

## TERMS & CONDITIONS

These terms and conditions of sale apply to all goods sold by Aber Holdings Ltd ("the seller") to the purchaser of those goods ("the buyer"). No agent or representative of the seller is authorized to make any representations, warranties, or agreements not expressly contained in these terms and conditions and the seller is not in any way bound by such representations, warranties or agreements.

### 1. Delivery

- 1.1 The seller shall not be responsible or liable in any way to the buyer for delays or defaults in delivery of the order or any part, nor for any direct or consequential loss or damage arising from any delay or default.
- 1.2 Delivery of the goods shall be deemed to occur when the goods arrive at the location specified by the buyer or when the buyer or any employee or agent of the buyer takes physical possession of the goods, whichever is the first to occur. Delivery of the goods to a carrier will be deemed to be delivery of the goods to the buyer.

#### 1.3 DAMAGED IN TRANSIT/DISCREPANCIES:

Goods supplied by Aber are carried at 'Limited Carriers Risk'. In order that we may process claims for damage or loss, please follow this procedure.

- a) Do not accept any goods from any source without thoroughly checking all items for damage. Your inspection should identify whether the goods should be:
- Accepted – if they are in satisfactory condition.
  - Rejected – if the consignment is substantially damaged or
  - If the packaging suggests that the goods may be damaged, you should accept the goods but ensure you sign for the goods as "Possible Transit Damage" and cross-out any reference to "Received in Good Condition".

PLEASE NOTE that if a consignment note is signed without any notation regarding the state of the goods it is classed as a "clean delivery". The freight company will not uphold any claims for which the courier or carrier has a clean receipt. Please notify Aber within 24 hours on our free phone number 0800 161 161 of any damaged consignments. This will allow us to ensure that any claims are processed quickly and that replacement stock can be provided to you as soon as possible.

- b) Even when time is limited, goods must be inspected at time of arrival. Signing consignment documents "Subject to Inspection" does not provide you with an avenue to claim later damage.  
All goods must be inspected in front of the driver and any damage noted.
- c) Where goods are missing, the consignment note must be signed "Short-Delivered" noting the discrepancy in quantity. The carrier or courier is then responsible for locating the missing goods, however please contact Aber on 0800 161 161 so that we are aware of any problems.

### 2. Payment

- 2.1 The buyer shall make payment for the goods on the 20<sup>th</sup> of the month following delivery or as otherwise agreed with the Seller (ie. 7 days from date of invoice). Notwithstanding any other provisions contained in these terms and conditions, payment shall become immediately due and payable without the need for any demand, upon the buyer breaching any of these terms and conditions or upon the commencement of any act or proceedings in which the buyer's solvency is involved as such as, but not limited to, any act or proceedings in bankruptcy, insolvency, winding-up or liquidation. If payment is not made on the due date, the seller may charge interest at 2% per month ("penalty interest") from the date upon which payment falls due until the date of payment. The charging of interest is without prejudice to the seller's rights and remedies in respect of the failure to make payment. In particular, without limitation, the charging of interest does not constitute an extension of credit and does not constitute a forbearance to sue or seek recovery of the overdue monies.
- 2.2 The buyer shall pay at the same time as payment under clause 2.1 above any Goods and Services Tax payable by the seller as a result of supply of the goods and such other tax chargeable on the goods supplied.

### 3. Risk and Title

- 3.1 Risk in the goods passes to the buyer upon delivery.
- 3.2 The buyer shall not return any goods after 7 days from delivery and any returns within this period are subject to clause 9 of these terms and conditions.
- 3.3 Claims for shortages of goods or damage must be in writing and delivered to the seller within 48 hours of delivery quoting the delivery docket number and the date of delivery.
- 3.4 Ownership and title in the goods shall not pass to the buyer until the buyer has paid all amounts owing by the buyer to the seller in full. Until such amounts are paid for in full, the buyer acknowledges that:
- (a) The relationship of the buyer to the seller shall be fiduciary in respect of the goods which shall be held by the buyer as bailee;
- (b) The buyer shall not sell or otherwise dispose of or deal with the goods or do any act that may affect the seller's title to the goods provided that the buyer as fiduciary, may deal or otherwise dispose of the goods in the normal course of trade on the understanding that the proceeds of disposition shall at all times be the property of the seller, all such proceeds being held on the trust for the seller in a separate account;
- (c) The buyer shall store the goods in such a way that it is clear that they are the property of the seller;

- (d) The buyer irrevocably gives the seller, its agents and servants leave and licence without the necessity of giving any notice to enter on and into any premises occupied by the buyer and the buyer shall procure access for the seller, its agents and servants to any premises in which the goods may be situated to search for and remove the goods without in anyway being liable to the buyer or any person claiming through the buyer. If the goods or any of them are wholly or partially attached to or incorporated in any other goods, the seller may, when practical, disconnect them or remove the goods, and the buyer shall procure access for the seller, its agents and servants to any premises in which the goods may be situated.

