

CHERRYPICKER SHOP LTD: STANDARD TERMS AND CONDITIONS OF SALE

1. **Definitions**

In these conditions: -

"Cherrypicker Shop Ltd" means Cherrypicker Shop Limited and includes successors, assignees or personal representatives.

"The buyer" means the person, firm or company purchasing goods from CHERRYPICKER SHOP LTD:

"The goods" mean the goods which CHERRYPICKER SHOP LTD is to supply to the buyer in accordance with these conditions.

2. **Basis of sale**

- 2.1. CHERRYPICKER SHOP LTD contracts on these conditions only, and acceptance by CHERRYPICKER SHOP LTD of any order from a buyer shall be upon these conditions and, subject to clause 2.2. below, shall override any other terms and conditions stipulated or incorporated by the buyer in its order or in any negotiation. Variations or representations will only be binding on CHERRYPICKER SHOP LTD if confirmed in writing by a director of CHERRYPICKER SHOP LTD.
- 2.2. Where these conditions shall be varied by or come into conflict with any conditions imposed by a Letter of Appointment for a dealer, agent or hire company the conditions of the Letter of Appointment shall prevail.

3. **The Goods**

- 3.1. All descriptions and illustrations contained in any catalogue, price list and advertisement provided by CHERRYPICKER SHOP LTD or otherwise communicated to the Buyer are intended to present merely a general idea of the Goods described and shall not form a part of the contract.
- 3.2. CHERRYPICKER SHOP LTD operates a policy of continuous improvement and hence reserves the right to make substitutions and modifications to the specifications of the Goods, provide that this does not materially affect their overall performance.

4. **Prices and Quotations**

- 4.1. Subject to 4.2. below, prices payable for goods are those listed in CHERRYPICKER SHOP LTD's price list at the time that CHERRYPICKER SHOP LTD accepts the Buyers order or those quoted where CHERRYPICKER SHOP LTD accept an order which has been placed in response to a valid quotation.
- 4.2. If the buyer required deliveries more than thirty days after the date of order, the price in effect at the date of delivery shall be payable save where CHERRYPICKER SHOP LTD have accepted an order based on a valid quotation.
- 4.3. Any quotation issued by CHERRYPICKER SHOP LTD shall be valid for thirty days. Thereafter CHERRYPICKER SHOP LTD reserves the right to vary or cancel its position.
- 4.4. Where price lists are published, the price list may change from time to time and CHERRYPICKER SHOP LTD shall use reasonable endeavours to notify a buyer of any change.
- 4.5. All prices quoted are exclusive of Value Added Tax at the appropriate rate and delivery charges unless stated otherwise.

5. **Cancellation**

Without prejudice to the right of cancellation contained in 4.3. the Buyer may not cancel the contract without written consent of CHERRYPICKER SHOP LTD. If such consent is given, it is made on the express condition that the Buyer shall indemnify CHERRYPICKER SHOP LTD against all loss, damage, claims or actions arising out of such cancellations unless otherwise agreed in writing.

6. **Payment**

- 6.1. Payment is due on or prior to delivery or despatch of the goods unless CHERRYPICKER SHOP LTD agrees to alternative arrangements.
- 6.2. In the case of overdue payment; without prejudice to any of CHERRYPICKER SHOP LTD 's other rights, CHERRYPICKER SHOP LTD may: -
 - A) Charge interest to the buyer on the amount overdue calculated on a daily basis at the rate of 5% per annum above the base rate of NatWest Bank from time to time in force.
 - B) Suspend further deliveries of goods to the Buyer.
 - C) Suspend the Buyers account (if any) from further trading. When the Buyer's account has been cleared in full any future trading with CHERRYPICKER SHOP LTD will be done on an item-by-item basis until CHERRYPICKER SHOP LTD is satisfied that the buyer is willing and able to comply with these conditions.
 - D) Charge to the buyer all costs and expenses incurred by CHERRYPICKER SHOP LTD in attempting to obtain payment from the buyer.
- 6.3. Payment on or before the due date is of the essence of the contract and is a condition precedent for any future deliveries to the Buyer or to its order.
- 6.4. Where CHERRYPICKER SHOP LTD has agreed that the goods may be paid for by instalments any failure by the Buyer to pay an instalment when due shall entitle CHERRYPICKER SHOP LTD to treat such failure as the Buyers repudiation of the whole contract without prejudice to its other rights to recover damages for that breach.
- 6.5. All payments due from the Buyer under these conditions shall be made without any set-off, deduction or deferment of any nature.
- 6.6. Notwithstanding the provisions of clause 6. 1. upon the occurrence of any event under clause 13.1. any period of credit allowed for the Buyer on any contract with CHERRYPICKER SHOP LTD, whenever made, shall cease to apply and payment for all goods shall be or be deemed to have become due forthwith on delivery.

