

# Terms & Conditions of Sale

## 1. FORMATION OF CONTRACT

- 1.1 All quotations, offers and tenders are made and all orders are accepted subject to the following conditions. Except as otherwise provided in these conditions, all other terms, conditions or warranties are excluded from any contract between Heywood Williams Components Limited trading as Mila Hardware ('Mila') and its customer (the "Buyer") unless expressly accepted in writing by a director of Mila.
- 1.2 If there is a conflict between these conditions and any other terms of Mila's quotation, offer, tender or acknowledgement of order, such other terms shall prevail.
- 1.3 Quotations shall only be valid for a maximum period of 28 days from date of issue and may be withdrawn by Mila by written or oral notice to the Buyer at any time prior to the contract being formed. The contract will only be formed when Mila has accepted the Buyer's order.
- 1.4 If any statement or representation has been made to the Buyer by Mila or its officers, employees or agents (other than in the document(s) enclosed with Mila's quotation or acknowledgement of order), upon which the Buyer wishes to rely it shall only be entitled to do so if the statement or representation is attached to or endorsed on the Buyer's order and then only if Mila subsequently confirms in writing to the Buyer that the Buyer is entitled to rely on the statement or representation.
- 1.5 Prices are quoted by Mila on the basis of the limitations of liability set out in these conditions.
- 1.6 Unless specifically agreed to the contrary all commercial terms shall be interpreted in accordance with the international commercial terms published by the International Chamber of Commerce ("INCOTERMS") current at the time the order is accepted.

## 2. PRICES

- 2.1 The price of the goods shall be the price as set out or determined in accordance with Mila's current price list at the date of the order or the price as agreed with Mila in writing at the date of the order.
- 2.2 Unless otherwise agreed in writing all prices are quoted net ex-works exclusive of VAT. Mila reserves the right to amend the price list at any time, and such amendment may be effective immediately upon notification to the Buyer in writing in relation to all contracts entered into after such notification.
- 2.3 Mila reserves the right to provide carriage at a separate charge to the goods at a rate set out in the current price list, or as agreed in writing by Mila.
- 2.4 Where Mila delivers or arranges delivery of the goods, the Buyer shall be liable to Mila for carriage costs, insurance costs and any demurrage costs incurred by Mila if vehicles are unduly delayed at the place of delivery.

## 3. DELIVERY

- 3.1 Delivery of the goods shall be given and taken at Mila's premises unless Mila has specifically agreed in writing to arrange transport for the goods in which case delivery shall occur when the goods arrive at the designated place of delivery.
- 3.2 Mila shall be entitled to deliver goods in instalments and each such delivery shall be treated as a separate contract.
- 3.3 Time for delivery is given as accurately as possible but is not guaranteed. The Buyer shall have no right to damages or to cancel the contract for failure for any cause to meet any delivery time stated nor shall the Buyer be entitled to make, or to purport to make, time for delivery of the essence of the contract.
- 3.4 The date for delivery shall in every case be dependent upon prompt receipt of all necessary information, final instructions or approvals from the Buyer.
- 3.5 If the Buyer fails to take delivery of goods or to give Mila adequate delivery instructions (save where this is due to an act or omission by Mila) then, without prejudice to any other right or remedy available to Mila, Mila may:-
  - 3.5.1 store the goods until delivery and charge the Buyer reasonable costs of such storage; or
  - 3.5.2 treat the contract as repudiated by the Buyer either in whole or in part.
- 3.6 Mila will endeavour to comply with reasonable requests by the Buyer for postponement of delivery of the goods but shall be under no obligation to do so. Where delivery is postponed, otherwise than due to default by Mila then, without prejudice to all other rights and remedies available to Mila, the Buyer shall pay all costs and expenses, including a reasonable charge for storage and transportation so occasioned.
- 3.7 Mila will not be liable for unloading the goods at the place of delivery or for placing them in position on site except by prior agreement in writing, and if Mila or any of its agent does participate in the unloading (whether with or without such prior agreement) the Buyer will indemnify Mila in respect of claims brought against Mila relating to its or its agents participation in such unloading.
- 3.8 Section 32(2) of the Sale of Goods Act 1979 shall not apply. Mila shall not be required to give the Buyer the notice specified in Section 32(3) of that Act.

