

# Supreme Imports Ltd - Terms of Trading

## 1. Formation

- All quotations (which expression, where the Buyer submits its Order via the Company's website, shall mean the "shopping basket" summary produced once the Buyer has indicated which Goods it requires and proposes to make the subject of an Order) and offers are made and Orders (if accepted) are accepted subject to and shall be deemed to incorporate the Conditions, and the Conditions shall apply to all Contracts between the Buyer and the Company to the exclusion of any other terms and conditions including without limit those which the Buyer purports to apply under any Order. Variations to the terms of any Contract will only be effective if agreed in writing and signed by a duly authorised officer of the Company.
- All Orders shall be deemed to be an offer by the Buyer to purchase the Goods identified therein from the Company on and subject to the Conditions, and shall only be deemed accepted by the Company (at which point a Contract will be deemed to have arisen between the Company and the Buyer in relation to the relevant Goods) upon the earlier of the issue of a formal written acceptance of that Order by the Company or delivery of Goods.
- The Company may modify the specification of Goods without notice provided that such modification does not materially affect the performance of the Goods. The Contract is not a contract for sale of goods by description. All descriptive matter, specifications and advertising issued by the Company is solely aimed at giving an approximate idea of the Goods and will not form part of the Contract.
- Any Order accepted by the Company may only be cancelled or varied by the Buyer with the prior written consent of the Company and on terms that the Buyer shall indemnify the Company in full against all losses (including, without limitation, loss of profit), costs, damages, charges and expenses incurred (directly or indirectly) by the Company as a result of such cancellation or variation.
- The Company shall not be liable or responsible to the Buyer for any representations made by anyone other than a Director of the Company.

## 2. Delivery and Non-Delivery

- Delivery times/dates named/accepted by the Company are given in good faith but are an estimate only. Time of delivery of Goods is not of the essence. Subject to Condition 8 (1), the Company shall not be liable to the Buyer in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause thereof including but not limited to directly or indirectly by failure (for any reason) to meet the delivery time/date stated/agreed (even if caused by the Company's own negligence), (i) for any economic loss of any kind whatsoever, including without limit loss of profit, loss of business, loss of contracts, revenues or anticipated savings, or (ii) for damage to the Buyer's reputation or goodwill, or (iii) for any loss resulting from any claim made by any third party, or (iv) for any special, indirect or consequential loss or damage of any nature whatsoever. Further, the Buyer shall have no right to cancel the Contract in the event of such a failure.
- Goods will be delivered as stated on the Company's quotation or acceptance of order or, if one is not issued, as agreed by the Company. Delivery shall be deemed to take place when the Goods arrive at the place stated in the Company's acceptance of order or if one is not issued at such place as is agreed by the Company except that delivery to a carrier appointed by the Buyer for the purpose of transmission to the Buyer shall be deemed to be delivery to the Buyer (and the Company shall not be liable for any acts or omissions of such carrier). Section 32(2) of the Sale of Goods Act 1979 shall not apply.
- Goods will be packed so as to adequately protect against damage in normal conditions of transit of usual duration. The Company shall make such arrangements for carriage of the Goods and their insurance during carriage as it thinks appropriate and unless otherwise agreed with the Company the Buyer shall indemnify the Company against all costs and/or expenses that the Company incurs in arranging for carriage and insurance of the Goods (including without limit, export and/or import duties and costs of packaging, loading and/or unloading), such costs and/or expenses to be paid by the Buyer when it is due to pay for the Goods.
- The Company may deliver Goods in instalments. Deliveries of further instalments may be withheld until the Goods comprised in earlier instalments have been paid for in full. Default by the Company, howsoever caused, in respect of one or more instalments shall not entitle the Buyer to terminate the relevant Contract as a whole.
- If the Buyer fails or refuses to accept delivery of any Goods when they are ready for delivery or the Company agrees (at its sole discretion) to postpone delivery of the Goods at the request of the Buyer, or the Buyer fails to provide or obtain any instructions, consents or authorisations required to enable the Goods to be delivered on the due date; then risk in the Goods shall pass to the Buyer, delivery of the Goods shall be deemed to have taken place and the Company may store or arrange for storage of such Goods and charge the Buyer for all related costs and expenses (including storage and insurance) and may sell such Goods 28 days after such failure or refusal and deduct any monies payable to the Company by the Buyer from the sale proceeds and account to the Buyer for any excess or charge the Buyer for any shortfall below the Contract price.
- If the Company agrees to permit the Buyer to collect the Goods from the Company's place of business then delivery shall be deemed to take place when the Company notifies the Buyer that the Goods are ready for collection and unless otherwise agreed in writing by the Company it is a condition of the Contract that the Buyer will collect the Goods within 7 days of such notice.
- Upon delivery to the Buyer, all Goods should be examined by the Buyer. The Company shall not be liable for: (a) any shortages in, or non-delivery of, Goods unless the same is notified by the Buyer to the Company (together with all specific details) in writing within 1 day of the actual date of delivery (or deemed delivery); or (b) for the loss of any part of the Goods in transit where such goods are delivered by carrier appointed by the Company and where such loss would be apparent upon delivery by way of inspection by the Customer (for example in the case of obvious damage to the packaging of Goods) and the Customer has failed to carry out such inspection and/or notify the carrier prior to the carrier leaving the premises of the Customer. Subject to such notice being provided, the Company shall at its sole discretion, either arrange for delivery as soon as reasonably possible or give credit to the Buyer for such Goods. Shortages in, or non-delivery of some or part of the Goods shall not affect the Contract in respect of the other or other parts of the Goods.

