

# TRIPTEX LIMITED TERMS AND CONDITIONS OF SALE

1. **Definitions and Interpretation**
- 1.1 Unless the context does not so permit the following expressions have the following respective meanings:-
- 1.1.1 "Additional Document means any document (other than the Order and these Terms and Conditions) which Triptex and the Customer agree shall form part of the Contract;
- 1.1.2 "Customer" means the person, firm or corporation purchasing the Products from Triptex;
- 1.1.3 "Contract" means any Contract between Triptex and the Customer for the sale to the Customer of the Products;
- 1.1.4 "Delivery Date" means the date on which the Products are available for collection by the Customer;
- 1.1.5 "Triptex" means Site Triptex Limited;
- 1.1.5 "Order" means the written order placed by the Customer to purchase the Products or, if no written order is placed, the request form the Customer to purchase the Products;;
- 1.1.6 "Parties" means Triptex and the Customer, and "Party" means either of them as the context permits.
- 1.1.7 "Price" means the price payable for the Products;
- 1.1.7 "Products" means the plant or equipment sold by Triptex to the Customer (including the packaging and labelling forming part or supplied by Triptex therewith); and
- 1.1.8 "Working Day" means any day except Saturday, Sunday or any bank, customary, public or statutory holiday in England and Wales.
- 1.2 Words importing the singular include the plural and vice versa, and a reference to any gender includes a reference to all other genders.
- 1.3 Condition headings do not affect the interpretation of these Conditions.
- 1.4 a reference to a statute, statutory instrument, regulation, order or licence is a reference to that statute, statutory instrument, regulation, order or licence as substituted, varied, or re-enacted from time to time.
- 1.5 A reference to "writing" includes any facsimile or electronic mail transmission.

## 2. The Contract

- 2.1 The Contract shall not come into existence until the Order is accepted by Triptex, either by Triptex providing formal written acceptance of the Order to the Customer, or Triptex contacting the Customer, whether in writing or orally, in order to arrange collection of the Products.
- 2.2 These Terms and Conditions comprise the only terms and conditions upon which Triptex supplies the Products to the Customer and prevail in full over all other terms and conditions, including any terms or conditions which the Customer at any time purports to apply under any order, confirmation of order, acceptance of quotation, specification or other document, or in any other manner.
- 2.3 No variation to the Contract shall be binding on the parties unless agreed in writing by authorised representatives of the parties.
- 2.4 The Contract shall comprise these Terms and Conditions and the Order, together with any Additional Document. In the event of any conflict between these Terms and Conditions and the Order, the Order shall take precedence, and in the event of any conflict between the Order or these Terms and Conditions and any Additional Document, the Additional Document shall prevail.
- 2.5 Each Order shall be the subject of a separate Contract.

## 3. Ordering

- 3.1 The Customer shall place all Orders in such manner and in such form as Triptex shall specify from time to time.
- 3.2 The Customer shall ensure that each Order
- 3.2.1 specifies the exact Products being ordered;
- 3.2.2 specifies the respective quantities of each of the Products being ordered; and
- 3.2.3 specifies a lead time for delivery of not less than [three] Working Days, (unless otherwise agreed in writing) from the submission of the Order.
- 3.3 Triptex is under no obligation to accept any Order, and no Order shall be regarded as having been accepted by Triptex unless Triptex has accepted it in accordance with Condition 2.1 applies. Any Order which fails to comply with the requirements of Condition 3.2 will not be accepted by Triptex and is deemed automatically rejected.

## 4. Delivery

- 4.1 Unless otherwise expressly agreed in writing, the Customer shall collect the Products from Triptex and load the Products onto its delivery vehicles. The Products shall be collected between 09.00 and 17.00 hours on the Delivery Date. Triptex shall notify the Customer of the Delivery Date at the time when the Order is accepted by Triptex. Delivery of the Products shall be deemed to have taken place when Triptex places the Products at the disposal of the Customer or, if earlier, at 17.00 hours on the date on which the Products are available for collection.
- 4.2 Immediately upon delivery having been deemed to have taken place pursuant to Condition 4.1:-

- 4.2.1 Risk in the Products shall pass to the Customer; and
- 4.2.2 Triptex shall have no further obligations in relation to the care or storage of the Products. However, if Triptex elects to undertake such obligations, the Customer shall be responsible for and shall fully indemnify Triptex in respect of all reasonable costs and expenses incurred by Triptex and arising from the undertaking of such obligations.
- 4.3 If the Products remain in the possession of Triptex after a period of two working Days has elapsed from the date on which delivery is deemed to have taken place pursuant to Condition 4.1, Triptex shall, without limiting any other right or remedy that it may have against the Customer, have the right to re-sell them to a third party or to dispose of them in any manner in which it sees fit, in either case without incurring any obligation to supply replacement Products to the Customer.
- 4.4 The time for the delivery of the Products shall not be of the essence of the Contract, and the Customer acknowledges that Triptex shall not be liable to it for any losses, costs, damages, expenses or charges directly or indirectly suffered or incurred by the Customer as the result of any

delay in the delivery of the Products, neither shall any such delay entitle the Customer to terminate or rescind the Contract.

