

# CARBEX LIMITED

## CONDITIONS OF SALE

### 1. DEFINITIONS

In these conditions the "Company" means Carbex Limited and "the Purchaser" means any company firm or Individual from whom the Company receives an order.

### 2. APPLICABILITY OF CONDITIONS

The Company accepts orders subject only to these conditions. The Purchaser accepts that these conditions shall govern relations between it and the Company to the exclusion of any other terms including without limitation conditions or warranties (written or oral express or implied) even if contained in any of the Purchaser's documents which purport to provide that the Purchaser's own terms shall prevail. No variation or qualification of these conditions or of any quotation or order arising there from shall be valid unless agreed in writing by the company secretary or a director of the Company.

### 3. QUOTATION AND ACCEPTANCE

Quotations are valid for thirty days unless otherwise stated in writing, and do not constitute an offer by the Company, furthermore, no order shall result in a binding contract until accepted by the Company. That order must contain sufficient information for the Company to proceed and no contract shall exist until confirmation in writing of acceptance is given by a duly authorised officer of the Company. Unless otherwise stated in writing by the Company, each order, when accepted, constitutes a separate contract.

### 4. PRICES AND PRICE VARIATION

4.1 Prices quoted are exclusive of Value Added Tax. Unless otherwise stated in writing, the Company reserves the right to vary the prices of its goods and services prior to acceptance of an order, or between the date of acceptance of an order and the actual date of delivery (including, but not by way of limitation, price variations related to changes in exchange rates, transport costs, or taxes, or where an increase in cost is due to any act or default of the Purchaser, including the cancellation by the Purchaser of part or any order).

4.2 Unless otherwise expressly agreed in writing, prices quoted are ex-works (as defined in INCOTERMS 2000 Edition). Packaging, insurance, carriage, postage and freight will be charged as extras.

4.3 The Company reserves the right to apply a minimum charge in respect of any order.

### 5. DELIVERY OF GOODS AND PERFORMANCE OF SERVICES

5.1 Any delivery period, or delivery date quoted is an estimate only and commences from the Company's written acceptance of the Purchaser's order. Such estimated delivery period shall not involve the Company in any liability to the Purchaser in respect of loss suffered as a result of failure to deliver or complete the contract within such period of time and no delay shall entitle the Purchaser to cancel the order or refuse to accept delivery at any time. The Company reserves the right to deliver in more than one consignment and to invoice each consignment separately and in such circumstances payment in respect of consignments delivered will be due even if the whole contract has not yet been fulfilled. The Company also reserves the right to withhold delivery of later consignments in respect of earlier consignments which are due and have not been made.

5.2 The Company shall be entitled (without prejudice to any of its other rights) to claim from the Purchaser any loss or additional cost arising from any delay by the Purchaser in:

5.2.1 Accepting delivery of the goods or services; or

5.2.2 Furnishing any further information required to enable the Company to complete and deliver the goods or services.

5.3 Without prejudice to the generality of clause 5.1 where an estimated delivery date or delivery Period is quoted, and that delivery date or delivery period is dependent on the issue to the Purchaser by the Department of Trade and Industry of an operating licence, the Company shall be under no liability whatsoever to deliver the goods or perform the service by the estimated delivery date or to within the contracted delivery period.

5.4 Subject to clause (5.5) below, unless otherwise agreed in writing all references to delivery shall mean delivery within the United Kingdom, to the destination specifically agreed between the parties, the method of transport to be decided at the sole discretion of the Company.

5.5 In the event that the Purchaser shall transport or arrange transport the goods shall be deemed to have been delivered when the Company shall have appropriated them in the Company premises to the relevant order and shall have notified the Purchaser that those goods are ready for collection. The goods shall be and thereafter remain at the Purchasers risk. The Company shall take all reasonable skill and care in the Performance of its services but no other standard or skill or care shall be expressed or implied by law or otherwise.

5.6 If the Purchaser fails to give the Company delivery instructions promptly when required, payment in full shall be due forthwith and the Company shall be entitled (but not bound) to store the goods at the Purchasers expense, but without liability for loss or damage securing after the due delivery date (unless caused by Company negligence). So long as the Company's storage facilities permit the Company may store the goods at the Purchaser's risk and the Purchaser shall pay a charge therefore to be determined by the Company.

