

Kingsway Enterprises (UK) Ltd

Terms & Conditions of Sale

1. INTERPRETATION

1.1 In these Conditions:

'The Company' means Kingsway Enterprises (UK) Ltd (with company number 08012701) and all group companies of Kingsway Enterprises (UK) Ltd.

'Goods' means any goods to be supplied by the Company to the Purchaser (including any part or parts of them) pursuant to the Contract.

'Services' means the services (if any) to be provided to the Purchaser by the Company pursuant to the Contract.

'The Purchaser' means the person, firm or company with whom the Contract is made by the Company whether directly or indirectly through an agent who is acting for or instructed by or whose actions are ratified by such person, firm or company.

'Conditions' means these terms and conditions (as amended from time to time by the Company).

'Contract' means any agreement entered into by the Company and the Purchaser for the sale and purchase of Goods.

'Quotation' means a quotation for the supply of Goods issued by the Company.

'Authorised Representative' means a person who has the authority to act for and on behalf of the Company.

1.2 The headings in these Conditions do not affect their interpretation.

1.3 A reference to a statute or statutory provision includes a reference to any subordinate legislation and is a reference to that statute, statutory provision or subordinate legislation

1.4 A reference to "including", "includes", "in particular" or any similar expression will be construed as illustrative and does not limit the scope of the words preceding it.

2. GENERAL

2.1 Unless the Company expressly states or agrees otherwise, these Conditions apply to the following:

- (a) all Quotations issued by the Company (whether or not accepted by the Purchaser);
- (b) all Orders for Goods received by the Company (whether or not accepted by the Company); and
- (c) all Contracts made by the Company for the supply of Goods.

2.2 Without prejudice to Condition 2.1 and subject to any variation of these Conditions made in accordance with Condition 2.3, these Conditions:

(a) are incorporated in their entirety into and will form part of the Contract to the exclusion of any terms or conditions in any document (including any terms or conditions which the Purchaser purports to apply by way of any purchase order, confirmation of order, specification or other document); and

(b) supersede all previous oral or written representations made by or on behalf of the Company to the Purchaser which relate to the Goods and/or the subject matter of the Contract.

2.3 No alteration or addition to or exclusion of these Conditions or any part thereof shall be effective unless expressly agreed in writing signed by an Authorised Representative of the Company.

2.4 Save as aforesaid, no agent of the Company has authority to modify, amend or exclude these Conditions or any part thereof, or to enter into an agreement to sell on any other terms, or to make any representation or warranty in relation to any Goods supplied without the express authority in writing of an Authorised Representative of the Company.

2.5 The Purchaser acknowledges and agrees that:

- (a) an Order for goods submitted by the Purchaser to the Company or an acceptance of a Quotation by the Purchaser will be deemed to be an offer by the Purchaser to buy the Goods subject to these Conditions; and
- (b) that by placing an Order for Goods with the Company or accepting a Quotation, the Purchaser accepts these Conditions in their entirety.

3. OFFERS FOR SALE

3.1 Statements in the Company's price lists, catalogues and advertisements shall not constitute an offer to sell.

3.2 A Quotation is an invitation to the Purchaser to order Goods from the Company and shall not constitute an offer by the Company to the Purchaser to enter into a contract.

3.3 Unless otherwise stated in writing in the Quotation, a Quotation shall remain valid for a period of 30 days from the date it is issued to the Purchaser.

3.4 The Company shall be entitled to withdraw any Quotation at any time during the 30 day period by notice in writing to the Purchaser, in which case such Quotation will stop being valid notwithstanding that such period has not expired..

3.5 The Purchaser shall submit an Order by:

- (a) Accepting a Quotation by email (such Quotation having been provided by the Company in response to a specific request for Goods or a scheduled delivery as part of an on-going project).
- (b) Submitting an order form to the Company, by post or email.
each an "**Order**".

3.6 An Order submitted by the Purchaser shall not be binding on the Company and no Contract will come into existence unless and until the earlier of:

- (a) the Order is accepted in writing by the Company; or
- (b) the Company dispatches the Goods to the Purchaser.

3.7 In respect of any Order which is for Goods being made to the bespoke specifications, size and/or functional requirements of the Purchaser, the Purchaser shall be required to pay a deposit equivalent to 25% of the total price for those bespoke Goods on placing the Order with the Company. In the event that a Purchaser wishes to cancel an Order for bespoke Goods ordered to the Purchaser's specifications/requirements, the Purchaser will be required to pay in full for those bespoke Goods (the Company will retain the 25% deposit paid at the time of placing the Order and will issue an invoice for the outstanding balance), notwithstanding that the Purchaser cancels the Order and elects not to take delivery of such Goods.

