



TERMS AND CONDITIONS OF SALE

1 DEFINITIONS

“Buyer” means the party dealing with the Seller.

“Goods” means the goods (including any instalment of the goods or any parts for them), which the Seller is to sell in accordance with these Terms and Conditions.

“Incoterms” means the international rules for the interpretation of the trade terms of the International Chamber of Commerce in force at the date when contract is made.

“Price” means the price at which the Seller has agreed to accept the Buyer’s order and includes, where appropriate, the “Seller” means **Prospect Catering Design Ltd, Unit 7 Stroud Enterprise Centre, Bath Road, Stroud, Gloucestershire, GL5 3NL**

“Terms and Conditions” means the standard terms and conditions of sale set out in this document.

“Writing” includes, other than for the purposes of Clause 14, facsimile transmissions and writing on the screen of the visual display unit or other similar device.

2 BASIS OF THE SALE

- (i) These Terms and Conditions will govern any contract for the sale of Goods by the Seller to the exclusion of any other terms, including any terms and conditions which the Buyer may purport to apply under any purchase order, confirmation of order or other document.
- (ii) Any variation of these Terms and Conditions will only bind the Seller if agreed in writing between authorised representatives of the Seller and the Buyer.
- (iii) The Seller’s employees are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into any contract and in accepting delivery, the Buyer acknowledges that it does not rely on representations concerning the Goods which are not confirmed in this way.

3 ORDERS AND SPECIFICATIONS

- (i) All Goods are offered for sale subject to availability and subject to the Seller’s acceptance of the Buyer’s order.
- (ii) No order submitted by the Buyer shall be deemed accepted by the Seller unless and until it is confirmed by the Seller, either orally or in writing.
- (iii) Any literature published or submitted by the Seller to the Buyer which contains any descriptions, specifications, drawings or prices of the Goods is published or submitted for guidance only. The Seller reserves the right to make modifications in the design and specification of the Goods without notice to the Buyer.

4 PRICE

- (i) The Buyer will pay the Price together with an amount equal to VAT chargeable on the sale of Goods. This applies to U.K sales only.
- (ii) Unless otherwise agreed, the Price is inclusive of the cost of packaging, insurance and Transportation to an address within the United Kingdom mainland. For Northern Ireland and offshore islands of the United Kingdom a packaging, insurance and transportation surcharge may be payable at the discretion of the Seller. A handling charge, inclusive of postage and packing will be made on small orders.
- (iii) The Seller may increase the Price before the Goods are delivered to the Buyer to reflect any increase in cost to the Seller including, among other things, foreign exchange fluctuations, taxes and duties, the cost of labour, materials, transport and other fees and charges.
- (iv) If the Price changes between the date of acceptance of the Buyer’s order and delivery of the Goods by the Seller, the Seller will advise the Buyer of the changed Price, the “New Price”. The Buyer will be obliged to take delivery of the Goods at the New Price unless the Buyer advises the Seller at least two days before the date for delivery that it will not pay the New Price. In this case the Seller will be under no obligation to deliver the Goods to the Buyer.
- (v) If appropriate, the cost of pallets and returnable containers will be payable by the Buyer in addition to the Price, but full credit will be given to the Buyer provided the Buyer returns the pallets and containers to the Seller in good repair.
- (vi) Unless otherwise specified the installation costs include for attendance to a clear and level site within normal working hours; Monday to Friday; 8.30am to 5pm. Connections to services provided by others to within 1M of the appliance terminating in suitable valve or T. Water pipework in copper to BS2871 and white plastic waste fittings.

PAYMENT

- (i) The Buyer will pay the amounts specified in the Seller's invoice on the due date in cleared funds without any deduction or set off on the grounds of any alleged breach of any contract between the Seller and the Buyer or on any other grounds. Those amounts will be payable by the Buyer, notwithstanding that property in the Goods has not passed to the Buyer. The time of payment of those amounts will be of the essence of these Terms and Conditions.
- (ii) If the Buyer fails to pay those amounts on the due date, then in addition to any other right or remedy available to the Seller, the Seller may do either or both of the following:
 - (a) Charge the Buyer interest (after as well as before judgement) on the amount unpaid at the rate of two per cent per annum above the base lending rate of Barclays Bank Plc time until full payment is made.
 - (b) Cancel the contract or suspend any further deliveries to the Buyer without notice and without liability.

