

Conditions of Sale

1. GENERAL

The following terms and conditions shall apply to and be deemed to be incorporated in all contracts to supply and/or install goods entered into or made by the following companies:-

ABACUS PLAYGROUNDS LIMITED (Company No. 2992616);

2. DEFINITIONS AND INTERPRETATION

2.1 In this contract the following words shall have the following meanings (unless the context otherwise requires):-

"the Buyer" the Buyer named in an Order Acceptance or Quotation including any agent who makes the Offer to the Company and which the Company accepts.

"the Company" means whichever of the companies named in clause 1 is identified as such in the Quotation, Order Acceptance, invoice or delivery note of which these terms and conditions form part or to which they are annexed.

"Completion" time of delivery of the Goods or, where any Works form part of the Contract, "Completion" means the time when the Works have been substantially completed excluding any maintenance or guarantee periods.

"the Contract" the contract for the supply and/or installation of Goods by the Company of which these terms and conditions shall form a part resulting from the Company's acceptance of the Offer.

"the Contract Price" the amount shown in the Quotation or Order Acceptance as the price for the Works or Goods.

"the Goods" any goods or materials to be supplied by the Company under the Contract including any supplied as part of the Works.

"the Offer" the offer verbal or written submitted by the Buyer to the Company.

"Order Acceptance" means a document so headed which has been issued by the Company and of which these terms and conditions form part or to which they are annexed.

"Quotation" means a document so headed which has been issued by the Company and of which these terms and conditions form part or to which they are annexed.

"the Works" the installation of Goods by the Company under the Contract if applicable.

2.2 In these terms and conditions references to the masculine include the feminine and the neuter to the singular include the plural and vice versa as the context permits.

2.3 The headings appearing in these terms and conditions are for guidance only and shall not in any way be deemed to affect the interpretation or effect thereof.

3. QUOTATION AND ACCEPTANCE

3.1 A Quotation is not an offer by the Company to provide the Works and/or Goods but is an invitation to treat made by the Company to the Buyer.

3.2 An Order Acceptance is the acceptance of the Offer made by the Buyer to the Company which is accepted on and subject to these terms and conditions.

3.3 Subject to any agreed variation under clause 3.5, the Buyer hereby agrees that these are the only terms and conditions which regulate the Contract.

3.4 These terms and conditions shall supersede any terms and/or conditions of any nature of the Buyer whether expressed to be by the way of offer, acceptance, counter offer or otherwise.

3.5 Any attempt by the Buyer to vary or amend these terms and conditions will not be binding on the Company unless the Company has agreed in writing to the variation or amendment.

4. WARRANTIES AND LIABILITIES

4.1 Subject to the conditions set out below the Company warrants that the Goods will correspond with their specification at the time of dispatch and will be free from defects in material and workmanship for the period stated in the Quotation or Order Acceptance (the Warranty Period) which shall commence on the date of dispatch.

4.2 The above warranty is given by the Company subject to the following conditions:-

4.2.1 the Company shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied the Buyer;

4.2.2 the Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Company's approval;

4.2.3 the Company shall be under no liability under the above warranty (or any other warranty condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;

4.2.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Company in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company

4.2.5 that the Goods are maintained, serviced and lubricated in accordance with the Company's instructions and that all spare parts including consumable items are purchased from the Company during the Warranty Period;

4.2.6 the above warranty does not extend to reconditioned or second-hand Goods supplied by the Company.

4.3 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Company immediately on becoming apparent and in any event all defective Goods or defective parts of Goods shall be returned to the Company within 30 days of any such notification. If delivery is not refused, and the Buyer does not notify the Company accordingly, the Buyer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Buyer shall be bound to pay the Contract Price as if the Goods had been delivered in accordance with the Contract.

4.4 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with the terms and conditions herein, the Company shall be entitled to replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), the Buyer shall have no further liability to the Buyer.

4.5 Save as expressly provided herein the Company shall exclude any warranty condition or statement express or implied statutory or otherwise as to quality workmanship or fitness of the Works or the Goods and the Company shall not be liable for any injury loss or damage of whatsoever nature and however arising in connection with any defective or unsuitable workmanship goods or materials whether original or replaced except in so far as such liability cannot lawfully be excluded from the Contract and the Company shall not in any event be liable for loss of profit or any other form of consequential loss.

4.6 No terms conditions guarantees representations or undertakings made to the Buyer by any of the Company's salesmen agents employees or representatives shall be binding unless confirmed in writing by the Company.

4.7 The Buyer and the Company shall enter into the Contract in the knowledge that the liability of the Company is to be limited in accordance with these terms and conditions and the price shall be agreed accordingly. The Buyer acknowledges that a higher price would be payable but for such limitations.

