

## **Van der Windt Packaging Ltd: Terms and Conditions of Sale**

### **1) Definitions.**

In these terms and conditions of sale the following expressions shall have the following meanings:

- (i) "the Seller" means Wentus Ltd. - UK Registered Company No. 2189102.
- (ii) "the Buyer" means the person, firm or company to whom any quotation is addressed or with whom the contract is made.
- (iii) "all Goods" means the article or things or any part thereof the subject of any quotation or contract to which these conditions apply.

### **2) General.**

(a) These terms and conditions supersede any prior representations or undertakings whatsoever and represent the entire contract terms subject to which all quotations are given and all contracts made by the Seller. All terms and conditions referred to by the Buyer or contained in any order or acceptance of quotation or otherwise brought to notice of the Seller are hereby excluded unless otherwise specifically agreed in writing by a director of the Seller before delivery of the Goods.

(b) Quotations given by the Seller are not offers capable of acceptance and all orders placed with the Seller require acceptance by the Seller before any contract arises.

### **3) Price.**

(i) Payment of the full invoice price (including packing, carriage and VAT where appropriate) shall be made (subject Clause 3 (iii)) in sterling within 30 days of the date of invoice. Time of payment shall be of the essence of the contract and failure to make any payment on the due date shall entitle the Seller to treat the contract as repudiated and act accordingly.

(ii) If payment is not made by the due date the Seller shall have the right to charge interest on any sums outstanding at a rate of 2 per cent above the base rate charged by Barclays Bank plc from time to time from the due date until the date of actual payment.

(iii) Notwithstanding the above, the Seller has the right to demand payment of the full invoice price before commencing work under the contract and may at any time require that the Buyer's obligations hereunder be secured to the satisfaction of the Seller.

### **4) Risk, Delivery and Performance.**

(i) Goods are delivered to the Buyer when the Seller makes them available to the Buyer or any agent of the Buyer of any carrier (who will then be the Buyer's agent whoever pays his charges) at the Seller's premises or other delivery point agreed by the Seller.

(ii) Risk in the Goods passes when they are delivered to the Buyer.

(iii) The Seller has the right to deliver the Goods by instalments in any sequence and:

(a) each instalment will be deemed to be the subject of a separate contract

(b) any default or failure by the Seller in respect of one or more instalments will not vitiate the Contract in respect of the goods previously delivered or undelivered goods.

(iv) The Seller may deliver to the Buyer and the Buyer must accept in satisfaction of the Contract a lesser sum than the number of the Goods ordered and a credit for any undelivered Goods.

(v) Any dates stated by the Seller for the delivery of the Goods are approximate only and do not form part of the Contract.

(vi) If the Buyer fails:

(a) to take delivery of the Goods or any part of them on the date.

(b) to provide any instructions, documents and licences, consents or authorisations required to enable the goods to be delivered on the due date the Seller will be entitled upon giving written notice to the Buyer to store or arrange for the storage of the Goods and;

(a) risk in the Goods will pass to the Buyer

(b) delivery will be deemed to have taken place

(c) the Buyer will pay to the Seller all costs and expenses including storage and insurance charges arising from the failure.

(vii) The Seller will not be liable for any loss arising from any delay or failure entitle the Buyer to refuse to accept any delivery or performance of or repudiate the Contract.

#### **5) Retention of Title to Goods.**

(i) For the purpose of Section 12 of the Sale of Goods Act 1979 the Seller shall transfer only such title or rights in respect of all Goods as the Seller has.

(ii) The Seller will remain the sole and absolute owner of all Goods until payment.

(iii) The Buyer may incorporate the Seller's Goods into another product. If Goods are mixed or united in any way with those of the Buyer the final product will become and be deemed for all purposes the property of the Seller. If the Seller's goods are mixed or united in any way with the property of any person other than the Buyer or are processed with or incorporated with such property the final product will become and will be deemed for all purposes to be owned in common with that person.

(iv) Notwithstanding that risk in the goods has already passed title in all Goods shall remain with the Seller until the amount due for all Goods as stated in the Seller's invoice has been paid in full.

(v) The Buyer shall be a bailee of all goods for the Seller until title has passed to the Buyer and:

(a) shall store all Goods upon its premises separately from its own goods or those of any other person.

(b) shall clearly mark all Goods so that they are clearly identifiable as all Goods of the Seller.

(vi) The Buyer warrants that:

(a) he is not insolvent and has not committed any act of bankruptcy.

(b) being a Company neither the Company nor any director knows of any circumstances which would entitle a debenture holder or secured creditor to appoint a receiver or to petition for winding up of the Company or to apply for the appointment of an administrator or exercise any other rights over or against the Company's assets.

(vii) If the Buyer is a Company it must give fourteen days Notice to the Seller before applying to the court for the appointment of an administrator. The Buyer will not be entitled to remain in possession of the Seller's goods from the date of notice and the appointment of an administrator without giving notice shall be deemed to be a fundamental breach of contract.

(viii) The Buyer's rights to possession of all Goods will cease at the earliest of the following dates:

(a) on the expiration of any agreed period of credit.

(b) if being an individual he commits an act of bankruptcy or makes a proposal to his creditors for a composition or does anything which would entitle a petition for bankruptcy order to be made

(c) if being a company it does or fails to do anything which would entitle a receiver to take possession of any assets or which would entitle any person to present a petition for winding up or apply for winding up or apply for an administration order.

(d) if the Buyer does or fails to do anything which may imperil the title of the Seller to all Goods.

(ix) The Seller may enter upon any premises where the Buyer has stored the Seller's Goods or the Seller reasonably believes all Goods to be stored

(x) The Seller will have the right if paragraphs (v), (vii) and (viii) apply:

(a) to repossess all Goods.