## 3. Force Majeure

- In the event that the Company is prevented from or delayed in carrying out any of its obligations under the Contract as a result of any cause beyond its reasonable control such as but not limited to: acts of God; governmental intervention or restriction, import or export regulations; war, riots; strikes or trade disputes (including by and with the Company's own employees); power failure; inadequate performance of, failure of or incorrect processing by computer systems; fire; flood; default of suppliers or sub-contractors, or breakdown of plant, machinery or vehicles then the Company shall be relieved of its obligations and liabilities under the Contract for as long as such fulfilment is prevented.

## 4. Risk/Title

- Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery or at the notified time for delivery if the Buyer fails for whatever reason to take delivery of the Goods at the notified time. Section 20(2) Sale of Goods Act 1979 shall not apply.
- Title to the Goods (both legal and equitable) shall remain with the Company until full payment with cleared funds of all monies due from the Buyer to the Company under all contracts between the Company and the Buyer has been made, or title is properly vested in some other person by the operation of any statute.
- Until title to the Goods passes, the Buyer shall hold the Goods on a fiduciary basis as the Company's bailee and must store the Goods (at no cost to the Company) such that they are easily identifiable as the property of the Company and must not destroy or deface any identifying marks on the Goods or their packaging; and must keep the Goods insured on the Company's behalf for the full price of the Goods against "all risks" to the reasonable satisfaction of the Company and produce the policy of insurance to the Company upon request and must hold all proceeds of such insurance on trust for the Company and shall not mingle them with any other money nor pay the proceeds into an overdrawn bank account.
- Until title to the Goods passes, the Buyer shall still be entitled to re-sell, use or otherwise dispose of the Goods in the ordinary course of its business provided that the Buyer shall ensure that the entire proceeds arising by virtue of any such sale, use or disposal shall be held in trust for the Company and shall not be mixed with any other monies or paid into any other overdrawn bank account and shall at all times be identifiable as monies belonging to the Company.
- Once payment becomes due, the Company may, while the owner of the Goods (without prejudice to its other rights) demand the immediate return of the Goods at any time and the Buyer must comply with (and bear the cost of) such demand immediately. If the Buyer fails to return such Goods, the Company or its successors in title, and their respective employees and agents, may enter the Buyer's premises (with or without vehicles) during normal business hours to remove the Goods (the cost of which shall be borne by the Buyer) and/or may sell or otherwise deal with the Goods.

## 5. Price

- Unless fixed prices have been agreed in writing by the Company all prices are subject to alteration without notice and will (where relevant) be invoiced at the price ruling at the date of despatch of Goods. Where Condition 6.3 applies the applicable price will be the Company's price in force at the time the Order is placed.
- Unless otherwise agreed in writing by the Company, prices set out on any of the Company's website, price lists, quotations and/or acceptance of order are ex works (as defined in INCOTERMS 2000) and exclusive of any value added, purchase or other taxes and any costs of carriage, packaging and insurance which shall be payable by the Buyer in addition to the price when the price is due (at, where relevant, the applicable rate in force from time to time).