4. PRICE

4.1 Unless otherwise agreed in writing by the Company, the price of any Goods will be as set out in the Company's acceptance of the Purchaser's Order.

4.2 Unless previously agreed in writing in accordance with Condition 2, prices stated by the Company are for delivery to mainland U.K addresses only.

4.3 Unless previously agreed in writing in accordance with Condition 2, the price of all Goods shall exclude Value Added Tax and all applicable taxes and duties, the cost of which shall be determined at the date of the acceptance by the Company of the Order and shall be payable by the Purchaser.

4.4 The Purchaser shall not be entitled to make any deduction from the price of the Goods in respect of any set-off, counterclaim, or for any other reason without the Company's prior written consent. The Company may set off sums owed to the Purchaser against sums owed to the Company from time to time.

5. PAYMENT

5.1 Subject to Condition 3.7 above and unless otherwise agreed in writing in accordance with Condition 2, or unless payment is made in accordance with Condition 5.2 below where the Purchaser has an account with the Company, the price of the Goods and any additional charges will be paid in full on or before delivery.

5.2 Subject to Condition 3.7 above or where the Purchaser has an account with the Company, the price of the Goods and any additional charges will be paid in full no later than the 30th day of the month following the date of the invoice submitted by the Company to the Purchaser.

5.3 The Company shall be entitled to close any account, at any time, at its sole discretion. In that event, the balance of the account shall be payable forthwith.

5.4 Time of payment is of essence of the Contract.

5.5 Without prejudice to any other rights of the Company, whether arising pursuant to the express or implied terms hereof, at common law, by statute or otherwise, in the event that the Purchaser fails to pay the price or any part thereof or any other sum due hereunder in accordance with these Conditions:

- (a) the Company shall be entitled to charge interest at the rate of 4% per annum above the Bank of England base rate from time to time in force, on all sums which remain payable by the Purchaser from the date on which such sums become payable until payment in full has been received by the Company;
- (b) The Company shall be entitled to refuse to make delivery of any Goods ordered by the Purchaser whether under the same or any other contract with the Company, without incurring any liability whatsoever to the Purchaser, until payment in full of all sums due from the Purchaser to the Company has been received by the Company. The Company may also treat all or any Contracts between the Company and the Purchaser as terminated;
- (c) The Company shall be entitled to recover all costs and expenses incurred by the Company in the collection or recovery of sums due and the Purchaser hereby agrees to indemnify the Company in respect of all such costs and expenses.

6. PROPERTY AND RISK

6.1 The Purchaser acknowledges that before entering into an agreement to purchase Goods from the Company it has expressly or, by placing an Order, impliedly represented and warranted that:

- (a) it is not insolvent;
- (b) it has not committed an act of bankruptcy;