#### **6. PAYMENT**

6.1 Payment shall be due in full immediately in respect of advance or progress claims rendered in accordance with an agreed scheme of phased payment, and, in respect of the invoiced value of goods supplied and services rendered within thirty days from the date of the Company's invoice. Payment shall not be withheld on account of any claim of the Purchaser against the Company, nor on account of a delay in bringing the goods into use resulting from the failure to receive an operating licence, or any other cause whatsoever. Payment by the Purchaser is due in full in accordance with these provisions in respect of goods held on its behalf whether or not arising from the Purchasers failure to give instructions in respect of delivery.

6.2 Should the Purchaser fail to pay any invoice in full by the due date the Company reserves the right to charge interest on a daily basis on the amount outstanding at the rate of 2% per month above the base rate for the time being of the Lloyds TSB Bank plc or the Late Payment of Commercial Debts (Interest) Act 1998 whichever is the greater and to recover all costs involved in collection of the overdue sums.

6.3 The Company reserves the right to suspend delivery or withdraw credit terms where payment of any invoice due to the Company, is not received in accordance with the payment terms stipulated herein, or otherwise agreed with the Purchaser.

6.4 The Company shall be entitled to sue for the price of the goods regardless of whether property in them has passed.

#### **7. RETENTION OF TITLE**

7.1 Legal and beneficial ownership of the goods shall remain with the Company until such time as the Company has received payment in full for all goods supplied to the Purchaser or until such time as the goods are sold to the Purchaser's customers by way of bona fide sale the full market value (whichever shall be the earlier) and until such time the Purchaser shall keep such goods separate from its property and clearly identified as the property of the Company.

7.2 Notwithstanding terms of payment specified herein or elsewhere payment for all goods supplied to the Purchaser shall become due immediately upon the commencement of any act or proceeding in which the Purchaser's solvency is involved (whether voluntary or upon application to any court) or upon appointment of a receiver over the whole or any part of the Purchaser's assets or undertaking and upon such occurrence the power of sale granted to the Purchaser above shall automatically determine.

7.3 If payment for any goods is overdue whether in whole or in part and any goods have been delivered to the Purchaser the Company may without prejudice to any of its other rights enter upon the Purchasers premises to recover and/or resell the goods or such of them as the Company in its absolute discretion may designate as necessary to recover the amount of payment overdue and the Company's reasonable costs incurred in giving effect to its rights hereunder and for these purposes the Purchaser hereby irrevocably authorises the Company to enter and take all necessary and reasonable steps upon the premises or the Purchaser.

7.4 Until the Company is paid in full for all goods supplied the Purchaser is and shall remain a fiduciary for the Company in respect of the goods and if the Purchaser sells or allows to be sold the goods the proceeds of sale shall be held in a separate clearly identifiable account and the beneficial interest of the Company shall attach to the proceeds of sale and the Company shall have the right to trace such proceeds of sale.

7.5 If any of the goods are incorporated in or mixed with the Products of other third parties before full payment for all goods supplied under the contract has been made title in such mixed products shall vest in the Company and those other third Parties jointly until full payment has been made or such products have been sold and the proceeds of sale shall be applied firstly in meeting the expenses of the sale and secondly in satisfying the full invoice price of the goods owing to the Company and any third parties pro rata to the sums owed to those persons, with the balance (if any) being paid to the purchaser.

#### **8. GUARANTEE OF QUALITY**

8.1 If any defect in the materials from which the goods are made or fault in manufacture of the goods shall be found to exist and be reported to the Company in writing within a Period of three months from the date when the goods are ready for delivery at the Company's premises, (or such other period as is expressly agreed in writing by the Company) the Company will repair or at its option replace the defective part free of charge provided that it is returned to the Company's works (following full authorisation by the Company for each return) carriage paid and Provided also that this guarantee:

- 8.1.1 Shall not cover defects or faults in components not manufactured by the Company;
- 8.1.2 Shall cease to have effect if the goods have been used for any Purpose other than that for which they are intended or otherwise than in accordance with the Company's instructions, or have been wrongly installed by the customer or stored in improper conditions, or, if installed by the Company, removed from such place of installation or otherwise tampered with.
- 8.1.3 Does not apply to damage sustained in transit; and
- 8.1.4 Shall not cover defects attributable to fair wear and tear.
- 8.2 Installation costs involved in any replacement made pursuant to clause 8.1 shall be borne by the customer.
- 8.3 The warranty given in clause 8.1 is in lieu of any warranty, condition or representation whether implied by law or otherwise as to quality, and except as otherwise expressly provided in these conditions, the Company shall be under no other liability in respect of the quality condition or description or goods supplied or their fitness for any particular purpose.
- 8.4 No servant or agent of the Company has authority to make any representation in relation to the goods sold or services supplied by the Company.