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## 4. RISK AND TITLE

4.1 Risk shall pass to the Buyer (so that the Buyer is then responsible for all loss or deterioration of the goods or for any damage occurring):-

4.1.1 if Mila is responsible for delivering or arranging for delivery of the goods, at the time when the goods arrive at the place for delivery (whether or not delivery is possible); or

4.1.2 in all other circumstances, at the time when the goods leave the premises of Mila.

4.2 The goods shall remain the sole and absolute property of Mila as legal and equitable owner until such time as all sums due to Mila from the Buyer, whether in respect of the goods or other goods or services, have been paid in full.

4.3 Mila may recover goods in respect of which title has not passed to the Buyer at any time and the Buyer irrevocably licences Mila, its officers, employees and agents to enter upon any premises of the Buyer, with or without vehicles, for the purpose either of satisfying itself that Condition 4.4 below is being complied with by the Buyer or of recovering any goods in respect of which title has not passed to the Buyer.

4.4 Until title to the goods has passed to the Buyer under these conditions it shall possess the goods as fiduciary agent and bailee of Mila. The Buyer shall store the goods separately from other goods and shall ensure that they are clearly identifiable as belonging to Mila. The Buyer shall not remove, deface or obscure any identifying mark or packaging on or relating to the goods. The Buyer shall also maintain the goods in satisfactory condition and keep them insured against all risks for their full price. During such time as the Buyer possesses the goods and prior to title passing, with Mila's consent, the Buyer may in the normal course of its business sell or hire the goods as principal but without committing Mila to any liability to the person dealing with the Buyer but such right shall immediately cease should any of the events in Condition 14.1 apply to the Buyer.

## 5. PAYMENT

5.1 Unless otherwise agreed by Mila in writing, payment shall be due and payable by the end of the month following the calendar month in which the invoice is dated and shall be made without any set-off, counterclaim or deduction whatsoever.

5.2 Mila shall be entitled to submit its invoice with its delivery advice note or at any time following despatch except that where delivery has been postponed at the request of, or by the default of, the Buyer, Mila 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 Buyer's request or default.

5.3 Where goods are delivered by instalments Mila may invoice each instalment separately and the Buyer shall pay such invoices in accordance with these conditions.

5.4 No disputes arising under the contract nor delays (other than delays acknowledged by Mila in writing), shall interfere with prompt payment in full by the Buyer.

5.5 If the Buyer shall default in payment, Mila shall be entitled, without prejudice to any other right or remedy, to do all or any of the following:-

5.5.1 to suspend any or all further deliveries under the contract and under any other contract or contracts between Mila and the Buyer then current, without notice;

5.5.2 to charge interest on any amount outstanding at the rate of 8% per annum above the base rate of the Bank of England, such interest being charged as a separate, continuing obligation not merging with any judgment together with any statutory debt recovery costs;

5.5.3 to serve notice on the Buyer requiring immediate payment for all goods supplied by Mila under this and all other contracts with the Buyer whether or not payment is otherwise due;

5.5.4 to sue for the price of the goods even though title may not have passed to the Buyer.

5.6 Mila shall be entitled to apply monies received from the Buyer in such manner as it chooses.

## 6. PACKAGING

6.1 Packaging supplied by Mila, unless otherwise expressly agreed in writing, is intended to provide adequate protection in normal conditions of transit of expected duration. Where Mila indicates that such packaging is to be returned to Mila, the Buyer shall be responsible for returning such packaging as soon as reasonably practicable, carriage paid and in good condition.