## 6. Payment

- The Company may invoice the Buyer for the Goods at any time after delivery and Goods delivered in instalments may be invoiced separately provided that if delivery of Goods is postponed at the request or by the default of the Buyer then the Company may submit its invoice at any time after the Goods are ready for delivery or would have been ready in the ordinary course but for the request or default on the part of the Buyer.
- Buyers who have been granted by the Company (in its sole discretion) a credit account facility shall pay the Contract price within 30 days of the date of invoice. The Company may (in its sole discretion) amend the terms of or withdraw such credit account facility at any time without notice with immediate effect and upon such withdrawal all amounts due or accruing to the Company (under the Contract or otherwise) shall become immediately payable notwithstanding any other Condition.
- Buyers who have not been granted a credit account facility shall pay the Contract price at the same time as placing an Order.
- Payment shall only be deemed received by the Company from the Buyer upon receipt by the Company of cleared funds. Payment shall be made in full without any deduction, set off or abatement on any grounds. The Company may appropriate any payment made by the Buyer to any outstanding invoice. The Company may bring an action for the price of the Goods even though the property in them may not have passed to the Buyer.
- Time for payment of the Contract price (including, without limit, any costs or charges payable pursuant to Condition this contract shall be of the essence. The Buyer shall indemnify the Company against all expenses and legal costs incurred by the Company in recovering overdue amounts. Interest shall be payable by the Buyer on overdue amounts (before as well as after judgment) at the annual rate of 1.5 percent per month above the base lending rate of Lloyds TSB Bank plc from time to time on the outstanding amount until the Contract price and/or such costs and/or charges are paid in full. The Company reserves the right to claim interest under the Late Payment of Commercial Debt (Interest) Act 1998.
- The Company may seek from the Buyer on an indemnity basis all expenses and costs including legal costs and other professional costs incurred in respect of issues arising out of the Contract.

## 7. Quality

- The Buyer is relying on its own skill and judgment in relation to the Goods and their selection irrespective of any knowledge of the Company or its servants, agents or employees as to the purpose for which the Goods are supplied or its suitability.
- All warranties implied, statutory or are hereby expressly excluded to the fullest extent permitted by law.

## 8. Liability

- Nothing in these Conditions shall exclude or limit the liability of the Company for death or personal injury caused by the Company's negligence or for fraudulent misrepresentation.
- The Company shall not be liable to the Buyer in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause thereof, (i) for any economic loss of any kind whatsoever, including without limit loss of profit, loss of business, loss of contracts, revenues or anticipated savings, or (ii) for damage to the Buyer's reputation or goodwill, or (iii) for any loss resulting from any claim made by any third party, or (iv) for any special, indirect or consequential loss or damage of any nature whatsoever.
- The Company's liability in contract, tort, (including negligence or breach of statutory duty) or otherwise arising by reason of or in connection with the Contract shall be limited to the greater of the Contract price or the amount received by the Company for the claim under its insurance policy covering such risks provided that nothing in this Condition shall oblige the Company to obtain any insurance or claim upon any insurance which it holds. The Buyer acknowledges that delay in notifying any claim may prevent the Company recovering any money under such policy.
- The Buyer warrants that the use by the Company of any IPRs, designs, specifications, drawings or other materials or information of any nature provided to the Company by the Buyer pursuant to an Order shall not infringe any third party's IPRs. If any claim is brought or threatened against the Company in respect of such an infringement, the Company shall be entitled to suspend carrying out further work to the Buyer, and the Buyer shall indemnify the Company against all actions, claims, costs, demands, expenses and liabilities of whatsoever nature suffered or incurred by the Company as a result of any such claim or threatened claim brought against the Company.
- Nothing in these Conditions shall be construed as a representation or warranty by the Company that the design, manufacture, use or sale of the Goods is not an infringement of any third party's IPRs.

## 9. Intellectual Property Rights and Confidentiality

- The Buyer shall not, under any circumstances, acquire any right in or to any of the IPRs (including, without limitation, copyright) subsisting in, resulting from or relating to the Goods, or documents, drawings and/or specifications relating thereto. If the Buyer shall in any way acquire any such rights then the Buyer shall immediately inform the Company and shall forthwith take such steps as may be required by the Company to assign such rights or vest such title in the Company.
- The Buyer shall not deface, remove or obliterate any trademarks or trade names on the Goods.
- The Buyer shall keep confidential and not use, without the prior written consent of the Company, all or any information including, without limit, that (as referred to in Condition 9.1) supplied by the Company to the Buyer or disclosed to or obtained by the Buyer pursuant to or as a result of the Contract, and shall not divulge the same to any third party except to the extent that any such information is or becomes public through no fault of the Buyer, or disclosure of the same is required by law or by any other governmental or other regulatory body.

## 10. Termination

- Without prejudice to any of its other rights the Company may immediately terminate the Contract and demand payment of any amount due or accruing to the Company whether under the Contract or otherwise, re-sell the Goods and/or withhold or cancel any deliveries if any of the following occurs or is likely to occur:
  - the Buyer is in breach of any of its obligations under the Contract which, if capable of remedy, the Buyer has not remedied within 30 days of receiving written notice from the Company; or
  - the Buyer is or becomes Insolvent or the Buyer suffers a distress or execution or other legal process to be levied or enforced or sued upon or against any part of the property, assets or revenue of the Buyer which is not discharged or stayed within 7 days or the Buyer ceases or threatens to cease to carry on business.
- Without limiting its rights or remedies, the Company will be able to immediately terminate the Contract on the basis that no Goods are available in order to fulfil the Contract, and the Company will not be liable for any losses whatsoever by the Buyer (as set out in clause 8 above), if the Contract is terminated.

