

# Smart-e (UK) Ltd

## Terms and Conditions

These Conditions govern any Contract for the supply of Goods by us, Smart-e (UK) Limited ('we', 'us' or 'our'), to you, the person, firm or company named on our sales order who purchases Goods from us ('you' or 'your').

### 1 INTERPRETATION

1.1 In these Conditions.

'Conditions': these terms and conditions.

'Contract': any contract between us and you for the sale and purchase of Goods, incorporating these Conditions and any Special 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 you by us (including any part or parts of them).

'Special Conditions': any special terms and conditions agreed in writing by you and us.

### 2 APPLICATION OF TERMS

2.1 These Conditions apply to all sales by us to the exclusion of all other terms and conditions. No terms or conditions endorsed on, delivered with or contained in your purchase order, order confirmation or other document, apply to any Contract unless agreed to in writing by us.

2.2 No variation or representation applies unless agreed to in writing by us. You agree that you have not relied on any statement or representation which is not set out in the Contract.

2.3 Quotations are open for acceptance for 30 days from their date unless withdrawn by us, after which they will lapse. No order placed by you is accepted by us until we have issued a written order acknowledgement or we deliver the Goods to you.

2.4 You may cancel any order by written notice to our registered office address, to be received within 2 working days from receipt by you of our order acknowledgement.

### 3 DESCRIPTION

3.1 The quantity and description of the Goods shall be as set out in our quotation or order acknowledgement.

3.2 All samples, drawings, descriptions, specifications and advertising issued by us or contained in our catalogues or brochures are for illustrative purposes only and do not form part of the Contract. We do not sell by sample.

### 4 DELIVERY

4.1 Unless otherwise agreed in writing by us, delivery of the Goods shall take place ex works at our place of business.

4.2 Delivery is subject to availability from our suppliers. Dates specified by us for delivery are good faith estimates only. Time for delivery is not of the essence. If no dates are specified, delivery shall be within a reasonable time.

4.3 Except as otherwise stated, we are not liable for any direct, indirect or consequential loss (including, without limitation, economic loss, loss of profits or loss of business), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by our negligence).

4.4 If you fail to accept delivery of any of the Goods when they are ready for delivery, or we are unable to deliver the Goods because you have not provided appropriate instructions, documents, licences or authorisations:

4.4.1 risk in the Goods passes to you;

4.4.2 the Goods are deemed to have been delivered; and

4.4.3 we may store the Goods until delivery, in which case you are liable for all related costs and expenses including storage and insurance.

4.5 You shall provide at the Delivery Point and at your expense adequate and appropriate equipment and manual labour for loading the Goods.

4.6 Except in respect of any fault under clause 9 below, you must notify us in writing within 7 days from the date of delivery of any fault in respect of the Goods.

### 5 NON-DELIVERY

5.1 The quantity of any Goods specified by us on despatch from our place of business is conclusive evidence of the quantity received by you on delivery unless you provide conclusive evidence to the contrary.

5.2 We are not liable for any non-delivery of Goods (even if caused by our negligence) unless you give us written notice within 3 days of the date when the Goods would in the ordinary course of events have been received.

5.3 Our liability for any non-delivery of 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

6.1 Goods are your risk from the time of delivery.

6.2 Ownership of the Goods does not pass to you until we have received in full (in cash or cleared funds) all sums due to us in respect of the Goods and all other sums which are or which become due to us from you on any account.

6.3 Until ownership of the Goods has passed to you, you shall:

6.3.1 hold the Goods on a fiduciary basis as our bailee;

6.3.2 store the Goods separately from your other goods or those of any third party and keep them readily identifiable as our property;

6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

6.3.4 maintain the Goods in satisfactory condition and insure them for their full value against all normal risks. You must produce the policy of insurance to us on request.

6.4 You may resell the Goods before ownership has passed to you provided that:

6.4.1 any sale is in the ordinary course of your business at full market value; and

6.4.2 any such sale is a sale of our property on your behalf and you deal as principal when making such a sale.

