

# Conditions of Sale

## 1. Interpretation

- 1.1 In these Conditions, „Buyer“ means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller. „Goods“ means the goods (including any instalment of the goods or any parts of them) which the Seller is to supply in accordance with these Conditions. „Seller“ means Protec The Cap Company Limited, Princes Park, Princesway North, Team Valley, Gateshead, Tyne & Wear, NE11 0NF. „Conditions“ means the standard terms and conditions of sale set out in this document. „Contract“ means the contract for the purchase and sale of the Goods
- 1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

## 2. Basis of the sale

- 2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusions of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.
- 2.2 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.
- 2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods is followed or acted upon entirely at the Buyer's own risk.
- 2.5 Any typographical or other error or omission in any sales literature, quotation, invoice at other document issued by the Seller shall be subject to correction without any liability on its part.

## 3. Orders and specifications

- 3.1 No order shall be deemed to be accepted by the Seller unless and until confirmed in writing.
- 3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).
- 3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a design or specification submitted by the Buyer, the Buyer shall indemnify the Seller against all losses, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's design or specification.
- 3.5 The Seller reserves the right to make any changes in the specification of the Goods to conform with any applicable safety or other requirements or, where the Goods are to be supplied to the Seller's specification which do not materially affect their quality or performance.
- 3.6 No Contract may be cancelled by the Buyer except with the written agreement of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

## 4. Samples

- 4.1 If the Seller supplies samples to the Buyer then the relevant Goods supplied by the Seller will be based upon such samples as regards colour and size although colour shall be subject to reasonable variation without liability on the part of the Seller. Any variation subsequently required by the Buyer shall be the subject of negotiation between the parties.

## 5. Price of the goods

- 5.1 The price of the Goods shall be the Seller's quoted price. All prices quoted are valid for the stipulated quantity (and no other) and for 30 days only or until earlier withdrawal by the Seller or acceptance by the Buyer. After such period of 30 days confirmation of quoted prices and delivery times or a further quotation must be optioned from the Seller.
- 5.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller, any change in delivery dates, quantities or specification for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 5.3 The price is exclusive of any applicable value added tax, for which the Buyer shall be additionally liable.

## 6. Terms of payment

- 6.1 The Seller shall be entitled to require payment of the price of the Goods with the Buyer's order 6.2 Subject to clause 6.1:
- 6.2.1 The Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has tendered delivery of the Goods;
- 6.2.2 the buyer shall pay the price of the goods (without deduction or set off) 30 days from the date of the seller's invoice.
- 6.3 The time of payment of the price shall be of the essence of the Contract.
- 6.4 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries to the Buyer and/or charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 3 per cent per annum above Lloyd's Bank Plc base rate from time to time, until payment in full is made.

## 7. Tooling

- 7.1 The property in any tooling charged to the Buyer shall pass to the Buyer when the Seller has received in cash or cleared funds the full sum due in respect of such tooling
- 7.2 Despite the fact that the property in any tooling may have passed to the Buyer, the Seller shall be entitled to retain such tooling for the period of one year from the date the Buyer makes the final payment in respect of it.
- 7.3 Thereafter the Buyer shall be entitled to collect that tooling but the Seller shall have no obligation to deliver it to the Buyer other than making it available for collection.
- 7.4 Notwithstanding clause 7.2 risk in the tooling shall pass to the Buyer as soon as the tooling has been manufactured and the Seller shall have no liability in respect of loss or damage to the tooling whilst in the Seller's possession save to the extent that the same results from the Seller's negligence
- 7.5 The Seller shall have no liability whatsoever in respect of tooling (including as to defects in manufacture) once it has been collected by the Buyer.
- 7.6 Any dimensions stipulated by the Buyer for the Goods shall be observed as nearly as possible but the Seller shall not be liable for any alteration in, or deviation from, such dimensions which do not adversely affect the Goods to a material extent having regard to the use notified to the Seller for which they are intended prior to the date of the contract under which the Seller is to manufacture the tooling therefor.
- 7.7 The Seller shall be entitled to require payment of the price of any tooling charged to the Buyer with the Buyer's order.
- 7.8 Subject to clause 7.6 the Buyer shall pay one third of the price of any tooling charged to the Buyer at the time of order.
- 7.9 The Seller shall be entitled to invoice the Buyer for the remainder of the price of any such tooling as follows:
- 7.8.1 one third upon the Seller sending samples produced using that tooling to the Buyer;
- 7.8.2 one third 30 days thereafter The provisions of clauses 6.2.2, 6.3 and 6.4 shall apply to the payment of such invoices.

## 8. Delivery

- 8.1 Unless otherwise agreed Goods will be sent to the Buyer by a three day delivery service chosen by the Seller in which case delivery of the Goods shall be effected by the Seller delivering them to the carrier. Thereafter transport of such Goods shall be subject to the carrier's conditions.
- 8.2 The Buyer shall be responsible for any delivery costs in respect of Goods, and where such costs are initially paid by the Seller the Seller shall forthwith be entitled to render an invoice in respect of such costs and the provisions of clauses 6.2.2, 6.3 and 6.4 shall apply to the payment of such invoice. Otherwise delivery costs shall be borne by the Seller.
- 8.3 If it is agreed that the Goods shall be delivered by a method other than that referred to in clause 8.1 then delivery shall be effected: 8.3.1 where the Goods are to be collected by the Buyer from the Seller's premises, upon the Seller notifying the Buyer that the Goods are ready for collection; 8.3.2 where the Goods are delivered by the Seller, by the Seller delivering the Goods to the address for delivery; 8.3.3 where the Goods are to be transported by a third party, upon collection by or delivery to that third party of the Goods.