## 7. EXPORT TERMS

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7.1 The Buyer shall be responsible for obtaining and complying with any necessary import/export licences, permits and contracts for the supply and delivery of the goods. It is the Buyer's responsibility to ensure that the goods comply with all legal and customary requirements in all jurisdictions into which the goods may be shipped or resold (and it shall indemnify Mila and keep Mila indemnified against any losses, claims, damages or expenses suffered or incurred by Mila as a result of the Buyer failing to do this).

## 8. CANCELLATION AND RETURNS

8.1 Cancellation will only be agreed to by Mila on condition that all costs and expenses incurred by Mila up to the time of cancellation and all loss of profits and other loss or damage resulting to Mila by reason of such cancellation will be paid immediately by the Buyer to Mila. Mila will not agree to cancellation of any orders for goods which are made to order or bought in by Mila specifically to fulfil the customer's order. Mila will advise the Buyer at the point of ordering of any products which meet these criteria.

8.2 Goods may only be returned to Mila for credit upon receiving prior written consent from Mila, and should be presented in accordance with Mila's returns procedure, a copy of which is available on request. Returned items will be subject to carriage and restocking charges in line with Mila's returns procedure and notified to the Buyer in advance.

## 9. VARIATIONS

9.1 No variations to the goods required by the Buyer shall be binding on Mila unless agreed by Mila and the Buyer in writing, including, as part of such agreement, any change to the contract price arising in consequence of the variation to the goods. If Mila agrees to any such variation, any dates quoted for delivery shall be extended accordingly.

## 10. PRODUCT INFORMATION AND SPECIFICATION

10.1 Mila reserves the right to alter the dimensions or composition of the goods supplied to conform to applicable standards or laws or otherwise within reasonable limits having regard to the nature of the goods. The design and specification of all goods may be subject to change or discontinuation without notice.

10.2 Whilst Mila has made every effort to ensure accuracy at time of issue, any illustrations, performance details, examples of installations and methods of assembly and all other technical data in such literature may not constitute an accurate and complete technical specification, and are based on experience and trials under test conditions and are provided for general guidance only. Mila's policy of continuous product improvement requires that its right to alter details may be exercised at any time. No such information or data shall form part of the contract or have any contractual force unless the Buyer shall have complied with Condition 1.4 relating to statements and representations and Mila shall have given the confirmation referred to in that Condition.

## 11. WARRANTIES AND LIABILITY

11.1 Mila takes reasonable steps to ensure that the goods shall be free from major defects for a period of one year following delivery (subject to fair wear and tear). Except as set out in specific product literature or catalogues, Mila does not guarantee the decorative finish of the goods.

11.2 If Mila offers a guarantee period in its sales literature in excess of one year it warrants that such goods will be free from material defects in materials and workmanship for such extended guarantee period. However, should the Buyer fail to make payment for the goods as required pursuant to these terms or should any of the events listed in Clause 14.1 happen to the Buyer, the extended guarantee period shall be of no effect and the extended guarantee shall be deemed replaced by the normal warranty as provided at Clause 11.1.

11.3 Any claim by the Buyer which is based on any shortage or any defect in the quality or condition of the goods or their failure to correspond with specification which is visible on inspection shall (whether or not delivery is refused by the Buyer) be notified to Mila within three (3) working days from the date of delivery. If delivery is not refused, and the Buyer does not notify Mila accordingly, the Buyer shall not (subject to Condition 11.4) be entitled to reject the goods and Mila shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the goods had been delivered in accordance with the contract.

11.4 Any claim relating to defects in materials or workmanship that were not visible on delivery shall only be valid if such claim is made within one year following delivery of the goods (or if longer the guarantee period stated in Mila's brochure at the time the contract was made) and in any event within 7 days of discovery of the defect. All warranties are subject to the conditions stated in the brochure from time to time. Where fitting and aftercare instructions are provided with the goods, the Buyer shall be required to prove that these have been complied with in order to support any claim. Mila shall have no liability for any claims made following the expiry of such period.

