

Phineas Products Ltd
CONDITIONS OF SALE

In these Terms and Conditions:-

- "Company" Shall mean Phineas Products Limited
- "Customer" Shall mean the person, firm or company from whom orders are received
- "Goods" Shall mean the goods (including any instalment or any parts for the goods) which the Company is to supply

1. General

All Quotations are made and all orders are accepted subject to the following conditions. No order submitted by the Customer shall be deemed to be accepted by the Company unless and until confirmed in writing by the Company's authorised representative. All conditions of the Customer and other terms, conditions and warranties whatsoever are excluded from the contract. The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in writing. In entering into a contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed. Clerical errors may be corrected by the Company at any time without any liability on the part of the Company.

No variation of these conditions shall be effective unless made in writing and signed by a Director of the Company.

2. Specifications

If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the Customer:-

- (a) The Customer shall be responsible for ensuring the accuracy of the specification and for giving all necessary information within a sufficient time to enable the Company to perform the contract;
- (b) The Customer shall indemnify the Company against all loss, damages, costs and expenses incurred by the Company in connection with a claim for infringement of a patent copyright design trademark or other intellectual property rights of any other person which results from the Company's use of the Customer's specification;
- (c) The Company reserves the right to make any changes in the specification which are required to conform with any applicable safety or other statutory or EC requirements.

3. Variations

- (a) If the Customer wishes to make any alteration or variation to the specification submitted to the Company and/or any order accepted by the Company it shall notify the Company in writing of the terms thereof. Such alteration or variation shall only be accepted by the Company if it has no adverse

affect upon the estimated delivery date and/or the price in which case the Company shall confirm its acceptance of the alteration or variation in writing to the Customer

(b) If the Customer requests an alteration or variation which has an adverse affect upon the estimated delivery date and/or the price the Company shall not be obliged to accept the alteration or variation unless and until the Customer agrees in writing the consequent amendment to the estimated delivery date and/or price (as the case may be)

4. Price

All prices are, unless otherwise stated, quoted exclusive of VAT, delivery and insurance. The Company reserves the right to vary the price of goods if subsequent to the date of quotation there is any increase or decrease in the total cost of the goods to the Company which are beyond the Company's control. In such an event the Company must give written notice to the Customer before delivery. If such alteration increases the price the Customer may cancel the relevant order by notice given to the Company within 14 days.

5. Samples

The Company may at its discretion submit a sample to the Customer for approval before executing the bulk of the order which will only be commenced on receipt of such approval in writing. All goods in respect of which a sample is so approved shall be deemed to have been satisfactorily tested by the Customer and to be suitable for the purposes for which the Customer requires them.

6. Warranties

The Company warrants that the goods shall conform to any specification agreed by the Company in writing and that they will be of satisfactory quality. The liability of the Company for breach of such warranty or under any claim in respect of any defect in the goods shall be limited to replacement of the defective goods or at the Company's option to reimbursement of the price paid by the Customer for those goods. The Customer shall not be entitled to make any claim in respect of any such defect unless the claim is notified to the Company in writing within 3 months from delivery of the goods.

The Company shall not be liable under this warranty:-

(a) Where the defect results from any drawings, designs or specification supplied by the Customer.

(b) Where the defect results from willful damage, negligence, abnormal working conditions or usage, fair wear and tear, failure to follow the Company's instructions (whether oral or in writing), misuse, alteration or repair of the Goods without the Company's approval; and

(c) Where the goods or any component parts thereof are the subject of a separate guarantee given by a Third Party and the benefit thereof is hereby assigned by the Company to the Customer.

(d) Unless the total price for the Goods shall have been paid by the due date for payment.

The Customer acknowledges that it has not notified to the Company any particular purpose for which the goods are required.

It is the responsibility of the Customer to ensure that the goods supplied are fit for purpose to display the customers own products. The company will endeavour to suggest the best display product available but cannot foresee changes to the customer's product specification.

Subject as expressly provided in these conditions and except where the Goods are sold to a person dealing as a consumer (as defined in the Unfair Contract Terms Act 1977) all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

The Supplier shall not be liable to the Reseller for any consequential special or indirect loss or damage (whether for loss of profit or contracts or otherwise and whether arising from negligence breach of contract or howsoever) even if the Supplier has been advised of the possibility of such damages.

Except in respect of death or personal injury resulting from the Supplier's negligence for which no limit applies the Supplier's total liability for all damages losses and causes of action (whether in contract tort (including negligence) or otherwise) shall not exceed the price of the Goods.

7. Delivery

Delivery of the goods shall be made by the Customer collecting the Goods at the Company's premises at any time after the Company shall have notified the Customer that the Goods are ready for collection, or, if some other place for delivery is agreed by the Company, by the Company delivering the Goods to that place. Where the Company agrees to deliver the Goods otherwise than to the Company's premises the Customer shall be liable to pay the Company's charges for transport packaging and insurance.

Time for delivery is given as accurately as possible but is not guaranteed. Time shall not be of the essence in respect of any delivery dates given, The Customer shall have no right to damages or to cancel the order for failure for any cause to meet any delivery time stated. Where an order calls for a number of items the Company reserves the right to deliver all or any number of items as soon as they are available and the Customer shall honour all invoices presented in respect of such deliveries in accordance with the payment terms.