- 8.4 Any periods of time or dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever
- 8.5 The Seller reserves the right to deliver up to 10 per cent more or 10 per cent less than the quantity ordered with an appropriate adjustment in the price and the quantity so delivered shall be deemed to be the quantity ordered.
- 8.6 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and, in respect of any one or more instalment, any failure by the Seller to deliver or any claim by the Buyer shall not entitle the Buyer to treat the Contract as a whole as repudiated. The total quantity of Goods ordered by the Buyer must be taken by the Buyer within 12 months of delivery of the first instalment.
- 8.7 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 8.8 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
- 8.8.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 8.8.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
- 8.9 Where, upon delivery of the Goods, the Buyer discovers that it has incorrectly ordered those Goods, a handling charge will be charged if the Seller agrees to accept return of those Goods. Without prejudice to the right of the Seller to refuse to accept return of Goods in any case, the Seller will not accept return of Goods if more than 1 month has elapsed since they were delivered to the Buyer.

## 9. Risk and property

- 9.1 Goods supplied by the Seller shall be at the Buyer's risk immediately on delivery and the Buyer shall insure accordingly.
- 9.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, title in all Goods supplied or sold by the Seller shall be retained by the Seller until all sums due on any account whatsoever from the Buyer to the Seller have been received by the Seller either in cash or cleared funds.
- 9.3 Until such time as the property in the Goods passes to the Buyer, the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods

## 10. Warranties and liability

- 10.1 Seller warrants that the Goods shall at the time of delivery be free from defects in materials and workmanship.
- 10.1.1 If any Goods do not conform to that warranty the Seller shall at its option:
- 10.1.2 replace the Goods found not to conform to the above warranty;
- 10.1.2 take back the Goods found not to conform to the warranty and refund the appropriate part of the purchase price, provided that the liability of the Seller shall in no event exceed the purchase price of the Goods. Any one of the above options shall constitute an entire discharge of Seller's liability under this warranty.
- 10.2 The above warranty is given by the Seller subject to the following conditions:
- 10.2.1 The Seller shall be under no liability in respect of any defect arising from any drawing, design or specifications supplied by the Buyer;
- 10.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;
- 10.2.3 the Seller shall be under no liability under the above warranty (or any other warranty, conditions or guarantee) if the total price for the Goods has not been paid by the due date for payment;
- 10.2.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.
- 10.2.5 the Buyer notifying the Seller of the defects within 10 days of delivery of the Goods
- 10.3 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 10.4 Where the Goods are sold under a consumer transaction, the statutory rights of the Buyer are not affected by these Conditions.
- 10.5 Any claim by the Buyer under the warranty set out in clause 10.1 shall be notified to the Seller within 30 days from the date of delivery. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract. The Seller shall have no liability whatsoever in respect of breakage's or resultant defects occurring after delivery.
- 10.6 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reasons of any representations, or any implied warranty, conditions or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensations whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connections with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these conditions.
- 10.7 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control („Force Majeure“) The time for performance shall be extended for the period of Force Majeure but the Seller may, at any time during such period, terminate this Contract by immediate notice, without liability to the Buyer.
- 10.8 The Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim brought by a third party in respect of loss, injury or damage sustained after receipt of the Goods by the Buyer.

## 11. Insolvency of buyer

- 11.1 This clause applies if the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or an encumbrance takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or the Buyer ceases, or threatens to cease, to carry on business; or the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 11.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 12. Export Terms

- 12.1 Where the Goods are supplied for export from the United Kingdom the provisions of this clause shall (subject to) any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provisions of these Conditions.
- 12.2 The Buyer shall be responsible for complying with any legislation or regulations governing the export of the Goods from the United Kingdom (including, if necessary, satisfying Customs and Excise that value added tax is not payable on the price) and the importation of the Goods into the country of destinations and for the payment of any duties thereon.
- 12.3 Unless otherwise agreed transport of the Goods to the Buyer from the Seller's premises shall be arranged by the Seller at the Buyer's cost. Where such cost is initially paid by the Seller, the Seller shall forthwith be entitled to render an invoice in respect of such costs and the provisions of clauses 6.2.2, 6.3 and 6.4 shall apply to) the payment of such invoice. Delivery of the Goods shall be effected when they are collected by the carrier from the Seller's premises. Thereafter transport of such Goods shall be subject to) the carrier's conditions.

## 13. General

- 13.1 The Seller is a member of the group of companies whose holding company is PROTEC GMBH & Co. KG, and accordingly the Seller may perform any of its obligations or exercise any of its rights thereunder by itself or through an other member of its group, provided that any act or omission of any such other member shall be deemed to be the act of omissions of the Seller.
- 13.2 The Contract shall be governed by the laws of England. Any dispute shall be referred to the exclusive jurisdiction of the English Courts.