7. **Delivery**

- 7.1. Any time or date specified for delivery is given in good faith as an estimate only and CHERRYPICKER SHOP LTD shall not be liable for any direct or indirect loss, damage or expense howsoever arising from any delay in delivery.
- 7.2. CHERRYPICKER SHOP LTD may deliver by instalments and may treat each delivery as a separate contract.
- 7.3. The buyer shall accept deliveries of Goods at the address stated on the purchase order when offered and shall be liable for any additional costs suffered by CHERRYPICKER SHOP LTD in the event of wrongful refusal or delay in accepting delivery, in failing to provide premises, services or information for CHERRYPICKER SHOP LTD to effect safe delivery, or in the event of failure deliveries being withheld through the Buyers non-payment. Where CHERRYPICKER SHOP LTD delivers the goods to the Buyers premises the Buyer shall provide sufficient labour to unload the goods.
- 7.4. The Buyer shall examine the goods immediately after delivery and within three days thereof the Buyer shall notify CHERRYPICKER SHOP LTD in writing of any defects in the goods. The Buyer shall permit inspection of all such defective goods by CHERRYPICKER SHOP LTD. If CHERRYPICKER SHOP LTD does not receive notice in accordance with this clause it shall be discharged from all responsibility and liability in respect of all defects which have occurred during transportation.

8. **Retention of Title**

- 8.1. Property in the goods shall not pass to the Buyer until the Buyer has paid to CHERRYPICKER SHOP LTD all sums owed (under this or any other contract) by the buyer to CHERRYPICKER SHOP LTD. The Goods shall be at the risk of the Buyer on delivery.
- 8.2. The buyer will indemnify CHERRYPICKER SHOP LTD against any loss or deterioration in the goods while they remain the property of CHERRYPICKER SHOP LTD and will keep the Goods properly insured for not less than their contract value.
- 8.3. Without prejudice to any other rights CHERRYPICKER SHOP LTD may have, CHERRYPICKER SHOP LTD may recover the goods and the Buyer agrees that CHERRYPICKER SHOP LTD, its agents or employees may enter on the Buyers premises and remove the Goods at any time, if any of the events in clause 13.1.A) - F) occur and property in the Goods has not passed to the Buyer.
- 8.4. Until property in the Goods has passed to the Buyer, the Buyer: -
 - A) Shall not pledge the Goods or documents of title thereon or allow any lien to arise thereon.
 - B) Shall store the Goods on its premises separately from its own Goods and those of other persons and in a manner, which makes them readily identifiable as goods of CHERRYPICKER SHOP LTD.
 - C) Shall not deal with or dispose of the Goods or documents of title thereto or any interest therein (other than by sale to an independent purchaser buying entirely in the ordinary course of Buyers business).
 - D) Hold itself out as CHERRYPICKER SHOP LTD 's agent in respect of the Goods.
- 8.5. If payment of any sum is overdue CHERRYPICKER SHOP LTD shall have the right to commence proceedings against the Buyer for the price, notwithstanding that property in the Goods has not yet passed to the Buyer.