If the Customer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery then, without prejudice to any other right or remedy available to the Company, the Company may:-

- (a) Store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; and/or
- (b) Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for any excess over, or charge the Customer for any shortfall below, the price under the contract.

If the Company fails to deliver the Goods for any reason beyond the Company's reasonable control or the Company's fault and the Company is accordingly liable to the Customer then its liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods

8. Risk

Risk in the goods shall pass to the Customer on delivery or in the case of Goods to be collected from the Company's premises at the time when the Company notifies the Customer that the Goods are available for collection.

9. Inspection and Acceptance

Upon acceptance of the Goods the Customer shall be deemed to acknowledge that the Goods so accepted conform in all respects with the specification of the Goods ordered. If the Customer desires to inspect the Goods prior to delivery such inspection must be made at the Company's premises and notification of this requirement must be given in writing at the time of placing the order. If upon inspection the Goods are approved by or on behalf of the Customer such approval shall constitute acceptance of the Goods. If no such inspection is made the Customer shall be deemed to have accepted the Goods when they are delivered to him unless the Customer gives written notification to the contrary to the Company within 3 working days after delivery.

10. Specification

All drawings, descriptive and forwarding specifications and particulars of the Goods submitted are approximate only. The descriptions and illustrations contained in the catalogues, price lists and other advertising of the Company are intended merely to present a general idea of the Goods described therein and shall not form part of the contract. Whilst every effort is made to ensure that the latest specification is available, the Company reserves the right to incorporate new features and to supply products which may not be strictly in accordance with the specification agreed upon, provided that any changes in specification shall not materially prejudice the performance of the Goods.

11. Quantities

The quantity of the Goods ordered shall be subject to fluctuation of plus and minus 5%. In the case of such a fluctuation the price will be appropriately adjusted. The copy of the delivery note must be signed on receipt of the Goods by the Customer or his representative at the Customer's premises, and the Company will not accept responsibility for any complaints or shortages unless notified within 48 hours.

12. Intellectual Property

The Customer acknowledges that all and any patent, copyright, design (registered or unregistered), trademark, know-how and similar intellectual property rights ("Intellectual Property Rights") in the Goods and any designs, drawings, specifications, instructions, prototypes, samples or other items supplied by the Company to the Customer upon these conditions are and shall remain the sole property of the Company. The Company grants to the Customer a licence of the Intellectual Property Rights in order that it may use the Goods, designs, prototypes, samples or other items for the purpose(s) for which they were supplied. The Customer shall not assign or transfer such licence to any third party without the prior written consent of the Company. The Customer shall indemnify the Company against any loss, damages, costs and expenses incurred by the Company in connection with any breach of this condition.

13. Confidentiality

(a) Subject to clause 13(b) below the content of any designs, drawings, specifications, instructions, prototypes, samples or other items supplied by the Company to the Customer shall remain strictly confidential and the Customer shall not divulge any of the content thereof to any party without the prior written consent of the Company.

(b) Clause 13(a) shall not apply to information that is in the public domain as of the date of delivery of the Goods nor shall clause 13(a) apply to information that would unavoidably enter the public domain by virtue only of the Customer using the Goods for the purpose for which they were supplied.

14. Invoicing and Payment

The Company shall be entitled to require payment for the Goods in full upon acceptance of the Customer's order.

The Company may at its sole discretion provide the Customer with credit terms upon completion of the Company's credit facility request form to the satisfaction of the Company.

If in the opinion of the Company the credit-worthiness of the Customer shall have deteriorated at any time the Company may require full or partial payment of:-

(a) the price of Goods which are the subject of an order which has already been accepted by the Company prior to delivery of the same; or

(b) the price of Goods which are the subject of an order which has not yet been accepted by the Company as a condition of the Company's acceptance of the same

as the case may be

The Company shall be entitled to invoice the Customer for the price of the Goods on or at any time after delivery of the Goods unless the Goods are to be collected by the Customer or if the Customer wrongfully fails to take delivery of the Goods in which event the Company shall be entitled to raise its invoice on tendering delivery of the Goods.

If the Company has allowed the Customer credit terms whether in accordance with this clause 14 or otherwise payment for the Goods must be made in full without any set-off or deduction within 30 days of the end of the calendar month in which the Company's invoice is rendered.

If the Customer fails to pay the Company's invoice on or before the due date the Company may cancel the contract for the sale of the Goods immediately by written notice and/or suspend any further deliveries to the Customer and charge interest both before and after judgement on all monies outstanding for any period at a rate of 4% over the base rate of Barclays Bank Plc from time to time.

15. Sterling Protection/Payment in Euros

The Company reserves the right to vary the price so that it accords with the rate of exchange prevailing at the time of the Company's invoice.

If the Euro is adopted as the sole lawful currency of the United Kingdom:-

(a) any accrued payment obligation of any part expressed in sterling shall be converted into a Euro denominated payment obligation at the rate specified in and otherwise in accordance with the relevant EMU legislation; and

(b) any sum which becomes payable from one party to the other shall be paid in Euros at the appropriate date.