#### **9. PACKING**

Goods will be packed in accordance with the Company's normal practice from time to time prevailing but the Company reserves the right to alter the method of packing in respect of individual order. No liability will be accepted for any failure to pack to a particular standard unless specifically accepted in writing and paid for by the customer.

#### **10. LOSS or DAMAGE IN TRANSIT**

10.1 Written notice of any claim relating to shortage of or damage to the goods shall be made to the Company (and the carrier where the Company's own transport has not been used) within 48 hours of delivery of the goods. In the event of non-delivery of the goods the Customer shall notify the Company (and the carrier as appropriate) within 7 days of the receipt of the advice note.

10.2 The Company will consider claims only if the above conditions are met and the claim is signed by the Customer and is accompanied by full particulars giving the Customer's order number and a copy of the advice note which in the case of shortage or damage must bear an appropriately qualified signature.

10.3 The Company's liability under this clause 10 shall be limited to the proportion of the contract price attributable to the goods lost damaged or undelivered.

#### **11. ILLUSTRATIONS AND BROCHURES**

All illustrations, brochures, catalogues, price lists and other advertising matter are an indication only of the type of goods offered and no particulars therein contained shall be binding on the Company. All prices quoted therein are subject to alteration or withdrawal from time to time without notice.

#### **12. LIABILITY FOR ACCIDENTS LOSS AND DAMAGE**

The Company shall indemnify the Purchaser against damage or injury to its property or person to the extent directly caused by the negligence of the Company whilst on the Purchaser's premises for the purposes of the contract, but not otherwise, by making good such damage to property or compensating personal injury  
PROVIDED THAT:

12.1 The Company's total liability for damage to the Purchaser shall not exceed £500,000 or the contract price whichever is the less; and

12.2 the Company shall not be liable to the Purchaser for loss of profit, pure economic loss, loss of use, loss of production, or of contract or, save as aforesaid, for any loss, damage of any kind whatsoever; and

12.3 the Purchaser shall indemnify the Company against all losses, damages, injuries including death to any persons or losses or damage to any property including the goods supplied which may arise out of the Purchaser's or any employee's act, default or negligence and against all claims, demands proceedings, damages, costs, charges and expenses whatsoever in respect thereof, or in relation thereto provided that the Purchaser shall not be liable for nor be required to indemnify against any compensation or damages for or with respect to injuries to persons or property to the extent that such injuries or damage result wholly from any act, default or negligence on the part of the Company.

#### **13. INSPECTION AND TESTING**

13.1 Any tests of the goods or their installation other than those normally carried out by the Company which may be required by the Purchaser, must be separately agreed in writing with the Company and may incur additional cost.

13.2 If the Purchaser required that he or his representative be present at any test, he shall notify the Company when placing his order and the Company shall give at least seven days notice in writing to the Purchaser before any test at which the Purchaser or his representatives requires to be present is carried out. If the Purchaser or his representative fails to attend such test, the Company may nevertheless proceed with such test which, shall have been deemed to have been carried out in the Purchaser's presence.

#### **14. FORCE MAJEURE**

14.1 The Company shall not be liable to the Purchaser to the extent that fulfilment of its obligations hereunder is prevented hindered or delayed by "force majeure" and the Purchaser shall not be entitled to refuse a delivery or terminate the contract in the event of any such delay or failure.

14.2 For the purpose of these Conditions "force majeure" shall mean any circumstances beyond the control of the Company and shall include (without restricting the generality of the foregoing):

14.2.1 Riots, civil commotions, war, rebellion, national or international emergency, strikes, lockouts or other labour disputes;

14.2.2 Destruction or damage due to natural causes, floods, fires, explosions or breakdown of machinery;

14.2.3 Any order of a local, national or international authority or government;

14.2.4 Unavailability of labour, materials or equipment, or failure of a supplier, carrier or sub-contractor to deliver on time; and

14.2.5 Currency restriction.

#### **15. LIABILITY AND INDEMNITY**

15.1 The Purchaser shall indemnify the Company against any damage and against all actions, claim demands, costs, charges and expenses, for which the Company may become liable in respect of the goods sold or services supplied under the contract except to the extent admitted expressly in these conditions, and unless such damage shall have been a direct result of negligence of the Company and can be attributed to no other cause (whether in whole or part).