## 11. General

- The failure to exercise or delay in exercising by the Company of a right or remedy provided by the Contract or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies.
- The Buyer shall not be entitled to assign or sub-contract any of its rights or obligations under the Contract without the prior written consent of the Company. The Company may assign, license or sub-contract all or any part of its rights or obligation under the Contract without the Buyer's consent.
- The Conditions contain the whole agreement between the Company and the Buyer. All other understandings, agreements, warranties, conditions, terms or representations, whether express or implied, statutory or otherwise, are excluded to the fullest extent permitted by law.
- The Contract shall be construed in accordance with and governed in all aspects by English Law and the Buyer submits to the exclusive jurisdiction of the English Courts.
- The Buyer shall be responsible for complying with all relevant laws, bylaws, regulations, orders, directions, codes of practice or requirements of any statutory, public, local or other competent authority or court of competent jurisdiction applicable to the storage, sale, marketing, provision and use of the Goods.
- Where a private label Order is taken from a Buyer who subsequently fails to honour that order or make payment when due, the Company may at its discretion sell any or all Goods which are the subject of that Order to any third party on such terms as it determines.

## 12. Export Sales

- Notwithstanding any other Condition, where Goods are sold for export outside the United Kingdom:
  - the Uniform Laws on International Sales Act 1967 shall not apply and the Company shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979;
  - Section 26(3) of the Unfair Contract Terms Act 1977 shall apply and notwithstanding Condition 8.a) all liabilities for injury or death arising directly from the use of the Goods are expressly excluded;
  - Unless otherwise agreed in writing by the Company the currency will be pounds sterling and payment shall be by confirmed irrevocable letter of credit to be opened at a bank nominated by the Company at the Buyer's expense;
  - if the Company raises an invoice in another currency payment will be required in the same currency as the invoice has been raised;
  - The Buyer shall be responsible for complying with any legislation or regulations governing the export of the Goods from the United Kingdom and governing the importation of the Goods into the country of destination and for the payment of any duties or taxes on them.

## 13. Governing Law

- The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

## 14. Third Party Rights

- No one other than a party to this agreement (or their successors and permitted assignees) shall have any right to enforce any of its terms. A person or party who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

## 15. Notices

- Any notice or other communication given to the Company under or in connection with the Contract shall be in writing, addressed to the Company at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that the Company may have specified to the Buyer in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service or commercial courier.
- A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 15.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.
- The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

## 16. Interpretation

- In these Conditions, unless the context requires otherwise, any reference to the singular shall include the plural and vice versa and:
- "the Buyer" means the person, firm or company that has requested any Goods;
  - "the Company" means Supreme Imports and its successors and assigns;
  - "the Conditions" means the standard terms and conditions of sale set out herein;
  - "Contract" means any contract for the sale of Goods;
  - "Goods" means any goods supplied or to be supplied by the Company (as may be described on the Company's website, or in the Company's quotation or formal acceptance of order);
  - "Insolvency" means in relation to the Buyer any of the following (as relevant): the appointment of any nominee, sequestrator, trustee, supervisor, administrator, administrative receiver, receiver, liquidator or equivalent pursuant to the Insolvency Act 1986 (as modified or replaced from time to time); or the entry into any compromise or arrangement with its creditors; or if it commits any act of bankruptcy; or if an order is made or effective resolution is passed for its winding up (except for the purposes of an amalgamation or reconstruction of a solvent company) or the appointment of a manager, receiver or equivalent pursuant to the Law of Property Act 1925 (as modified or replaced from time to time) or the occurrence or sufferance of anything equivalent under any jurisdiction other than England or Wales and "Insolvent" shall be construed accordingly;
  - "IPRs" means any intellectual property rights of any nature including without limit any and all inventions, patents, utility models, design rights, copyright, know how, trade secrets, confidential information, trademarks, service marks, trade names and goodwill; and
  - "Order" means an order placed by the Buyer with the Company for Goods.

## 17. Refund Policy

- Consumers (not business customers) are entitled to cancel their purchase at any time up to 7 working days from commencement of "the contract". If goods have been delivered to you then please call us on 0161 872 5151 quoting your order number we will then arrange collection. There will be a charge for this service.

## 18. Faulty or Damaged Goods

- Any refund due to a fault or other defect will include a refund of the applicable delivery charge. We will also pay for our costs of collecting goods for replacement or refund. Replacement goods are sent by standard delivery only. Please call us on 0161 872 5151 to arrange for collection.