(b) to dismantle all Goods without being liable for any damage caused by so doing.

(c) to use or sell all or any of all Goods.

(d) to terminate without liability to the Buyer the Buyer's right to use, sell or deal with all Goods.

(e) to enter any premises of the Buyer for the aforesaid purposes.

(xi) The Buyer may sell the Goods on the Seller's account at any price which is not less than the price agreed between the Seller and the Buyer.

(xii) If the Buyer sell on his own account:

(a) he will sell as agent and bailee of the Seller in law and in equity.

- (b) he will hold the proceeds of sale in trust for the Seller and will not mingle the proceeds with other monies and will not pay the proceeds of sale into an overdrawn bank account.
- (c) he will open a fiduciary account with him bankers and advise them that he holds the entire proceeds of sale to a sub-purchaser as trustee for the Seller.
- (d) He will ensure that the proceeds of the sale are at all times identifiable as monies belonging to the Seller.
- (e) until payment to the Seller of the agreed price he will not be entitled to transfer any profit from the proceeds of the sale of the goods to any other account.
- (xiii) If a receiver is appointed to the Buyer at the time of appointment the Buyer has not yet received the proceeds of sale the Buyer or the receiver as agent for the Buyer will assign to the Seller at the earliest date possible all rights against the person or persons to whom the goods have been sold.
- (xiv) The Seller will be entitled to maintain an action for the price of any Goods notwithstanding that title in them has not passed to the Buyer.

#### **6) The Scope of the Contract.**

- (i) All conditions or warranties as to correspondence to description or sample quality or fitness for any purpose of any Goods supplied pursuant to this contract whether express or implied either by statute or otherwise are excluded provided always that the Seller shall be liable to the Buyer in respect of the breach of any such condition or warranty which may be incorporated in the contract insofar as exclusion of the Seller's liability for such breach by this terms fails to satisfy the requirements or reasonableness contained in the Unfair Contract Terms Act 1977 or where the Purchaser deals as a consumer within the meaning of the Act but not otherwise.
- (ii) If in the Seller's judgement any defect exists or arises in the Goods due to faulty manufacture then the Seller will replace the defective goods provided that the Buyer promptly returns the same to the Seller and in any event no later than two months from the date of delivery of the Goods but not otherwise.
- (iii) Save as expressly provided above the Seller shall not be liable for any fault or defect on the Goods howsoever occasioned and in particular the seller shall not be liable for such fault or defect in the Goods if the Goods have been misused or damaged as a result of their use and the Seller shall not be liable for any consequential loss or damage of any kind occasioned by or arising out of fault or defect in the Goods and in no circumstances will be Seller's liability in respect of the Goods exceed the value as determined by the Seller's original invoice for the Goods.
- (iv) Delivery of any repaired or replacement Goods will be at the Seller's premises or at the delivery point stated in the original agreement
- (v) If the Seller is liable in accordance with terms of this Contract for some or part of the Goods the Contract will remain in force in relation to the other parts of the Goods and no set off or there counterclaim will be made the Buyer against or in respect of such other parts of the

#### **Goods.**

- (vi) The Seller will not be liable where any Goods are lost or damaged in transit and all claims by the Buyer must be made against the carrier.
- (vii) The Seller may wholly or partly sub-contract the performance of the contract.
- (viii) The Contract is between the Seller and the Buyer as principals and may not be assigned by the Buyer without the express written consent of the Seller.
- (ix) The Seller has the right to exercise a lien on all the Buyer's property in the Seller's possession until all sums due at any time from the Buyer have been paid and has the right to use, sell or dispose of the property as agent for and at the expenses of the Buyer and apply the proceeds in and towards the payment of such sums on giving twenty eight days notice in writing to the Buyer. Upon accounting to the Buyer for any balance remaining after payment of any sums due to the Seller and the costs of the sale or disposal the Seller will be discharged of any liability in respect of the Buyer's property.
- (x) The Seller may suspend or terminate the supply of any Goods if the Buyer:
  - (a) fails to make payment when the same is due.

- (b) defaults in any of its obligations under the Contract.
- (c) becomes insolvent or wound up.
- (d) or the Seller bona fide believes that any of the aforesaid events may occur, and in the case of termination the Buyer will forfeit any deposit paid.
- (xi) If the Goods have been manufactured in accordance with any design or specification provided or made by the buyer the Buyer will indemnify the Seller from and against all claim costs expenses and liability of any nature in connection with them including any claim whether actual or alleged that the design or specification infringes the rights of any Third Party.
- (xii) Any tools, patterns, materials, drawings, specifications, or other information provided by the seller remains the seller's property and all technical information patentable or unpatentable copyright and registered designs arising from the execution of any orders will become the property of the Seller.
- (xiii) These Terms and Conditions, the Contract and its subject matter cannot be disclosed to a third party.
- (xiv) If the performance of these Terms and Conditions, the Contract or any agreement or obligation between the Buyer and Seller is prevented or interfered with by reason of circumstances beyond the control of the Seller then upon giving notice to the Buyer the Seller will be excused from performance to the extent of the prevention, restriction or interference.
- (xv) These Terms and Conditions, the Contract or any agreement are subject to English Law and the Buyer consents to the exclusive jurisdiction of the English Courts in all matters regarding the Goods.
- (xvi) Any failure of the Seller to enforce any of its rights under this contract shall not be taken to be a waiver of any of the Seller's rights hereunder.
- (xvii) Any notices under this contract shall be in writing and sent by post, cable, telex or facsimile to the registered office or to the last know address of the person to whom it is addressed and in the case of posting shall be deemed to have been received 24 hours after the date of posting thereof.