## 5. Title to the Products

- 5.1 Title to the Products shall pass to the Customer on delivery

## 6. Price and Payment

- 6.1 Unless otherwise expressly agreed by Triptex in writing, the Price shall be the price set out in Triptex's price list current at the date when Triptex accepts the Order or, where Triptex has provided a quotation, the price set out in such quotation.
- 6.2 The Price shall be exclusive of any Value Added Tax, all other taxes, duties, levies and impositions of whatever nature, and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Customer shall if applicable pay in full when it pays for the Products. In addition, Triptex reserves the right to increase the Price as the result of to a change in or insufficiency of the Customer's instructions or to any variation in the cost of materials, labour, transport duties, taxes, exchange rates or any costs of whatsoever nature between the date on which the Contract comes into existence and the date of delivery or completion of payment.
- 6.3 Triptex shall submit an invoice to the Customer for the Products plus any additional sums payable pursuant to Condition 6.2 upon the Contract having come into existence..
- 6.4 The Customer shall pay the amount stated on each invoice, without any deduction or set-off of any kind, in cleared funds upon or before the delivery of the Products.
- 6.5 If the Customer fails to pay in full the amount stated in any invoice issued by Triptex prior to 17.00 hours on the Delivery Date, the Contract shall be deemed to be terminated automatically without further notice to the Customer.

## 7. Warranties

- 7.1 Triptex hereby warrants to the Customer that the Products will upon delivery:-
- 7.1.1 Be of satisfactory quality within the meaning set out in the Sale of Goods Act 1979 (as amended);
- 7.1.2 Be reasonably fit for the purpose of human consumption; and
- 7.1.3 Comply with all relevant statutes, regulations and other matters having the force of law (whether specifically relating to the Products or otherwise).
- 7.2 In the event that the Customer believes that a breach of any of the warranties set out in Condition 7.1 has occurred then the Customer shall:-
- 7.2.1 inform Triptex accordingly in writing within two Working Days of the date of discovery of the alleged breach of warranty. Save as expressly provided in these Conditions Triptex shall be under no liability for any breach of warranty in respect of which the Customer has not complied with this Condition 7.2.1.;
- 7.2.2 at Triptex's option either promptly return to Triptex (at Triptex's reasonable cost) the Products affected or permit Triptex, its officers, employees and representatives to inspect the Products affected at the Customer's or some other agreed premises; and
- 7.2.3 provide to Triptex free of charge such facilities, information and assistance as Triptex shall reasonably require in order to verify the nature and cause of any alleged defect in the Products.
- Triptex's sole liability to the Customer in relation to any breach of the above warranties shall be limited, at the option of Triptex, to the replacement of the Products affected as soon as reasonably practicable or refunding to the Customer the Price of the Products affected.

## Limitations of Liability

- Subject to Condition 8.2:-
- 8.1.1 Triptex's total liability to the Customer in connection with any and all claims arising in relation to any Products shall not exceed the Price of those Products;
- 8.1.2 under no circumstances shall Triptex be liable to the Customer for loss of profit, loss of revenue, loss of bargain, loss of business or contract, diminution of goodwill or for any other economic loss (whether direct, indirect or consequential), or for any indirect or consequential loss or damage of any kind; and
- 8.1.3 save as expressly provided in the Contract all warranties, conditions or other terms implied by statute or common law in relation to the sale of goods are hereby excluded.
- Nothing in the Contract shall limit or exclude the liability of Triptex:-
- 8.2.1 for death or personal injury resulting from the negligence (as defined in Section 1 of the Unfair Contract Terms Act 1977) of Triptex;
- 8.2.2 for fraud or fraudulent misrepresentation; or
- 8.2.3 for any matter in respect of which it would be unlawful or illegal to exclude or limit its liability.

## Assignment

Triptex may assign the Contract or any part of it to any person, firm or company. The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of Triptex.

## Force Majeure

Triptex reserves the right to defer delivery of the Products or to cancel the Contract with regard to some or all of the Products in each case without liability to the Customer if it is prevented from or delayed in the delivery of any Products due to circumstances beyond its reasonable control. Provided that, if Triptex is so prevented or delayed for a continuous period in excess of 28 days, the Customer shall be entitled to cancel the Contract by giving notice to that effect to Triptex.

**11 Notices**

- 11.1 All communications between the parties regarding the Contract or the Products shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or electronic mail (subject to Condition 12.3):-
- 11.1.1 in the case of communications to Triptex, to its registered office or such other address as may be notified to the Customer by Triptex; or
  - 11.1.2 (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in the Order, or if applicable such other address as shall have been notified to Triptex by the Customer.
- 11.2 Communications shall be deemed to have been received:
- 11.2.1 If sent by pre-paid first class post, on the second Working Day after posting (exclusive of the day of posting); or
  - 11.2.2 if delivered by hand, on the day of delivery (or, if the actual time of delivery is after 16.00 hours local time or the day of delivery is not a Working Day, on the next Working Day; or
  - 11.2.3 if sent by fax or electronic mail on a Working Day and received prior to 16.00 hours, at the time of transmission, and otherwise on the next Working Day.
- 11.3 Communications addressed to Triptex shall be marked for the attention of the Managing Director. Any communication not so addressed shall be invalid.

**12 General**

- 12.1 The documents specified in Condition 2.4 constitute the entire agreement between Triptex and the Customer for the supply of the Products, and supersede any previous agreements, arrangements, understandings, representations or statements. Each party warrants that it has not entered into the Contract in reliance upon any statement, promise, warranty or representation not having effect as an express provision of the Contract.
- 12.2 Each right or remedy of Triptex under the Contract is without prejudice to any other right or remedy that it may have whether under the Contract or not.
- 12.3 Except as expressly provided in these Conditions, the rights and remedies contained in these Conditions are cumulative and shall be in addition to every other right or remedy provided by law or otherwise.
- 12.4 If any provision of the Contract is found by any court or tribunal of competent jurisdiction to be illegal, invalid, void, voidable, unenforceable or unreasonable it shall be deemed severed and the remaining provisions of the Contract shall continue in full force and effect.
- 12.5 Any failure or delay by Triptex in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract. Any waiver by Triptex of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
  - 12.6 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.
  - 12.7 All aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.