11.5 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

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specification is notified to Mila in accordance with Conditions 11.3 or 11.4 above, Mila shall be entitled to repair or replace the goods (or the part in question) free of charge or, at Mila's sole discretion, refund to the Buyer the price of the goods (or a proportionate part of the price), but Mila shall have no further liability to the Buyer whatsoever.

- 11.6 For the avoidance of doubt, the remedies set out in Condition 11.5 above represent Mila's entire liability in respect of any defective goods and without limitation to the generality of the foregoing:-
- 11.6.1 Mila shall be under no liability in respect of any defect in the goods arising from any drawing, design or specification supplied by the Buyer;
- 11.6.2 Mila 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 Mila's instructions (whether oral or in writing), misuse or alteration or repair of the goods without Mila's approval; and
- 11.6.3 in no event shall the Buyer be entitled to reject the goods on the basis of any defect or failure which is so slight that it would be unreasonable for him to reject them
- 11.7 Subject as expressly provided in these conditions, and except where the goods are sold to a person dealing as a consumer (i.e. an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 11.8 Except as expressly provided in these condition and subject to Condition 11.9, Mila shall have no liability to the Buyer (whether arising under contract, tort (including negligence), breach of statutory duty or otherwise) in excess of the price of the goods and shall have no liability for any loss of profit, loss opportunity, loss of sales or loss of goodwill, costs, expenses (in each case whether direct or indirect) or for any indirect, special or consequential loss or damage or other claims for compensation whatsoever which arise out of or in connection with the supply of goods or their use or resale by the Buyer.
- 11.9 Nothing in these terms and conditions shall limit or exclude Mila's liability for death or personal injury, any fraud or for any other liability which it is not permitted to limit or exclude by operation of law.
- 11.10 The parties agree that in all the circumstances of the Contract that the limitations of liability in this Condition 11 are fair and reasonable taking into account the price payable by the Buyer and the relative abilities of the parties to insure against the potential losses that may arise.

## 12. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY RIGHTS

- 12.1 All drawings, documents, confidential records, computer software and other information supplied by Mila, whether produced by itself or a third party, are supplied on the express understanding that copyright is reserved to Mila (or the third party) and that the Buyer will not, without the written consent of Mila, give away, loan, exhibit or sell any drawings, documents, records, software or other information or extracts from them or copies of them or use them in any way except in connection with the goods in respect of which they are issued. In addition, any design right or copyright created in relation to the goods will vest in Mila where the goods are commissioned by the Buyer, whether or not for a separate fee.
- 12.2 All claims for alleged infringement of patents, trade marks, registered designs, design right or copyright received by the Buyer relating to the goods must be notified immediately to Mila. If requested by Mila, Mila shall be entitled to have conduct of any proceedings relating to any such claim in such manner as Mila thinks fit and the Buyer will provide to Mila such reasonable assistance as Mila may request. The cost of any such proceedings will be borne by Mila.

## 13. CUSTOMER'S DRAWINGS

- 13.1 The Buyer shall be solely responsible for ensuring that all drawings, information, advice and recommendations given to Mila, either directly or indirectly by the Buyer or by the Buyer's consultants or advisers, are accurate, correct and suitable unless, and then only to the extent that, Mila agrees in writing to accept responsibility. Examination or consideration by Mila of such drawings, information, advice or recommendations shall not of itself limit the Buyer's responsibility.
- 13.2 The Buyer shall indemnify Mila from and against all actions, claims, costs and proceedings which arise due to the manufacture of goods by Mila being in accordance with drawings or specifications provided by the Buyer if such drawings or specifications are inaccurate or contain design defects or if they infringe or are alleged to infringe a patent, copyright, registered design, design right or design copyright or other right of any third party.
- 13.3 Mila does not guarantee the suitability of materials or the design of goods made especially to the Buyer's requirements and differing from Mila's standard specifications even if the purpose for which the goods are required is known to Mila.
- 13.4 Mila does not accept responsibility for the safe-keeping and condition of the Buyer's samples, drawings, tools and the like whilst they are in Mila's possession whatever the circumstances may be in which they are lost, broken or damaged and the Buyer should make its own arrangements to insure these items.