5. INDEMNITY

The Buyer shall undertake to indemnify the Company against all claims relating to the Works and/or Goods in respect of any loss, damage or expense whatsoever arising whether such claims be made by the Buyer or any third party and whether they be made in respect of contractual or tortious liability breach of statutory duty or any other liability.

6. RESERVATION OF TITLE

6.1 The Goods shall remain the sole and absolute property of the Company as legal and equitable owner until such time as the Buyer shall have paid to the Company both the Contract Price (including any retention) and all monies owed by the Buyer to the Company on any account whatsoever.

6.2 Until such time as the Buyer becomes the owner of the Goods the Buyer will store them on its premises separately from its own goods and materials or those of any other person and in a manner which makes them readily identifiable as the Goods of the Company.

6.3 The Buyer is licensed by the Company to agree to sell all the Company's Goods subject to the express condition that the entire proceeds thereof are held in trust for the Company and are not mingled with other monies or paid into any overdrawn bank account and shall be at all times identifiable as the Company's money.

6.4 The Company may for the purpose of recovery of the Goods enter upon the premises where they are stored or laid or where they are reasonably thought to be stored or laid and may remove the same.

6.5 If Goods the property of the Company are admixed with goods and materials the property of the Buyer or are processed with or incorporated therein, the product thereof shall become and/or shall be deemed to be the sole and exclusive property of the Company. If Goods the property of the Company are admixed with the property of any other person other than the Buyer or are processed with or incorporated therein, the product thereof shall become or be deemed to be owned in common with that other person.

7. TRANSFER OF RISK

7.1 Notwithstanding that the property in the Goods may not have passed to the Buyer the Buyer shall carry all risk of loss of and damage to them when the Goods are delivered or installed as part of the Works.

7.2 From when the risk of loss of and damage to the Goods commences to when the Company is paid in full for them the Buyer shall:-

7.2.1 indemnify and keep indemnified the Company against all loss of and damage to the Goods and against any reduction in the resale value thereof below the price to be paid by the Buyer;

7.2.2 insure and keep insured the Goods in an amount at least equal to the Contract Price

and; 7.2.3 hold upon trust for the Company absolutely all proceeds of such insurance.

8. WORKS AND DELIVERY

8.1 Delivery of the Goods and the carrying out of the Works (if any) shall take place at the location specified in the Quotation or Order Acceptance or (if no location is so specified) at the premises of the Buyer.

8.2 Any date or time stated in the Contract for delivery of Goods or completion of the Works is given in good faith and every endeavor will be made to adhere to it subject to clause 9 below. Any such date or time is an estimate only and the Company shall not be liable for failure to deliver the Goods or carry out the Works within the time or by the date stated.

8.3 The carrying out of the Works and/or delivery of the Goods shall not be hindered by any obstruction or impediment on the premises. The premises shall not be in such a state as shall in any manner affect such Works and/or delivery and the premises shall in all respects be suitable for such Works and/or delivery with good roads up to the place of delivery.

9. TIME

Time shall be of the essence of the Contract for the performance by the Buyer of its obligations herein and the Buyer shall indemnify the Company against any loss or damage caused by delay for whatsoever reason. Time shall not be of the essence of the Contract for the performance by the Company of its obligations herein.

10. DRAWINGS AND SPECIFICATIONS

10.1 The Company reserves all rights protected by statute, license, registration or common law vested in the Company by way of letters, patent, utility, model right, trade marks, design right, registered design or copyright or trade secrets in any documentation, drawings, plans or specifications, technical data or formulae, or in any goods written, drawn or manufactured (as the case may be) by the Company and the Buyer agrees same or cause or permit the same to be reproduced without the written consent of the Company provided the restriction shall not apply to information or knowledge relating to the above which may become public knowledge (other than as a result of the Buyer's breach).

10.2 The Company shall accept no liability for any minor deviation from the Contract nor shall such deviation be made the basis of any claim against the Company.

10.3 The Buyer shall provide such complete instructions particulars information and materials if specified as shall be necessary or required by the Company to enable the Company to complete the Contract.

10.4 The preparation and construction of foundations access and supporting structures are not included in the Contract and must be prepared by the Buyer prior to the commencement of the Works unless expressly agreed in writing.

11. PRICE AND PAYMENT

11.1 The Contract Price shall be strictly net unless otherwise quoted. The Company shall be entitled to add to the Contract Price the amount of any tax or other Governmental charges in the UK or otherwise which the Company must pay in respect of the Goods (including Value Added Tax).

Such taxes or Governmental charges shall include those now in effect or those which are hereinafter imposed or any increases thereto prior to delivery.

