



Merko (Europe) Ltd Old Station Yard, Norwich Road, Cromer, NR27 0HF Tel: 01263 515030 Fax: 01263 515290

Registered in England No: 2857947 VAT Registration No: 63 58083 25

## **STANDARD TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS**

### **1. INTERPRETATION**

1.1 In these Conditions the following expressions will have the following meanings unless inconsistent with the context:

<b>Word</b>	<b>Meaning</b>
<b>“the Company”</b>	<b>Merko (Europe) Ltd</b> placing the Order with the Supplier or, if different, the member(s) of Merko (Europe) Ltd receiving delivery of the Goods (either directly or through a nominated third party);
<b>“Conditions”</b>	means these terms and conditions and any special terms agreed in writing by the Company and the Supplier;
<b>“the Contract”</b>	the Order and the Supplier’s acceptance of the Order;
<b>“Goods”</b>	any goods agreed in the Contract to be purchased by the Company from the Supplier (including any part or parts of them);
<b>“Order”</b>	the Company’s written instruction to supply the Goods, incorporating these Conditions;
<b>“Supplier”</b>	the person, firm or company who accepts the Company’s Order.

1.2 In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.3 In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

1.4 In these Conditions the headings will not affect the construction of these Conditions.

### **2. APPLICATION OF TERMS**

2.1 These Conditions are the only conditions upon which the Company is prepared to deal with the Supplier and they shall govern the Contract to the entire exclusion of all other terms or conditions.

2.2 Each Order for Goods by the Company from the Supplier shall be deemed to be an offer by the Company to purchase Goods subject to these Conditions and no Order shall be accepted until the Supplier either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part accepts the offer. The Company’s offer to purchase Goods shall lapse if the offer has not been accepted by the Supplier within 7 days of the Company making the offer.

2.3 No terms or conditions endorsed upon, delivered with or contained in the Supplier’s quotation, acknowledgement or acceptance of order, specification or similar document will form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.

2.4 These Conditions apply to all the Company’s purchases and any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by a director of the Company or a person who has delegated authority from the Company’s Board of directors.



Merko (Europe) Ltd Old Station Yard, Norwich Road, Cromer, NR27 0HF Tel: 01263 515030 Fax: 01263 515290

Registered in England No: 2857947 VAT Registration No: 63 58083 25

### 3. **QUALITY AND DEFECTS**

- 3.1 The Supplier warrants, represents and undertakes that the Goods shall be of the best available design, of the best quality, material and workmanship, be without fault and conform in all respects with the Order and any specification and/or patterns supplied or advised by the Company to the Supplier, or applied by the Supplier to the Goods, and that the Goods shall comply with any and all regulations, regulatory, statutory, legal and other such requirements applicable to the Goods including without limitation as to food safety and/or, in the case of machinery, CE Marking.
- 3.2 The Supplier shall demonstrate on demand the conformity of the Goods to the requirements of Condition 3.1 and the conformity of the Supplier and its processes to any legal, regulatory or statutory requirement.
- 3.3 The Company's rights under these Conditions are in addition to the statutory conditions implied in favour of the Company by the Sale of Goods Act 1979 and any other applicable statute from time to time.
- 3.4 At any time prior to and after delivery of the Goods to the Company the Company shall have the right to inspect Goods or premises at which Goods are manufactured, packed, processed or stored and test the Goods at all times. If initial tests on the Goods undertaken by the Company indicate a potential defect or problem, the Company reserves the right to undertake such additional tests as it deems appropriate and the Supplier shall reimburse the Company the cost of such additional tests.
- 3.5 If the results of such inspection or testing cause the Company to be of the opinion that the Goods do not conform or are unlikely to conform with the Order or to any specifications and/or patterns supplied or advised by the Company to the Supplier, the Company shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure conformity and in addition the Company shall have the right to require and witness further testing and inspection.
- 3.6 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract.
- 3.7 If any of the Goods fail to comply with the provisions set out in Condition 3 the Company shall be entitled to avail itself of any one or more remedies listed in Condition 13.

### 4. **INDEMNITY**

- 4.1 The Supplier shall indemnify and hold harmless and keep the Company indemnified in full on demand against all direct, indirect or consequential liability, loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with:
  - 4.1.1 defective workmanship, quality or materials;
  - 4.1.2 any of the Goods failing to comply with the provisions set out in Condition 3;
  - 4.1.3 an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Goods; or
  - 4.1.4 any claim made against the Company in respect of any liability, loss, damage, injury, cost or expense sustained by the Company's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods.