16. Returns

Goods can only be returned within 3 months of receipt and if written authorisation has been received from the Company. The Goods must be in their original cartons. Incomplete cartons will not be accepted.

17. Title

Notwithstanding delivery and the passing of risk in the Goods, property in the Goods shall not pass to the Customer until:-

(a) The Customer shall have paid the price of the Goods including VAT in full in cash or cleared funds; and

(b) No other sums whatever shall be due from the Customer to the Company.
Until such time as property in the Goods passes to the Customer:-

(a) The Customer shall hold the Goods and each of them as the Company's fiduciary agent and bailee;

(b) The Customer shall keep the Goods (at no cost to the Company) separate from those of the Customer and third parties and properly stored protected and identified as the Company's property;

(c) The Customer shall insure and keep insured the Goods to their full price against "all risks" to the reasonable satisfaction of the Company until the date that property in the Goods passes from the Company;

(d) The Company shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Company; and

(e) The Company shall be entitled at any time to require the Customer to deliver up the Goods to the Company. The Customer grants to the Company an irrevocable licence to enter any vehicles or premises owned, occupied or controlled by the Customer where the Goods are situated and repossess the Goods.

18. Cancellation

No Order (which the Company has accepted) may be cancelled by the Customer except with the Company's agreement in writing and on the terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including design and development costs), damages and expenses incurred by the Company as a result of cancellation

If:-

(a) The Customer fails to make any payment to the Company for the Goods on the due date;

(b) The Customer enters into any voluntary arrangement with creditors or becomes subject to an administration order, or goes into liquidation or passes any resolution for winding-up or becomes bankrupt or if an encumbrancer takes possession or a receiver is appointed over any asset or property of the Customer;

(c) The Customer ceases or threatens to cease to carry on business;

- (d) The Customer commits a continuing or material breach of any of these conditions and, in the case of such a breach which is capable of remedy, fails to remedy the same within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied; or
- (e) The Company reasonably apprehends that any of the events mentioned is about to occur and notifies the Customer accordingly then
- without prejudice to any other right available to the Company:-
- (i) The Company shall be entitled to cancel the contract for the sale of the Goods immediately by written notice and/or suspend any further deliveries to the Customer.
- (ii) The price for any Goods delivered but not paid for shall become immediately due and payable notwithstanding any arrangement to the contrary.
- (iii) The power of sale given to the Customer in clause 17 of these Terms and Conditions shall be automatically revoked and the Customer shall not be entitled to sell the Goods.

19. Force Majeure

The Company shall not be liable to the Customer for failure to deliver the goods or for any delay in delivery of the Goods or for any damage to or defect in the Goods where such failure is wholly or mainly due to any cause outside the Company's reasonable control, including but not limited to shortages of raw materials, strikes or lockouts, riots and civil commotion or acts of God, fire, theft, war and embargo.

20. Law and Jurisdiction

These conditions are governed by English Law. Any disputes arising out of these conditions shall be submitted to the exclusive jurisdiction of the English Courts.

21. General

- (a) The Company shall not be responsible for any delays in performing or for any failure to perform any of its obligations hereunder if the delay or failure was due to any cause beyond the Company's reasonable control
- (b) If any provisions of these conditions is declared by any judicial or any other competent authority to be void, voidable, illegal or otherwise unenforceable or indications to that effect are received by either party from any competent authority then that provision shall be limited to eliminated to the minimum extent necessary so these conditions shall otherwise remain in full force and effect and enforceable
- (c) Each party acknowledges that these conditions contain the whole agreement between the parties and that the Customer has not relied upon any oral or written representation made to it by the Company or its employees or agents
- (d) Any notice or other information required or permitted to be given by either party under these conditions shall be deemed to have been validly given if served personally upon that party or is sent by first class pre-paid post to the last known address of that party. If sent by first class pre-paid post the notice shall be deemed to have been received 2 working days after the date of posting. If any

such notice or other information is given by means of facsimile, telex or other immediate form of communication, then notice shall be deemed to have been received on the same day, provided it is sent within normal working hours

- (e) In the event of any dispute arising out of or in connection with these conditions the parties hereby agree:-
- (i) to refer the dispute to ADR Group Europe Limited (or such other organisation experienced in the process of Alternative Dispute Resolution) for the purpose of Alternative Dispute Resolution in order to resolve the dispute by way of mediation; and
- (ii) in the event that a resolution of the dispute is not achieved by way of mediation the parties shall be entitled to commence proceedings or take such action as they respectively consider appropriate
- (f) No waiver by the Company of any breach of these conditions by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provisions
- (g) Any contract subject to these conditions is personal to the Customer which may not without the prior written consent of the Company assign its rights or obligations hereunder
1. Except in so far as these conditions expressly provide that a third party may in its own right enforce a provision of these conditions a person who is not a party to the contract has no right under the Contracts (Rights of Third Parties) Act 1999 (the "Act") to rely on or enforce any term of the contract but this does not affect the right or remedy of a third party which exists or is available apart from the Act.

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