- (c) being a company with limited or unlimited liability it knows of no circumstances which would entitle any debenture holder, secured creditor or any other person to appoint a receiver, to petition for its winding-up or to exercise any other rights over or against its assets.
- 6.2 All Goods shall be at the Purchaser's risk from the time of delivery to the Purchaser, save that if ownership passes to the Purchaser prior to delivery the Goods shall be at the Purchaser's risk from the time when ownership passes to the Purchaser. A Purchaser shall ensure that Goods that are the property of the Company but that are at the risk of the Purchaser, are subject to insurance cover against all risks at all times.
- 6.3 Until such time as the Purchaser shall have paid the Company in full the price of, and all additional charges in respect of, Goods supplied:
 - (a) such Goods shall remain the sole and absolute property of the Company as legal and equitable owner and the Company shall reserve the right to dispose thereof;
 - (b) the Purchaser shall be in possession of the Goods solely as bailee for the Company, and must act in good faith to protect the Company's interests in the Goods;
 - (c) until the Goods have been resold or used (which, for the avoidance of doubt, is permitted in the context of the Purchaser's normal business operations), the Purchaser shall store the Goods on his premises, separate from his own Goods and those of any other person in a manner which makes them readily identifiable as the Goods of the Company;
- 6.4 Subject to the terms hereof, the Purchaser is permitted by the Company to sell or to agree to sell to a sub-purchaser Goods supplied and delivered by the Company to the Purchaser, notwithstanding that ownership of the Goods has not passed to the Purchaser, on the express condition that such a sale or agreement to sell shall, as between the Company and the Purchaser, be made by the Purchaser as principal and not as the Company's agent, and ownership in the Goods shall be deemed to pass from the Company to the Purchaser immediately before the time at which ownership in the Goods passes to the sub-purchaser pursuant to the agreement to resell the Goods. Where this Condition applies, the Purchaser owes a fiduciary duty to the Company and shall hold in trust for the Company such part of the proceeds that is equal to the price and additional charges at which the Goods resold were invoiced by the Company to the Purchaser, and such proceeds shall not be combined with any other monies or paid into any overdrawn bank account and shall at all times be identifiable as the Company's monies and the Company shall have the right to trace the said part of the proceeds.
- 6.5 Without prejudice to any other rights of the Company, if the Purchaser becomes insolvent or makes composition with its creditors or enters into any negotiations for arrangement or composition with his creditors, or commits an act of bankruptcy or has a petition in bankruptcy presented against him or if the Purchaser does or fails to do anything which would entitle a receiver to take possession of any of the Purchaser's assets or undertakings, or if a receiver of the Purchaser's assets or undertakings or any part thereof shall be appointed or if any part of the contract price or of additional charges in respect of the Goods remains unpaid after the date on which it falls due, or if the Purchaser is or becomes in default of any of his obligations hereunder, or if the Purchaser ceases or threatens to cease to carry on business, or if any distress or execution shall be levied upon the Purchaser, or if the Purchaser, being a body corporate, does or fails to do anything which act or failure would entitle any person to present a petition for winding-up, or if any resolution is proposed or petition presented to wind-up the Purchaser, or if an application is made for an administration order, or if the Company considers that its interest in Goods supplied to the Purchaser is prejudiced in any way;
 - (a) the Purchaser's right of possession shall cease;
 - (b) the Company may by its servants or agents enter any premises where its Goods are stored or are reasonably believed to be stored and repossess the same without prejudice to the obligation of the Purchaser to purchase the Goods;
 - (c) the Company may, with or without notice, terminate the Contract insofar as it remains unperformed and the Purchaser shall be liable to pay the Company all sums due at termination plus the amount of any loss, sustained by the Company on the resale of undelivered Goods, without prejudice to any other rights of the Company; and
 - (d) the Purchaser's right of resale under Condition 6.4 hereof shall cease.
- 6.6 The Company may maintain an action for the price of Goods sold notwithstanding that the property in them may not have passed to the Purchaser.
- 6.7 The Purchaser shall have no power to create any charge, lien or other encumbrance whatsoever on the Goods or any part thereof so long as the property in and legal ownership in the Goods remains with the Company.

7. DELIVERY

- 7.1 Any date indicated by the Company for the supply or delivery of Goods shall not be a contractual term but an indication of the estimated date of supply or delivery only and in the event of any failure of the Company to deliver or supply on such date or to deliver or supply Goods of the correct quantity, quality or description or at all on such date for any reason whatsoever, whether or not due to the negligence of the Company or its agents, the said failure shall not constitute a breach or repudiation by the Company of any Contract and the Company's liability shall be limited to the costs and expenses reasonably incurred by the Purchaser in obtaining replacement Goods of similar description and quality in the cheapest market reasonably available, less any unpaid part of the price of the undelivered Goods, save that the Company will not be liable to the extent that the failure to deliver the Goods is caused by the Purchaser's failure to provide adequate and appropriate instructions, documents, licences, authorisations or any other act or omission by the Purchaser.
- 7.2 Delivery and the Purchaser's acceptance of the Goods shall be deemed to take place upon the occurrence of the first in time of the following:
 - (a) the delivery of the Goods to the Purchaser at the Company's premises;
 - (b) the delivery of the Goods to the Purchaser's carrier or his agent;
 - (c) the delivery of the Goods to the Purchaser's place of business;
 - (d) the delivery of the Goods to such place as the Purchaser may reasonably specify.
- 7.3 The Company shall be entitled to deliver the Goods in instalments.
- 7.4 Save where an absolute legal prohibition against exclusion and restriction of liability applies, the Company shall not be liable;
- (a) for partial loss, partial misdelivery or shortage unless the Company is advised thereof in writing (otherwise than on a consignment or delivery note) within 3 days of delivery and the claim is made in writing within 14 days of delivery.
- (b) for loss or non-delivery of the whole consignment or of any separate package or container forming part of the consignment unless the Company is advised of the loss or non-delivery in writing (otherwise than on a consignment or delivery note) within 3 days of the expected delivery date and the claim is made within 14 days of the despatch of the Goods from the Company's premises).
- 7.5 the Company must be notified in writing if Goods are not received within 10 days of date of invoice, or the expected delivery date.
- 7.6 Without prejudice to any other rights of the Company, whether arising pursuant to the express or implied terms hereof, at common law, by statute or otherwise, if the Purchaser (i) fails to give on or before the agreed date of delivery all instructions and all documents, licences, consents and authority which the Company may reasonably require to enable it to make delivery of the Goods in manner satisfactory to the Purchaser or (ii) shall otherwise cause or request delay or fail to take delivery, the Purchaser shall pay to the Company all storage costs incurred and arising from such delay and if such delay continues for a period in excess of 1(one) month or beyond the expiry of a period of reasonable notice given by the Company, the Company shall be entitled to rescind the Contract and resell the Goods.