DELIVERY

- (i) The place for delivery of the Goods will be agreed between the Seller and the Buyer on the date of acceptance of the Buyer's order. If no place for delivery is agreed, the Seller may deliver the Goods by either:
 - (a) Notifying the Buyer that the Goods are ready for collection from premises nominated by the Seller ("the Seller's premises").
or
 - (b) Tendering the Goods at an address agreed between the Seller and the Buyer.
- (ii) In the case of delivery in accordance with Clause 6(i)(a), the Buyer will load the Goods when the Goods are collected from the Seller's premises and the Buyer will be liable for any damage to the Goods or losses occurring during loading. In the case of delivery in accordance with Clause 6(i)(b), the Goods will be, or will be deemed to be, unloaded by the Buyer and the Buyer will be liable for any damage to the Goods or losses occurring during unloading.
- (iii) Any dates quoted for delivery of the Goods are indicative only. Time for delivery will not be of the essence of these Terms and Conditions and the Seller will not be liable for any loss or expenses sustained by the Buyer arising from any delay in delivery of the Goods howsoever caused.
- (iv) The Buyer or, where relevant, the person to whom delivery is made in accordance with Clause 6(i)(b), must inspect the Goods on delivery and sign the required proof of delivery document or collection acceptance document. A signature on that document will constitute conclusive evidence against the Buyer of receipt of the quantity of Goods indicated on that document free from any apparent defect or damage. The Buyer may not reject the Goods or any part of them because of short delivery. If the Goods are alleged to be damaged or defective on delivery, a description of the alleged damaged or defect must be given in writing at the time of delivery and signed by or on behalf of the Buyer, or, where relevant, the person to whom delivery is made in accordance with Clause 6(i)(b).
- (v) The Seller reserves the right to make delivery of the Goods by instalments. If the Goods are to be delivered in instalments, each delivery will constitute a separate contract. The Buyer may not treat the contract as a whole as repudiated if the Seller fails to deliver any one or more of the instalments or if the Buyer has a claim in respect of any one or more of the instalments.
- (vi) If the Buyer fails to take delivery of the Goods then, in addition to any other right or remedy available to the Seller, the Seller may do either or both of the following:
 - (a) Store the Goods until actual delivery and charge the Buyer for the costs including insurance of storage, together with any other reasonable incidental costs.
 - (b) Sell the Goods at the best price readily obtainable by the Seller and after deducting all storage and selling expenses charge the Buyer for any shortfall below the Price.
- (vii) In the case of delivery to an address outside the United Kingdom, the Goods will be delivered F.O.B. (as that term is used in Incoterms) the air or seaport of shipment. The Seller will be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979, as amended from time to time.

RISK AND PROPERTY

- (i) Risk of damage to or loss of the Goods will pass to the Buyer.
 - (a) In the case of Goods delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection, or
 - (b) In the case of Goods delivered otherwise than at the Seller's premises, on delivery at the agreed address.
- (ii) Notwithstanding delivery and the passing of risk in the Goods, property in the Goods will not pass from the Seller until the Seller has received in cash or cleared sums full payment of the Price and all other sums which are due, owing or payable by the Buyer or the Seller or in respect of which the Buyer will, or may in the future, become liable to make payment to the Seller.
- (iii) Until property in the Goods passes to the Buyer.
 - (a) The Buyer will keep the Goods as the Seller's fiduciary bailee. The Buyer will keep the Goods separate from those of the Buyer and third parties and keep the Goods properly stored, protected, insured and identified as the Seller's property.
 - (b) Subject to (c) below the Buyer may resell the Goods in the ordinary course of its business but will account to the Seller for the proceeds of sale or otherwise of the Goods, including insurance proceeds. Until the Buyer has accounted to the Seller for the proceeds of sale or otherwise of the Goods, the Buyer will hold the relevant debt due to the Buyer and the relevant proceeds on trust for the Seller. The Buyer will keep all such proceeds separate from any moneys or property of the Buyer and third parties.
 - (c) The Seller may revoke the Buyer's power of sale in respect of the Goods. The power of sale will automatically cease if a petition is presented, any order made or any resolution passed or any other action taken for or with a view to the Buyer's winding up or administration or being an individual bankruptcy, or an administrative receiver, liquidator or administrator or similar officer is appointed in respect of the whole or any part of its undertaking, property or assets or if it convenes a meeting for the purpose of making, or proposing to enter into, any agreement for the benefit of its creditors. This also applies to any analogous proceedings in another jurisdiction.