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## 14. INSOLVENCY AND TERMINATION

- 14.1 Mila shall be entitled to cancel the contract in whole or in part by giving written notice to the Buyer, without prejudice to any other right or remedy available to Mila if the Buyer is subject to any of the following:
- 14.1.1 deemed unable to pay its debts for the purposes of Section 123 of the Insolvency Act 1986;
  - 14.1.2 commences negotiations with any class of its creditors with a view to rescheduling any of its debts;
  - 14.1.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Buyer;
  - 14.1.4 a creditor or encumbrancer of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - 14.1.5 an application is made to court, or an order is made for the appointment of an administrator;
  - 14.1.6 a floating charge holder over the Buyer's assets has become entitled to appoint or has appointed an administrative receiver;
  - 14.1.7 a person becomes entitled to appoint a receiver over the Buyer's assets or a receiver is appointed over the Buyer's assets;
  - 14.1.8 any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events in Conditions 14.1.1 to 14.1.7 (inclusive).
  - 14.1.9 the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or
  - 14.1.10 the Buyer's financial position deteriorates to such an extent that in Mila's opinion the Buyer's capability to adequately fulfil its obligations has been placed in jeopardy.
- 14.2 The Buyer shall immediately notify Mila in writing if:-
- 14.2.1 there is any change in the ownership, management or control of the Buyer;
  - 14.2.2 there is any sale or transfer of a material part of the Buyer's business or assets;
  - 14.2.3 the Buyer, being a sole trader, entering into partnership with others; or
  - 14.2.4 the Buyer, being a sole trader or a partnership, becomes incorporated or amalgamated with others.
- 14.3 If any of the events listed at Condition 14.2 occur any credit facilities granted by Mila shall automatically terminate and the balance of such account shall become immediately payable in full
- 14.4 If any of the events detailed in Condition 14.1 occur, Mila reserve the right to terminate the warranty for certain products as stated in Mila's brochure at the date of the contract.
- 14.5 Should the Buyer fail to notify Mila of the occurrence of any of the events listed in Conditions 14.2.1 – 14.2.4 above the Buyer shall be jointly and severally liable to pay all sums due to Mila in respect of goods and/or services supplied to the changed entity until the date that written notice is received by Mila.
- 14.6 The Buyer shall be jointly and severally liable for all sums due to Mila in respect of goods and/or services supplied to any individual, partnership or other legal entity that makes use of the customer's credit account facility.
- 14.7 Mila may (without prejudice to its other rights or remedies) terminate or suspend Mila's performance of the whole or any outstanding part of the contract if the Buyer fails to take delivery of or to pay for the goods on the date required or breaches any other term of contract, or if the customer is late in payment or performance under or otherwise breaches any other contract for the sale and purchase of goods or services between the Buyer and Mila. Mila may also suspend deliveries while investigating any claim relating to prior deliveries (under any contract) of goods.

## 15. FORCE MAJEURE

Mila shall be under no liability for any failure to perform any of its obligations under the contract if and to the extent that the failure is caused by a Force Majeure Event. A Force Majeure Event includes but is not limited to, an act of God, terrorism, war, riot, extreme adverse weather conditions, fires, governmental restriction, condition or control or by reason of any act done or not done pursuant to a trade dispute, shortages of labour or materials or breakdown of machinery or any other matter (whether or not similar to the foregoing) outside the control of Mila.