#### **4. Warranties and Conditions**

- 4.1 Any warranty or condition must be in writing and signed by the seller to be binding on the seller. No warranty or condition shall be implied by any conduct or representation of the seller. Where any warranty or condition is implied by law that warranty is expressly excluded to the fullest extent permitted by law.
- 4.2 Where the goods are subject to an express warranty given by the manufacturer, or the parties supplying the goods to the seller, being a warranty upon which the seller relies, the terms of that express warranty shall be deemed to be incorporated on the following terms:
- (a) The wording does not create any privity of contract between the buyer and the manufacturers or supplier;
- (b) Where a claim is made by the buyer under the warranty, the judgment of the manufacturer or supplier as to whether or not there has been a breach of the warranty shall be final and binding upon the seller and the buyer.
- 4.3 If the seller or any other person for or on behalf of the seller provides information or advice regarding the goods or their design, use or suitability, the seller shall not be liable in respect of that information or advice. It shall be the responsibility of the purchaser to determine for itself the suitability of the goods for the particular purposes of the purchaser or the specific uses to which the goods will or may be applied.

#### **5. Extent of Liability**

- 5.1 The liability of the seller to the buyer shall not in any case exceed the purchase price of the goods in respect of which such liability arises. This limitation shall apply to liability however arising whether in contract or in tort or otherwise. In any case of liability on the part of the seller arising from breach of contract the seller shall be under no liability for damage or consequential loss to the buyer or any other party arising from any breach.

#### **6. Exclusion of Liability**

- 6.1 The seller shall not be responsible for any damage caused either to the goods supplied or as a result of the malfunction of the goods in the event that the goods:
- (a) Are fitted by unqualified tradesmen; or
- (b) If the goods are fitted in an un-tradesman-like manner; or
- (c) If the goods are in anyway adapted to a use to which they are not specifically intended; or
- (d) If the goods are added to or repaired by components not recommended or approved by the manufacturer.

#### **7. Price**

- 7.1 All prices are net and do not include goods and service tax. The price for any delivery shall be the price in force at the time of dispatch. The seller reserves the right to amend the price at any time without notice.

#### **8. Cancellations**

If any order is to be cancelled, the cancellation must be received:

1. In writing either via fax or e-mail and
2. Prior to the goods being dispatched and in-transit, otherwise the order will be subject to a handling charge of 15% of the net price of the goods (excluding GST).

#### **9. Credits>Returns**

- 9.1 Any credits sought for goods returned under clause 3.2 are at the seller's discretion by the way of a Returned Goods Approval Number (RGA), and:
- (a) Must have received prior authorisation by the seller;
- (b) Must be returned by the buyer within 7 days of delivery;
- (c) The buyer shall bear all costs of return freight;
- (d) The goods must be in the same condition they were dispatched;
- (e) The goods must be accompanied by the number and the date of the supplying packing slip and/or invoice; together with the RGA;
- (f) No goods which have been specifically ordered by the seller at the request of the buyer may be returned;
- (g) The returned goods will be subject to a handling charge of up to 15% of the net price of the goods (excluding GST).

**10. Severability**

10.1 If any provision of these conditions is invalid, illegal or unenforceable, it will be severed and all other provisions will remain in full force and effect.

**11. Personal Properties Securities Act 1999**

- (a) The buyer grants to the seller a security interest in all present and after acquired goods purchased from the seller, and their proceeds.
- (b) On the request of the seller the buyer will promptly execute any document and do anything else required by the seller to ensure that the security interest created under this agreement constitutes a first ranking perfected security interest over the goods and their proceeds including providing any information the seller reasonably requires to complete a financing statement or a financing change statement. The buyer waives any right to receive a copy of the verification statement under the Personal Property Securities Act 1999.
- (c) The buyer will pay to the seller all costs, expenses and other charges incurred, expended or payable by the buyer in relation to the filing of a financing statement or a financing change statement in connection with these terms and conditions.

**12. No Set-Off**

The buyer may not deduct or withhold any amount (whether by way of set-off, counterclaim, or otherwise) from any amount owing to the seller. If any account is in dispute the full amount must be paid. The seller will address the dispute immediately upon receipt of written notice of the dispute.

**13. Costs of Recovery**

The buyer will pay or reimburse the seller all costs and/or expenses incurred by the seller in instructing a solicitor and/or debt collection agency to recover any amount overdue for payment. The costs and expenses will bear interest at the penalty interest rate from the date upon which they are paid or incurred by the seller until the date the buyer reimburses the seller.

**14. Force Majeure**

The seller will not be liable for delay or non-delivery of any goods caused by matters beyond its control. This includes, but is not limited to, the default of any supplier to the seller, any adverse climatic or natural event, any act of government, stoppage of labour, strikes, or civil commotions.

**15. Conflict with other Terms and Conditions**

From time to time the seller may publish other terms on which goods will be sold. If there is any express conflict between these terms and any subsequent terms of sale the most recent terms will apply. If the terms can be read together however, they will be read together to the fullest extent possible.

**16. Variation of Terms**

The terms on which the seller sells goods may be varied by the seller from time to time. No other variation of terms will be allowed unless it is expressly consented to in writing by the seller.