- (d) The Seller may at any one time require the Buyer to deliver up to the Seller those Goods which have not been resold. If the Buyer fails to do so or if the power of sale has been revoked or ceased in accordance with Clause 7(iii)(c) the Seller may enter the premises of the Buyer or any third party where the Goods are stored or reasonably believed to be stored and repossess them.
- (e) The Buyer may not pledge or in any way charge by way of security any of the Goods which remain the property of the Seller.

8 **SAMPLES**

Any samples submitted by the Seller must either be paid for or returned to the Seller's premises carriage paid, within one month from the date of receipt by the Buyer.

9 **DRAWINGS**

All drawings shall remain the Seller's property and must not be wholly or partially used or copied without the Seller's written permission and shall be returned to the Seller forthwith on request by the Seller.

10 **LIABILITY**

- (i) The Seller will not be liable for damaged Goods unless a claim is notified to the Seller in writing in accordance with Clause 15 within 24 hours of delivery. The Seller will not be liable for defective Goods unless a claim is notified to the Seller in writing in accordance with Clause 15 within 24 hours of the Buyer becoming aware of the defect or, if earlier, within 24 months of delivery. In each case, the notification must include the invoice number, delivery note number and details of the claim. In the case of a valid claim, the Seller may, in its sole discretion, replace the Goods (or the part in question) or refund to the Buyer the Price (or an appropriate proportion of the Price). The Seller will have no further liability to the Buyer.
- (ii) The Seller will not be liable for short delivery or non-delivery unless a claim is notified to the Seller in writing in accordance with Clause 14 within seven days of delivery or, in the case of non-delivery, the indicative date given by the Seller for delivery. The notification must give details of the claim and, where appropriate, the invoice number and delivery note number. In the case of a valid claim, 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 the Goods not delivered over the Price.
- (iii) The Seller will not be liable in any way for loss, damage, costs or expenses (including loss of profit) arising directly or indirectly from any failure or delay in performing any obligation under these Terms and Conditions by reason of any event or circumstances outside the reasonable control of the Seller, including, amongst other things, any strikes, industrial action, failure of power supplies or equipment.
- (iv) Nothing in this Clause shall limit or exclude any liability of the Seller of death or personal injury caused by the Seller's negligence. Except as provided in this Clause 11, the Seller will not be liable to the Buyer for any consequential loss or damage, costs, expenses (including loss of profit) or other claims for compensation whatsoever arising out of or in connection with the sale of the Goods or their use or resale by the Buyer.

11. **INSOLVENCY OF THE BUYER**

If the power of sale has ceased in the circumstances described in Clause 7 (iii)(c), or if the Seller reasonably believes that any of those circumstances may occur in relation to the Buyer and notifies the Buyer of its belief, then in addition to any other right or remedy available to the Seller, the Seller may terminate the contract or suspend any further deliveries under the contract without any liability to the Buyer. If the Goods have been delivered but not paid for, the Price and all other amounts payable by the Buyer to the Seller shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