11.2 Subject to any special terms for payment agreed in writing between the Buyer and the Company, the Company shall be entitled to invoice the Buyer for the Contract Price (or any instalment) on or at any time after completion of the Works (or any agreed part of the Works) as detailed in the Quotation or Order Acceptance or delivery of the Goods (or any instalment) provided that if Goods (or any instalment) are to be collected by the Buyer or if the Buyer wrongfully fails to take delivery of the Goods (or any instalment) the Company shall be entitled to invoice the Buyer for the Contract Price at any time after the Company has notified the Buyer that the Goods (or any instalment) are ready for collection or (as the case may be) the Company tendered delivery of the Goods.

11.3 The Buyer shall pay the Contract Price without deduction on "Completion" or (where a credit account has been established by the Buyer with the Company) on or before the thirtieth day following the date of the invoice, notwithstanding that delivery of Goods may not have taken place and the property in the Goods has not passed to the Buyer. The time for payment of the Contract Price shall be of the essence of the Contract. Receipts for payment will be issued upon request.

11.4 If the Buyer fails to make any payment on the due date under any Contract then without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel and/or suspend any further Works or deliveries of Goods to the Buyer under this or any other Contract.

11.5 Interest will be charged on all overdue accounts at the rate of four per cent above Bank of Scotland base lending rate for the time being in force. Such interest will accrue from day to day and be payable both before and after any judgment.

11.6 No payment may be withheld nor any sums owing to the Buyer set off against any payment due hereunder without the consent of the Company.

11.7 The Company shall add to the Contract Price the cost of extras incurred by the Company in relation to:-

11.7.1 additional items ordered;

11.7.2 tests alterations or commissioning additions;

11.7.3 alterations in design quantity specification or manufacturing details including the correction of any error on the part of the Buyer therein provided always that the Company shall reserve the right to amend the unit rates applicable to the Contract Price;

11.7.4 the failure of the Buyer to adhere to instruction given by the Company as to use of Goods.

11.8 The Contract Price is based on raw materials prices and the Company therefore reserves the right should raw materials prices rise to alter the Contract Price accordingly.

11.9 No retention of the Contract Price shall be made by the Buyer without the Company's written agreement.

12. DETERMINATION OF THE CONTRACT

12.1 The Company shall be entitled to determine the Contract by notice in writing to the Buyer if:-

12.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

12.1.2 an encumbrancer takes possession or a receiver is appointed, of any property or assets of the Buyer; or

12.1.3 the Buyer ceases or threatens to cease to carry on business; or

12.1.4 the Buyer fails to make payment within seven days of a written notice from the Company stating that the period for payment has expired.

12.2 If the Company determines the Contract under clause 12.1 then without prejudice to any other right or remedy available to the Company the Company shall be entitled to payment for the value of the Works carried out and/or Goods delivered (together with interest as referred to in clause 11.5) and in addition thereto an amount (by way of damages and not a penalty) equivalent to the profit the Company would have made on the balance of the Work not carried out by reason of the occurrence of any events referred to in the relevant sub-clause of clause 12.1.

12.3 The Company shall also be entitled to cancel the Contract or suspend any further Works and/or deliveries of Goods under the Contract without any liability to the Buyer, and if any Works have been carried out or Goods delivered but not paid for the Contract Price shall become immediately due and payable notwithstanding any provisions agreement or arrangement to the contrary.

13. FORCE MAJEURE

The Company shall not be under any liability of whatever kind for non-performance in whole or in part of its obligations under the Contract due to causes beyond the control of the Company or beyond the control of the Company's suppliers including but not limited to war (whether an actual declaration thereof is made or not), terrorism, sabotage, insurrection, riot or other acts of civil disobedience, Government regulations, or acts of God.

In any such event the Company may without liability cancel the Contract or vary the terms of the Contract including but not limited to extending the time of performance of the Contract for a period at least equal to the time lost by reason of such causes.

14. ASSIGNMENT

14.1 The Company shall be entitled to assign the benefit (subject to the burden) of the Contract to a company which succeeds to the business of Company as a result of any internal reorganisation reconstruction or amalgamation of the Company or any group of companies of which the Company forms part.

14.2 Save as provided for in clause 14.1 neither party may assign, novate, sub licence or otherwise transfer the Contract or any of its rights or obligations in whole or in part, without the written consent of the other party.

14.3 The Contract is enforceable by the original parties to it and by their successors in title and permitted assignees. Any rights of any person to enforce the terms of the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999 (or any successor legislation) are excluded.

15. GENERAL

15.1 Any notices required or permitted to be given by either party to the other under these conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

15.2 No waiver by the Company of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

15.3 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 of the provisions of these terms and conditions and the remainder of the provision in question shall not be affected thereby.

15.4 The Contract shall in all respects be construed and operate as a contract made in England and the construction validity and performance of the Contract shall be governed in all respects by English Law.