9. **Warranties**

- 9.1. CHERRYPICKER SHOP LTD hereby warrants that the Goods are free from any material defect in workmanship and materials and correspond with any agreed written specification but CHERRYPICKER SHOP LTD 's liabilities under this warranty shall be limited to making available free of charge the labour and materials required to make good any such defects or (at CHERRYPICKER SHOP LTD 's option) replacing defective Goods. CHERRYPICKER SHOP LTD 's liability under this warranty is also conditional upon: -
 - A) Written notice of the defect being given to CHERRYPICKER SHOP LTD within fourteen days after discovery of the same and in any event within twelve months after either the date of delivery or the date on which the Buyer was informed that the goods are ready for delivery whichever first occurs: and
 - B) The Goods having been properly stored and used by the Buyer prior to the defect occurring, and
 - C) The Goods not having been subject to any abnormal or improper use or modification; and
 - D) The Goods having been returned at CHERRYPICKER SHOP LTD 's request.

- 9.2. The warranty contained in 9.1. above is given in lieu of and shall be deemed to exclude all other warranties and conditions whether express or implied arising by common law, statute or otherwise other than that relating to title to the Goods.
- 9.3. All Goods are sold on the basis that the Buyer is neither a consumer nor deals as a consumer within the meaning of the Unfair Contract Terms Act 1977 and that the Buyer has satisfied itself as to the suitability of the Goods for use of resale in accordance with its own specialised knowledge and skill.
- 10. Limitation of Liability and Buyer's Obligation**
- 10.1. Save as provided under the Unfair Contract Terms Act 1977 CHERRYPICKER SHOP LTD 's liability for any loss, injury or damage of any nature whatsoever, whether direct or consequential, arising out of or in connection with any Goods supplied by CHERRYPICKER SHOP LTD or resulting from the use thereof and whether arising out of a breach of implied or express term warranty or condition shall not exceed the cost to the Buyer or replacing the Goods provided that CHERRYPICKER SHOP LTD is afforded a reasonable opportunity of replacing or repairing the Goods
- 10.2. CHERRYPICKER SHOP LTD shall not be responsible for any loss, injury or damage of any nature whatsoever caused by
- A) The Buyers failure to use the Goods in accordance with safety requirements.
- B) The Buyers failure to demonstrate the Goods properly to any end user.
- C) Any other negligent conduct on the part of the Buyer.
- 11. Indemnity**
- The Buyer agrees to indemnify CHERRYPICKER SHOP LTD against all claims relating to the Goods sold to the Buyer in respect of any injury, loss, damage or expense sustained by any third party save only in respect of death or personal injury caused by the negligence of CHERRYPICKER SHOP LTD or any of its employees or agents.
- 12. Force Majeure**
- CHERRYPICKER SHOP LTD shall bear no liability for loss, damage or delay howsoever arising caused in circumstances outside its control including (but not limited to) Acts of God, War, Strike, Civil Commotion, work to rule or go slow, over time bans, Lockouts, fire, flood, drought or inability to produce materials or articles except at increased prices due to any of the foregoing causes (and in these circumstances may suspend or cancel the whole or part of any delivery). CHERRYPICKER SHOP LTD shall endeavour to notify the Buyer as quickly as reasonably possible if a force majeure ever occurs.
- 13. Default**
- 13.1. Without prejudice to any other rights it may have and without prejudice to the provisions of clause 8. above, CHERRYPICKER SHOP LTD may by notice to the Buyer, terminate any contract between the Buyer and supplier forthwith and/or immediately recover from the Buyer all sums due from the Buyer under any contract with CHERRYPICKER SHOP LTD (notwithstanding any period of credit which may have been allowed) together with any accrued interest and other legitimate charges and any loss caused to CHERRYPICKER SHOP LTD as a result of any termination if:
- A) Any payment due by the buyer to CHERRYPICKER SHOP LTD is overdue in whole or in part: or
- B) The Buyer shall commit any breach of any of the terms of any contract with CHERRYPICKER SHOP LTD provided that if the breach is remediable CHERRYPICKER SHOP LTD has given to the Buyer notice of such breach which has not been remedied within seven days there: or
- C) A resolution is passed or a court order is made resolving or ordering the Buyer to be placed in to liquidation or ordering that an administrator be appointed over all or any of the assets of the Buyer: or