8.0 DEFECTIVE GOODS

- 8.1 The Purchaser undertakes that on discovering any defect in the Goods it will give immediate written notice to the Company (otherwise than on a consignment or delivery note) and thereafter in accordance with the Company's instructions return the Goods to the Company for examination. The Purchaser further undertakes that he will prevent further use of distribution of such Goods.
- 8.2 The Company undertakes that it will, at its option, either replace or refund the contract price of any Goods supplied which are defective or do not conform with their contract description or sample, provided that:
 - (a) in the case of defects or non-conformity with description or sample which were apparent on delivery, the Company shall be under no obligation to replace or refund the contract price unless advised of the defect or non-conformity in writing (otherwise than on a consignment or delivery note) within 14 days of delivery and the Goods alleged to be defective or not in conformity with description or sample are thereafter returned to the Company for examination in accordance with Condition 8.1 hereof;
 - (b) in any event, the Company shall be under no obligation to replace any Goods or refund the contract price or any other obligation whatsoever in respect thereof unless advised of the defect within 12 months of delivery. All other warranties or conditions as to quality or description (statutory or otherwise) are excluded except insofar as such exclusion is prevented by law.
- 8.3 In cases where the Company exercises its option to replace defective Goods, the replacement Goods shall be supplied subject to these Conditions.
- 8.4 Save as expressly provided in Condition 8.2 above and save where an absolute legal prohibition against exclusion and restriction of liability applies the Company or its agents shall not be liable for any loss or damage, whether in contract, tort or otherwise howsoever (including any liability for direct, indirect or consequential loss or damage of any nature whatsoever) arising out of or in connection with any Goods sold by the Company in any way whatsoever, whether the same be due to any act, omission or negligence, misrepresentation, breach of any statutory duty, or breach of any condition, warranty or other term (express or implied) of any Contract or otherwise, and all conditions, warranties and other terms whether express or implied, statutory or otherwise, inconsistent with the provisions of this term are hereby excluded.

9.0 ADVICE, INFORMATION, OPINION ETC.

- 9.1 Save where an absolute legal prohibition against exclusion and restriction of liability applies, the Company, and its agents shall be under no liability whatsoever to the Purchaser whether in contract, tort or otherwise howsoever (including any liability for consequential injury, loss or damage of any nature whatsoever) for or arising out of any advice, information, opinion or statement given or made by the Company or its agents, and whether the same be oral or in writing and whether or not the same be due to any negligent act or omission on the part of the Company, its servants or agents, and all conditions, warranties and other terms whether express or implied, statutory or otherwise, inconsistent with the provisions of this sub-paragraph and hereby excluded.
- 9.2 It is the responsibility of the Purchaser to determine whether the Goods ordered are fit for any purpose for which they may be required, and all conditions, warranties and other terms whether express or implied, statutory or otherwise, inconsistent with the provisions of this sub-paragraph are hereby excluded, except in so far as such exclusion is prevented by law.
- 9.3 Where products are described as 'Anti Ligature', whilst they have been tested to ensure that they resist ligature attachment, they are not sold as being ligature proof and the Company will not be liable for any claim arising from the use of their Goods.

10. LIMITATION OF LIABILITY

10.1 If, notwithstanding the other provisions in these Conditions, the Company shall be held to be under any liability (whether in contract tort or otherwise and whether or not due to negligence on the part of the Company or its agents), without prejudice to the other provisions hereof such liability shall not exceed the sum of £5,000 in respect of any claim, save where an absolute legal prohibition against exclusion or restriction of liability applies.