Merko (Europe) Ltd Old Station Yard, Norwich Road, Cromer, NR27 0HF Tel: 01263 515030 Fax: 01263 515290

Registered in England No: 2857947 VAT Registration No: 63 58083 25

**5. DELIVERY**

- 5.1 Unless otherwise agreed in writing between the Supplier and the Company, the Goods shall be delivered, carriage paid, to the Company's place of business or to such other place of delivery as is specified by the Company in writing prior to delivery of the Goods. The Supplier shall off-load the Goods as directed by the Company and in accordance with the Company's health and safety policy.
- 5.2 The Company shall have the right to change its delivery instructions including the delivery date at any time by reasonable notice in writing to the Supplier.
- 5.3 The date for delivery shall be specified in the Order, or if no such date is specified then delivery shall take place within 28 days of the Order.
- 5.4 The Supplier shall invoice the Company upon, but separately from, delivery of the Goods to the Company.
- 5.5 The Supplier shall ensure that each delivery is accompanied by a delivery note which shows, inter alia, the order number, date of order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.
- 5.6 Time for delivery shall be of the essence.
- 5.7 Unless otherwise stipulated by the Company in the Order, deliveries shall only be accepted by the Company in normal business hours.
- 5.8 If the Goods are not delivered on the due date then, without prejudice to any other rights which it may have, the Company reserves the right to:
  - 5.8.1 cancel the Contract in whole or in part;
  - 5.8.2 refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
  - 5.8.3 recover from the Supplier any expenditure reasonably incurred by the Company in obtaining the Goods in substitution from another supplier; and
  - 5.8.4 claim damages for any additional costs, loss or expenses incurred by the Company which are in any way attributable to the Supplier's failure to deliver the Goods on the due date.
- 5.9 If the Supplier requires the Company to return any packaging material to the Supplier that fact must be clearly stated on any delivery note delivered to the Company and any such packaging material will only be returned to the Supplier at the cost of the Supplier.
- 5.10 Where the Company agrees in writing to accept delivery by instalments the Contract will be construed as a single contract in respect of each instalment. Nevertheless failure by the Supplier to deliver any one instalment shall entitle the Company at its option to treat the whole Contract as repudiated and the Company shall be entitled to each of the remedies at Condition 5.8.
- 5.11 Signature on behalf of the Company of a delivery note or other document presented for signature on delivery of the Goods is not evidence that the correct quantity or number of Goods have been delivered or that they otherwise meet the requirements of these Conditions or Order.
- 5.12 If the Goods are delivered to the Company in excess of the quantities ordered the Company shall not be bound to pay for the excess and any excess will be and will remain at the Supplier's risk and will be returnable at the Supplier's expense.



Merko (Europe) Ltd Old Station Yard, Norwich Road, Cromer, NR27 0HF Tel: 01263 515030 Fax: 01263 515290

Registered in England No: 2857947 VAT Registration No: 63 58083 25

**6. RISK/PROPERTY**

The Goods shall remain at the risk of the Supplier until delivery to the Company is complete (including off-loading and stacking) when ownership of and risk in the Goods shall pass to the Company.

**7. PRICE**

7.1 The price of the Goods shall be stated in the Order and unless otherwise agreed in writing by the Company shall be exclusive of value added tax but inclusive of all other charges.

7.2 No variation in the price nor extra charges will be accepted by the Company.

7.3 The Company shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier to any other customer.

**8. PAYMENT**

8.1 The Supplier's paper invoices shall include a description of the Goods provided and the relevant order number.

8.2 Subject to Condition 8.3, the Company shall pay or procure the payment of all invoices in accordance with the terms stated on the Purchase Contract that, if in the opinion of the Company any invoice is incorrect or does not comply with Condition 8.3 the Company shall notify the Supplier and payment shall not be due to the Supplier for the price set out in such invoice unless and until a correct invoice has been submitted to the Company and then payment shall be due within forty five (45) days of such corrected invoice being received.

8.3 If any sums are due to the Company from the Supplier, then the Company shall be entitled to exercise the right to set-off such sums against any payments due to the Supplier from the Company under or in relation to this or any other Contract.

8.4 If the Company is required, pursuant to any applicable present or future law, rule or regulation of any competent governmental or other administrative body, to make any withholding in respect of tax or otherwise from any amount or amounts payable to the Supplier pursuant to the Contract, the Company shall pay any amounts net of such withholding.

**9. INSURANCE**

9.1 The Supplier shall at its own cost, maintain in force such insurance policies as are appropriate and adequate having regard to its obligations and liabilities under these Conditions with a reputable insurer.

9.2 The Supplier shall on written request of the Company from time to time provide the Company with reasonable details of the insurance policies in question, and, on the renewal of each policy, the Supplier shall send a copy of the premium receipt to the Company when requested to do so in writing by the Company.

**10. CONFIDENTIALITY**

10.1 The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Company or its agents and any other confidential information concerning the Company's business or its products which the Supplier may obtain and the Supplier shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Supplier's obligations to the Company and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Supplier.

10.2 The Supplier shall not make any announcement or otherwise publicise the existence of or disclose to any person the terms of these Conditions without the prior written consent of the Company.