15.2 The Company shall not be liable for any economic loss, loss of production or other consequential loss of whatsoever kind in relation to any matter arising in connection with the contract.

#### **16. DEFAULT, INSOLVENCY OF PURCHASER**

If the Purchaser shall make default or commit a breach of contract or of any other of his obligations to the Company, or if any distress or execution shall be levied upon the Purchaser's property or assets, or if the Purchaser shall make or offer any arrangement or composition with creditors, or commit any act of bankruptcy, or if any petition or receiving order in bankruptcy shall be presented or made against him, or if the Purchaser is a limited company and any resolution or petition to wind up the Purchaser's business (other than for the purpose of bona fide amalgamation or bona fide reconstruction) shall be passed or presented, or if a receiver of the undertaking, property or assets or any part thereof of the Purchaser shall be appointed then the Company may without notice and without prejudice to any of its other rights:

16.1 Suspend or determine the contract or any unfilled part thereto; and

16.2 stop any goods in transit; and

16.3 recover any goods from the Purchaser's premises for which payment has not been made in full.

#### **17. PATENT RIGHTS**

17.1 The sale of goods and the publication of any information or technical data relating thereto does not imply freedom from patent or other rights in respect of any particular application of the goods by the Purchaser and the Company accepts no liability for infringement of such rights.

17.2 The Purchaser shall indemnify the Company and its suppliers against all royalties and other payments in respect of any patent, registered design or any other rights which might be claimed as a result of goods being made according to designs or specifications supplied by the Purchaser. The Purchaser shall indemnify and keep indemnified the Company and its suppliers against all claims, actions, demands, proceedings, losses and costs in connection with any infringement of any patent or registered design or other right in the manufacture, use, or sale of such goods.

#### **18. ORDER AMENDMENT AND CANCELLATION**

18.1 No order shall be subject to amendment or cancellation by the Purchaser in whole, or in part without the written consent of the Company.

18.2 In the event of agreed cancellation, the Company reserves the right to recover from the Purchaser the greater sum of 25% of the accepted contract price, or the cost of all work carried out and material ordered at the date of cancellation together with a sum equal to a proportion of the total contract price for loss of profit.

#### **19. GENERAL LIEN**

The Company shall have general lien over any goods of the Purchaser in its possession for any monies whatsoever due from the Purchaser to the Company. If any lien is not satisfied within 14 days of such monies becoming due the Company may in its absolute discretion sell the goods as agents for the Purchaser and apply the proceeds towards the monies due and the expenses of the sale and shall upon accounting to the Purchaser for the balance (if any) remaining, be discharged from all liability whatsoever in respect of the goods.

## **20 CONFIDENTIAL INFORMATION**

20.1 The Purchaser is not authorised to copy, publicise or make available to any third party any written instructions, specifications or other information supplied by the Company hereunder and the same, shall remain its property and shall be treated by the Purchaser as strictly confidential even after termination of this contract.

20.2 The foregoing shall not apply to information which is or which becomes in the public domain without default by the Purchaser.

## **21. NOTICES**

Any notices relating to these conditions shall be in writing and may be served by hand or by first class post to the party at its registered office for the time being in the case of company or at his address as notified from time to time in the case of an individual or partnership or other body. Notices sent by first class delivery mail shall be deemed to have been served forty-eight hours after posting and proof of due posting shall be sufficient evidence of delivery. Notices served by hand shall be deemed served at the time of service.

## **22. GENERAL**

22.1 The headings in these conditions are for ease of reference only and do not affect their construction or limit their scope.

22.2 This contract represents the entire agreement between the parties and supersedes all earlier warranties, representations, statements or agreements (whether written or oral).

22.3 This contract is personal to the Purchaser and the Purchaser may not assign, transfer or otherwise part with the benefit and/or burden hereof whether in whole or in part without the written consent of the Company.

## **23. PROPER LAW**

The validity, construction and performance of the contract shall be governed by English law, and unless otherwise agreed by the Company shall be subject to the jurisdiction of the English Courts.