12. **NOTICES**

- (i) Any notice given or made under these Terms and Conditions will be in writing.
- (ii) A notice will be addressed as provided in Clause 14 (ii) and, if so address, will be deemed to have been duly given or made as follows:
 - (a) If sent by personal delivery, upon delivery at the address of the relevant party, or
 - (b) If sent by first class post, two clear business days after the date of posting.
- (iii) For the purposes of these Terms and Conditions, notices will be given to the Seller at its registered office set out in Clause 1, for the attention of the Company Secretary. Notices will be given to the Buyer at its registered office or its principal place of business for the attention of the Purchasing Director, Manager.
- (iv) The Seller and the Buyer may notify each other of a change in their name, relevant addressee and address for the purposes of Clause 15. This notification will only be effective on:
 - (a) The date specified as the date on which the change is to take place, or
 - (b) If no date is specified or the date specified is less than five clear business days after the date on which notice was given the date falling five clear business days after notice of any change has been given.
- (v) This Clause will not apply for serving any writ, summons, order, judgement or other document arising in connection with any disputes under these Terms and Conditions.

13. **GOVERNING LAW AND JURISDICTION**

- (i) These Terms and Conditions shall be governed by and construed in accordance with English law.
- (ii) The parties irrevocably agree that for the exclusive benefit of the Seller the courts of England are to have jurisdiction to settle any disputes which may arise in connection with these Terms and Conditions.

14. **MISCELLANEOUS**

- (i) If the Seller does not exercise the right or power when it is able to do so this will not prevent it exercising that right of power. When it does exercise a right or power it may do so again in the same or a different manner. The Seller's right and remedies under these Terms and Conditions are in addition to any other rights and remedies it may have. Those other rights and remedies are not affected by these Terms and Conditions.
- (ii) If any provision of these Terms and Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity or enforceability of the other provisions of these Terms and Conditions and the remainder of the provision in question shall not be affected.

15. **GUARANTEE U.K. MAINLAND**

The products are guaranteed in respect of faulty materials and workmanship for (unless otherwise confirmed in writing) twelve months from date of dispatch or date of delivery. The service extends to provide replacement parts for those originally fitted which have failed and service engineer labour cover Monday to Friday 0900 through 1700 hours public holidays excepted. The equipment being subject to service docket maintenance carried out at six monthly intervals (unless otherwise specified by the manufacturer) during the period of warranty. In order to instigate work we must be notified of the user's name and address and card registration number issued on the date of supply of the equipment or alternatively proof of date of purchase. The equipment must not be misused or tampered with in any way. The foregoing pertains to U.K. mainland and Northern Ireland. It does not include the Scottish Isles, Channel Islands or Isle of Man where parts only terms apply. Before making warranty calls make all minor operator checks such as power supplies valves open and that the problem is not due to operator misuse or incorrect installation as calls of this nature will be charged for.

16. **GUARANTEE EXPORT**

The products are guaranteed in respect of faulty materials and workmanship for twelve months from date of dispatch from our warehouse covering component parts excluding labour. Component parts which fail will be replaced if returned freight paid for inspection subject always to having received fair wear and tear and no abuse of misuse. Replacements will be shipped freight paid by the most economic method. Care should be taken to ensure that local power supplies transformers, etc., are operating to the correct voltage and current of the appliance in question and similarly that local gas valves, water and steam pressures equate to those of the appliance. Refrigeration equipment supplied to continents or countries with tropicalised motors etc. should make reference to the ambient operating temperature of the unit when making claims.

17. **GUARANTEE U.K. MAINLAND. SPECIFIC EXCLUSIONS**

ELECTRICALLY OPERATED EQUIPMENT

Replacement of consumables including Filaments, Elements, Bulbs, Fuses, Breakers.

GAS OPERATED EQUIPMENT

Damage caused by carbonisation of injectors due to external gas governor malfunction of low pressure.

WATERBORNE EQUIPMENT

Damage caused by limescale or water impurities where salty resins cartridges or descaling agents have not been replaced as per schedule.

CLEANING PRODUCTS

Damage caused by the use or misuse of solvents, acids, cleaning fluids, descaling and decarbonising agents and corrosive substances.