Merko (Europe) Ltd Old Station Yard, Norwich Road, Cromer, NR27 0HF Tel: 01263 515030 Fax: 01263 515290

Registered in England No: 2857947 VAT Registration No: 63 58083 25

**11. THE COMPANY'S PROPERTY**

Materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by the Company to the Supplier or not so supplied but used by the Supplier solely in the manufacture of the Goods, or developed by or on behalf of the Supplier for the Company shall at all times be and remain the exclusive property of the Company but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the Company and shall not be disposed of other than in accordance with the Company's written instructions, nor shall such items be used otherwise than as authorised by the Company in writing. Upon termination of the Contract, howsoever arising, the Company shall be entitled, upon reasonable notice and during normal business hours, to enter the Supplier's premises to repossess any of the Company's property which is in the Supplier's possession.

**12. TERMINATION**

12.1 The Company shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Supplier written notice whereupon all work on the Contract shall be discontinued and the Company shall pay to the Supplier fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

12.2 The Company shall have the right at any time by giving notice in writing to the Supplier to terminate the Contract with immediate effect if:

12.2.1 the Supplier commits a breach of any of the terms and conditions of the Contract;

12.2.2 any distress, execution or other process is levied upon any of the assets of the Supplier;

12.2.3 the Supplier enters into any compromise or arrangement with its creditors, commits any act of bankruptcy or if an order is made or an effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction as a solvent company) or if a petition is presented to court, or if a receiver and/or manager, receiver, administrative receiver or administrator is appointed in respect of the whole or any part of the Supplier's undertaking or assets;

12.2.4 the Supplier ceases or threatens to cease to carry on its business; or

12.2.5 the financial position of the Supplier deteriorates to such an extent that in the opinion of the Company the capability of the Supplier adequately to fulfil its obligations under the Contract has been placed in jeopardy.

12.3 The termination of the Contract, however arising, will be without prejudice to the rights of the Company accrued prior to termination. The Conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

**13. REMEDIES**

13.1 Without prejudice to any other right or remedy which the Company may have, if any Goods are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of this Contract the Company shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by the Company:

13.1.1 to rescind the Order;

13.1.2 to reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods so returned (and for costs incurred by the Company in returning those Goods) shall be paid immediately by the Supplier. If Goods are rejected



Merko (Europe) Ltd Old Station Yard, Norwich Road, Cromer, NR27 0HF Tel: 01263 515030 Fax: 01263 515290

Registered in England No: 2857947 VAT Registration No: 63 58083 25

by the Company, for whatever reason, the Supplier shall collect the Goods from the delivery address communicated to the Supplier in accordance with Condition 5;

- 13.1.3 at the Company's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
- 13.1.4 to refuse to accept any further deliveries of the Goods but without any liability to the Supplier;
- 13.1.5 to carry out at the Supplier's expense any work necessary to make the Goods comply with the Contract; and/or
- 13.1.6 to claim such damages as may have been sustained in consequence of the Supplier's breaches of the Contract.

13.2 The Company shall not be deemed to have accepted any Goods until the Company has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.

#### 14. **ASSIGNMENT**

14.1 The Supplier shall not be entitled to assign the Contract or any part of it (including without limitation the assignment of the financial benefit pursuant to a factoring or similar arrangement) without the prior written consent of the Company

14.2 Where the Company agrees that the Supplier may assign to a third party (the "**Third Party**") the right to collect payments pursuant to the Contract:

14.2.1 unless otherwise notified by the Third Party in writing, the Company shall comply with the instructions for payment received from the Supplier;

14.2.2 if the Supplier wishes the Company to cease making payments to the Third Party, it shall provide the Company with unequivocal written confirmation from the Third Party that payment should cease to be paid to that Third Party. Until such confirmation is received, the Supplier may continue to make payments to the Third Party;

14.2.3 then notwithstanding any assignment by a Supplier to a Third Party of the right to collect payment, the Company shall have the right to set-off against the Supplier's invoices any amounts owed by the Supplier to the Company, including without limitation where the Supplier failed to fulfil an Order, or where the Goods delivered by the Supplier do not comply with the Order; and

14.2.4 the Supplier shall bring to the attention of the Third Party the existence of these terms and, as part of the arrangements with the Third Party, the Third Party shall comply with these terms insofar as is applicable

14.3 The Company may assign the Contract or any part of it to any person, firm or company.

#### 15. **FORCE MAJEURE**

The Company reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.



Merko (Europe) Ltd Old Station Yard, Norwich Road, Cromer, NR27 0HF Tel: 01263 515030 Fax: 01263 515290

Registered in England No: 2857947 VAT Registration No: 63 58083 25

**16. THIRD PARTY RIGHTS**

The third party rights referred to in this Condition can be enforced by the Company subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999 (the "Act"). Except as provided in this Condition (or insofar as these Conditions otherwise expressly provides that a third party may in his own right enforce a term of these Conditions), a person who is not a party to these Conditions has no right under the Act to rely upon or enforce any terms of these Conditions but this does not affect any right or remedy of a third party which exists or is available apart from the Act.

**17. GENERAL**

- 17.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 17.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 17.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 17.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Supplier will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 17.5 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the non exclusive jurisdiction of the English courts.