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## 16. ATTENDANCE ON SITE

If Mila attends, or arranges for an attendance to be made, at the Buyer's premises or the premises of any third party for any reason connected with the contract, the Buyer shall indemnify Mila in respect of all claims made or proceedings taken against Mila (and associated legal costs incurred by Mila) by any person, firm or company, including employees of Mila, or of the Buyer or of any contractor employed by the Buyer (or their personal representatives), whether in respect of death, personal injury or damage to property arising directly or indirectly from the attendance at such premises.

## 17. CONSUMER PROTECTION ACT 1987 (THE "ACT")

17.1 In circumstances in which Mila supplies goods to the Buyer for incorporation with, or use ancillary to, any composite or other products to be produced, manufactured, processed or supplied by the Buyer or a third party then:-

17.1.1 the Buyer shall immediately on demand produce for inspection by Mila copies of all written instructions, information and warnings to be supplied by the Buyer in relation to the composite or other products, provided that such inspection or right to inspect shall not of itself constitute acceptance or approval on the part of Mila of such instructions, information or warnings; and

17.1.2 the Buyer shall indemnify, reimburse and compensate Mila for all losses and damages (including costs, expenses and charges for legal actions in which Mila may be involved) which Mila may incur, or have to bear, if any claim or claims shall be made against Mila, pursuant to the Act or otherwise, relating to the composite or other products in circumstances in which the goods supplied by Mila are either (i) not the defective part of the composite or other product, or (ii) are only rendered the defective part or became a defective product by reason of acts or omissions of the Buyer or a third party (including without limitation the supply of defective free issue materials), or (iii) are only rendered the defective part or became a defective product by reason of instructions or warnings given by the Buyer or other supplier of the composite or other products or (iv) are supplied in accordance with a specification or drawings furnished by, or on behalf of, the Buyer.

17.2 For the purposes of Condition 17.1 only, the word "defective" shall be interpreted in accordance with the definition of "defect" contained in Part 1 of the Act.

17.3 The Buyer acknowledges that it is under a duty to pass on to its customers all instructions, information and warnings supplied to it by Mila with the goods.

## 18. GENERAL

18.1 The contract is entered into between Mila and the Buyer as principals and the Buyer shall not be entitled to assign the benefit or burden of it or of any interest in it (including but not limited to any guarantee) without the prior written consent of Mila. Mila shall be entitled to sub-contract the whole or part of its obligations under the contract and to assign its interest in the contract.

18.2 If these conditions shall be or become void in whole or in part, the other provisions shall remain valid and enforceable and the void provisions shall, where appropriate, be replaced by other provisions corresponding as closely as possible with the void provisions.

18.3 A failure by Mila to exercise, or a delay in exercising, any right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies which Mila may otherwise have and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

18.4 Any waiver by Mila of a breach of any of the terms of this Agreement or of any default under this Agreement shall not be deemed a waiver by Mila of any subsequent breach or default and shall not affect the other terms of this Agreement.

18.5 A person who is not a party to the Agreement (a "third party") shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 (the "Act") to enforce any of these conditions. Any right or remedy of a third party which exists or is available apart from the Act is not affected.

18.6 The parties agree that any disputes arising or in any way connected with the subject matter of this Agreement (whether of a contractual or tortious nature or otherwise) shall be subject to the laws of England and in the case of proceedings issued against Mila shall be subject to the jurisdiction of the English courts only.

18.7 Credit reference agencies - We will make a search and/or enquiry of a credit reference agency that will keep a record of such search and may share it with other businesses. In doing so we will also share your personal data and trade performance with such credit agencies who may go on to share such information with third parties in assessing applications for credit and fraud prevention. For Credit Circle members information including trade credit performance will be made available to other organisations.

18.8 To the extent any personal data is collected or processed under or in connection with these Conditions it shall be collected or processed in accordance with applicable law and the Seller's privacy policy (and where applicable cookies policy) which can be downloaded from our website at [www.mila.co.uk](http://www.mila.co.uk).