE OF GOODS

- 14.1 In the event that:
  - (a) the Seller retains possession or control of the Goods; and
  - (b) payment of the Price is due to the Seller; and
  - (c) the Seller has made demand in writing of the Buyer for payment of the Price in terms of this agreement; and
  - (d) the Seller has not received the Price of the Goods, then,
  - (e) whether the property in the Goods has passed to the Buyer or has remained with the Seller, the Seller may dispose of the Goods and may claim from the Buyer the loss to the Seller on such disposal;
  - (f) the Seller shall not be liable to the Buyer for any loss or damages as a result of the implementation of clause 14.

## 15. INTELLECTUAL PROPERTY

- 15.1 Where the Seller has designed or drawn Goods for the Buyer, then the copyright in those designs and drawings shall remain vested in the Seller, and shall only be used by the Buyer at the Seller's discretion, unless otherwise agreed in writing by the Seller.
- 15.2 Conversely, in such a situation, where the Buyer has supplied drawings, the Seller in its sale conditions may look for an indemnity (the specifications and design of the Goods (including the copyright, design right or other intellectual property in them) shall as between the parties be the property of the Seller). Where any designs or specifications have been supplied by the Buyer for manufacture by or to the order of the Seller then the Buyer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party.

## 16. LIEN & STOPPAGE IN TRANSIT

- 16.1 Where the Seller has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Seller shall have:
  - (a) alien on the Goods;
  - (b) the right to retain them for the Price while the Seller is in possession of them;
  - (c) a right of stopping the Goods in transit whether or not delivery has been made or ownership has passed; and
  - (d) a right of resale;
  - (e) the foregoing right of disposal.

## 17. GENERAL

- 17.1 If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.2 These terms and conditions will be governed in accordance with the laws of England & Wales.
- 17.3 Seller and Buyer irrevocably submit to the jurisdiction of English Courts.
- 17.4 The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.
- 17.5 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Services and or Goods.
- 17.6 The Buyer shall not set off against the Price amounts due from the Seller.
- 17.7 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.
- 17.8 The Seller reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the seller notifies the Buyer of such change.

## 18. AUTHORITY OF BUYER

- 18.1 The person signing or accepting the Terms and Conditions for and on behalf of the Buyer hereby covenants with the Seller that he or she has the authority of the Buyer to make the agreement on the Buyer's behalf and is empowered by the Buyer to bind the Buyer to the Terms and Conditions, and hereby indemnifies the Seller against all losses, costs and claims incurred by the Seller arising out of the person so signing the contract not in fact having such power and/or authority.

## 19. PRIORITY OF TERMS AND CONDITIONS

- 19.1 The Terms and Conditions as set out in this document apply exclusively to every contract made with the Buyer, so that any conditions imposed by the Buyer are null and void. All Terms and Conditions set out herein by the Seller shall take authority over any set by the Buyer.
- 19.2 All quotations made by the Seller and orders accepted from the Buyer are subject to the Terms and Conditions set out herein.