10.2 Nothing in the Contract of in these Conditions will limit or exclude the Company's liability (if any):

- (a) to the Purchaser:
 - (i) for personal injury or death suffered by the Purchaser that is caused by the Company's negligence ;
 - (ii) for breach of the Company's obligations arising under section 12 Sale of Goods Act 1979;
- (b) for defective products under section 2(3) of the Consumer Protection Act 1987;
- (c) for any matters which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- (d) for fraud or fraudulent misrepresentation.

11. FORCE MAJEURE

If the Company is prevented, hindered or delayed, whether directly or indirectly, from making delivery of the Goods or any part thereof in accordance with the terms of any Contract or from otherwise performing such agreement or any part thereof by reason of an act or acts of God, war, embargo, riot, strike, lock-out, trade dispute, fire, breakdown, inclement weather, interruption of transport, government action, delay in delivery or non-delivery to the Company of any Goods or materials or by any cause whatsoever (whether or not of like nature to those specified above) outside its control, it shall be under no liability whatsoever whether in contract, tort or otherwise howsoever, to the Purchaser and shall be entitled at its option, which shall be notified in writing to the Purchaser, to either cancel the contract or, without any liability, to extend the time for performance of the Contract by a period at least equivalent to that during which performance has been prevented, hindered or delayed.

12. PREVENTION OF EXCLUSION

These Conditions shall be without prejudice to the absolute legal prohibitions against exclusion and restriction of liability contained in the Unfair Contract Terms Act 1977 or any other statute.

13. INDEMNITY

The Purchaser shall indemnify the Company against all costs, claims, demands, expenses and liabilities whatsoever made by third parties, caused in whole or in part or arising out of or in connection with any act or omission of the Purchaser in connection with the Goods.

14. SUB-CONTRACTS

The Company reserves the right to sub-contract the performance of the Contract or any part thereof.

15. ASSIGNMENT

The Purchaser shall not assign or transfer or purport to assign or transfer any contract to which these Conditions apply or the benefit thereof to any other person whatsoever.

16. PATENTS, LICENSING, TRADE MARKS ETC.

The Purchaser shall indemnify the Company against all loss, damages, costs and expenses suffered by the Company or to which the Company may become liable as a result of any work done in accordance with the Purchaser's specification which involves infringement or alleged infringement of a patent, registered design, trade mark, copyright or any other right in property. If the Purchaser uses or sells the Goods in such manner as to infringe any such rights, the Company shall not be responsible for such infringement and the Purchaser agrees to indemnify the Company from and against all liability arising therefrom.

17. WAIVER

No time given or concession made on the part of the Company shall be construed as a waiver of any of its rights or remedies.

18. SEVERANCE

In the event of the invalidity or unenforceability of any of these Conditions or any paragraph, sub-paragraph or part thereof, the same shall be severed and shall not affect the validity or enforceability of the remaining provisions.

19. MISCELLANEOUS

19.1 The Purchaser shall ensure that, without the Company's prior written consent:

- (a) any confidential information of the Company of which the Purchaser becomes aware (which information shall at all times remain the property of the Company) shall not be copied, used, or disclosed and that all materials containing such information shall be returned to the Company on demand;
- (b) any tradenames or marks that the Company uses on or in connection with the Goods are not supplemented by any mark of the Purchaser, interfered with, or obscured.

19.2 The Contract sets out the entire agreement between the Company and the Purchaser and supersedes any previous agreement or arrangement between the parties relating to the subject matter of it (and any document referred to in it).

19.3 The Purchaser acknowledges that it has not relied on or been induced to enter into the Contract by a warranty, statement, promise representation or undertaking which is not expressly included in the Contract.

20. EXCLUSION OF THIRD PARTY RIGHTS

No person other than a party to a Contract which incorporates these Conditions may enforce any of these terms by virtue of the Contract (Rights of Third Parties) Act 1999.

21. PROPER LAW AND JURISDICTION

19.1 Each Contract of sale entered into by the Company shall be deemed to have been made in England and shall be governed by English law.

19.2 Any claim or dispute arising out of or in connection with a contract of sale made by the Company or the supply of Goods by the Company shall be subject to the exclusive jurisdiction of the English Courts.

22. LIGATURE DISCLAIMER

The anti-ligature design characteristics of Goods are not intended to replace or substitute the need for necessary supervision of those who may be at risk, or for other necessary protective measures to be taken in the specific circumstances of usage. Kingsway Enterprises UK Ltd does not offer any Goods for sale as being 'ligature-free' and will not be liable for any claims arising from ligature attachment on its products. It is the Purchaser's responsibility to ensure that products purchased and installed are suitable for the environments they are fitted in.