6.5 Your right to possession of the Goods terminates immediately if:

6.5.1 you have a bankruptcy order made against you or you make an arrangement or composition with your creditors, or take the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) you convene a meeting of creditors, or enter into liquidation (voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or you have a receiver, administrator, manager or administrative receiver appointed of all or any part of your undertaking, or documents are filed with the court for the appointment of an administrator of you or notice of intention to appoint an administrator is given by you or your directors or by a qualifying floating charge holder, or a resolution is passed or a petition presented to any court for your winding-up or for the granting of an administration order in respect of you, or any proceedings are commenced relating to your insolvency or possible insolvency; or

6.5.2 you suffer or allow any execution, whether legal or equitable, to be levied on your property or obtained against you, or fail to observe or perform any of your obligations under the Contract or any other contract between us and you, or are unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986 or you cease or threaten to cease to trade; or

6.5.3 you encumber or in any way charge any of the Goods.

6.6 We may recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from us.

6.7 You grant us, our 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 your right to possession has terminated, to recover them.

6.8 On termination of the Contract, howsoever caused, our (but not your) rights contained in this condition 6 remain in effect.

### 7 PRICE

7.1 Unless otherwise agreed by us in writing, the price for the Goods is that set out in our price list published on the date of delivery or deemed delivery.

7.2 The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage, overseas shipping charges and insurance, all of which amounts you shall pay in addition when you are due to pay for the Goods.

### 8 PAYMENT

8.1 Subject to condition 8.4, payment of the price for the Goods is due in full in pounds sterling prior to or upon the date of delivery unless otherwise stated on the invoice or notified by us. We reserve the right to immediately return any Goods to our place of business in the event that payment is not received from you in full pursuant to this term 8.1 and at our discretion to cancel thereafter any orders placed by you.

8.2 Time for payment shall be of the essence.

8.3 No payment shall be deemed to have been received until we have received cleared funds. You shall make all payments in full without any deduction or set-off.

8.4 All payments payable to us under the Contract shall become due immediately on its termination despite any other provision.

8.5 If you fail to pay us when any sum when due, you are liable to pay us interest on such sum from the due date for payment at the minimum rate of 2.5% above the base lending rate from time to time of [Barclays] Bank plc per calendar month, accruing on a daily basis until payment is made, whether before or after any judgment.

### 9 WARRANTY

Unless otherwise stated by us, we warrant any Goods manufactured by us for three years from the date appearing on the delivery note against defects in manufacturing or materials. This warranty applies provided the Goods fail when in normal use by you. We will repair any Goods under warranty free of charge but you are liable for any handling and/or carriage charges required.

### 10 LIMITATION OF LIABILITY

# Smart-e (UK) Ltd

## Terms and Conditions

- 10.1 Subject to conditions 4 and 5, the following provisions set out our entire financial liability (including any liability for the acts or omissions of our employees, agents and sub-contractors) to you in respect of:
- 10.1.1 any breach of these Conditions;
- 10.1.2 any use made or resale by you of any Goods, or of any product incorporating any Goods; and
- 10.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 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 excluded to the fullest extent permitted by law.
- 10.3 Nothing in these Conditions excludes or limits our liability:
- 10.3.1 for death or personal injury caused by our negligence, or for fraud or fraudulent misrepresentation; or
- 10.3.2 under section 2(3), Consumer Protection Act 1987 (as updated); or
- 10.3.3 for any matter which it would be illegal for us to exclude or attempt to exclude its liability.
- 10.4 **Subject to condition 10.2 and condition 10.3, our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising out of or in connection with the performance of the Contract is limited in aggregate to the Contract price of the Goods.**

### 11 ASSIGNMENT

- 11.1 We may assign the Contract or any part of it to any person, firm or company.
- 11.2 You must not assign the Contract or any part of it without our prior written consent.

### 12 FORCE MAJEURE

We reserve the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by you (without liability to you) if we are prevented from or delayed in performing our obligations due to circumstances beyond our reasonable control 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.

### 13 GENERAL

- 13.1 Our rights or remedies under this Contract is without prejudice to any other right or remedy we may have whether under the Contract or otherwise.
- 13.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 13.3 Any failure or delay by us in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of our rights under the Contract.
- 13.4 Any waiver by us of any breach of, or any default under, any provision of the Contract by you shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 13.5 The parties 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.
- 13.6 The formation, existence, construction, performance, validity and all aspects of this Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

### 14 COMMUNICATIONS

- 14.1 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 fax:
- 14.1.1 to us, at our registered office or such other address as we may notify to you; or
- 14.1.2 to you, at your registered office (if you are a company) or (in any other case) to your address set out in any document which forms part of the Contract or such other address as you may notify to us.
- 14.2 Communications are deemed to have been received:
- 14.2.1 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
- 14.2.2 if delivered by hand, on the day of delivery; or
- 14.2.3 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.