- D) A receiver or administrative receiver is appointed over all or any of the assets of the Buyer: or
- E) The Buyer (being an individual) has a petition in bankruptcy entered against him.: or
- F) The Buyer ceases or threatens to cease to carry on trading.
- 13.2. Where the Buyer is situated outside of the United Kingdom CHERRYPICKER SHOP LTD shall be entitled to terminate the contract and/or recover all sums due pursuant to clause 13.1. if any event occurs which is analogous to the events described in 13.1.C) to 13.1.E) inclusive.
- 14. Disputes and Arbitration**
- 14.1. If at any time any question, dispute or difference whatsoever shall arise between CHERRYPICKER SHOP LTD and the Buyer in relating to or in connection with the contract, either of them shall give to the other notice in writing that it requires such question, dispute or difference to be referred to the arbitration of a person to be agreed upon or failing agreement within 14 days after the date of such notice of some person to be appointed on the application of either party by the president for the time being of the Law Society pursuant to the Arbitration Acts 1950 to 1996.
- 14.2. In any dispute between CHERRYPICKER SHOP LTD and the Buyer in relation to sums due by the Buyer to CHERRYPICKER SHOP LTD, a certificate from CHERRYPICKER SHOP LTD that a specified sum is due from the Buyer shall be conclusive evidence (and in Scotland sufficient evidence) of that fact.
- 15. Intellectual Property Rights**
- 15.1. The Goods are sold and/or supplied subject to the rights of any person whether in respect of any patent, trade mark, registered design, copyright, confidential disclosure or otherwise howsoever to prevent or restrict the sale or use of the Goods in any part of the world; the Buyer will in this respect accept title to the Goods as CHERRYPICKER SHOP LTD may have.
- 15.2. Where the Goods have been manufactured according to designs or configurations all processes specified or supplied by the Buyer the Buyer represents and warrants to CHERRYPICKER SHOP LTD that the Goods so designed or configured and processes so used do not infringe the rights of any person whether in respect of any patent, trademark, registered design, copyright, confidential disclosure or otherwise howsoever to prevent or restrict the sale or use of the Goods or materials or the use of such processes in any part of the world. The Buyer shall indemnify CHERRYPICKER SHOP LTD against all actions suits claims demands losses charges costs and expenses which CHERRYPICKER SHOP LTD may suffer or incur in connection with any claim by third party alleging facts which, if established, would indicate a breach of the representations and warranties contained in this paragraph 15.2.
- 16. Waiver**
- No waiver by CHERRYPICKER SHOP LTD of any breach of contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision of the contract.
- 17. Invalidity of Contractual Term**
- The parties agree to be bound by these conditions, which they consider to be reasonable. If any clause of these conditions is held by any court or competent authority as invalid or unforeseeable in whole or in part the validity of the remainder of these conditions and of the remainder of the provisions in question shall not affect Cherrypicker Shop Ltd thereby.
- 18. Assignment**
- The Buyer shall not assign or transfer any contract to which these conditions apply nor the benefit thereof to any person whatsoever.
- 19. Lien**
- Without prejudice to any other remedies CHERRYPICKER SHOP LTD shall in the event of default by the Buyer or any of the situations set out in clause 13.1. arising have a general lien on all Goods and property in its possession (whether worked on or not) and belonging to the Buyer in respect of any sums due from the Buyer and shall be entitled after giving 14 days written notice to the Buyer to dispose of such Goods or property as it thinks fit.
- 20. Proper Law Of The Contract**
- The construction, validity and performance of any contract shall be governed in all respects by the law of England and the Buyer shall at all times provide CHERRYPICKER SHOP LTD with an address in England or Wales where it will accept service of proceedings.
- 21. Notices**
- Any notice required to be given under these conditions may be sent by pre-paid first class post or email to the principal place of business or registered office of the party to whom the notice is being sent. If sent by post, it shall be deemed to have been served (until the contrary is proved) on the second working day after the date of posting.