

1. DEFINITIONS

In these Terms of Sale the following meanings shall apply:

“We” and “Us” means SGB Hire (the legal entities being SGB Hire (Channel Islands) Ltd in Jersey and SGB Hire (Guernsey) Ltd) and Our shall be interpreted accordingly.

“You” means the person their employees or agents seeking to purchase Goods from Us and Your shall be interpreted accordingly. “the Goods” means the goods, and/or the services to be supplied by Us.

“Company Signatory” means a manager employed by Us.

“the Terms” means these terms and special terms agreed in writing between a Company Signatory and You. “Consumer” means any natural person acting for purposes outside their trade, business or profession.

SAFETY INFORMATION ABOUT THE USE OF THE GOODS IS PROVIDED AND IT IS YOUR RESPONSIBILITY TO BRING THIS TO THE ATTENTION OF THE USER OF THE GOODS

2. THE CONTRACT

2.1 All orders are accepted by Us only under these Terms which may not be altered except with the written agreement of a Company Signatory.

Any contrary or additional terms unless so agreed are excluded. Written quotations are open for 28 days.

2.2 Orders may be cancelled only with written agreement of a Company Signatory and You will indemnify Us against all losses damages costs and expenses We incur as a result of that cancellation

2.3 We shall not be liable for any misrepresentation made by Us Our employees or agents to You as to the condition of the Goods their fitness for any purpose or as to quantity or measurements unless the representation is made or confirmed in writing by a company Signatory and/or is fraudulent. Our brochures and other literature are for your guidance only and (in the absence of fraud on Our part) shall not constitute representations by Us.

3. PRICE

3.1 The ex-works price of the Goods shall be as stated or quoted and is exclusive of VAT. A separate charge shall be made for delivery and all pallets and/or containers which you fail to return. Any discounts deductions or rebates agreed are only available if the price is paid by the due date.

3.2 Prices stated or quoted are applicable to the quantity specification delivery dates and information provided by You. If the order placed varies or delay is caused by Your instructions or lack of instructions We shall be entitled to adjust the price.

4. PAYMENT

4.1 If We have agreed in writing to give You credit all accounts are due for payment 30 days after the date of Our invoices.

4.2 Credit is granted and may be reviewed at any time at Our discretion. We reserve the right to refuse to execute any order or contract if the arrangements for payment or Your credit rating is not satisfactory to Us.

4.3 You may not withhold payment of any invoice or other amounts due to Us by reason of any right of set off or counterclaim which You may have or allege to have for any reason.

5. DELIVERY

5.1 Delivery will be effected when the Goods are collected or arrive at the delivery address immediately prior to unloading for which You shall be responsible.

5.2 Delivery dates are given in good faith but are estimates only. Time for delivery shall not be of the essence of the contract.

5.3 We shall not be liable for any damages whatsoever whether direct or indirect (including for the avoidance of doubt any liability to any third party) resulting from any delay by Us in delivery of the Goods or failure to deliver the goods in a reasonable time whether such delay or failure is caused by Our negligence or otherwise howsoever.

5.4 We reserve the right to make delivery by instalments and tender a separate invoice in respect of each instalment.

Any claim which You may have in respect of one instalment shall not affect Your liability in respect of any other instalment.

5.5 If You fail to take delivery accept or collect Goods within the agreed time at Our discretion. We may make an additional charge, invoice You for the Goods or treat the contract as repudiated and in any case recover Our losses from You.

5.6 We reserve the right to refuse to deliver the Goods if the driver considers the delivery cannot be affected safely at the delivery address.

5.7 You will indemnify Us in respect of all losses damages costs and expenses incurred as a result of delivery in accordance with Your instructions. This indemnity will be reduced in proportion to the extent that such losses damages costs or expenses are due to Our negligence.

6. INSPECTION

- 6.1 You shall inspect the Goods at the place and time of loading (collection) or unloading (delivery) but nothing in these Terms shall require You to break packaging and/or unpack Goods which are intended to be stored before use.
- 6.2 Unless You advise Us by telephone immediately and written notice is received by Us within 3 Working Days of loading (collection) or unloading (delivery) of any claim for short delivery or failure to conform to the contract apparent on inspection the Goods will be deemed to have been delivered in accordance to the delivery documents and You shall not be entitled and waive any right to reject the Goods.
- 6.3 Our liability for short delivery or failure of the Goods to conform to the Contract which is apparent on inspection is limited to supplying the Goods as ordered. We shall not be liable for any damages whatsoever for short delivery or failure of the Goods to conform to the Contract which is apparent on inspection howsoever caused. You remain liable to pay the full invoice price of Goods delivered or available for delivery in accordance with the Contract. Any other claims for damages is subject to Clause 8.

7. TITLE AND RISK

- 7.1 Risk in Goods shall pass to You when the Goods are delivered. The title in the Goods shall remain with Us until You pay all sums owing to Us whether in respect of this contract or otherwise and You shall hold the Goods as Our fiduciary agent and bailee.
- 7.2 We shall be entitled at any time to recover any or all the Goods to which We have title and for that purpose We Our employees or agents may with such transport as is necessary enter upon any premises occupied by You or to which You have access and where the Goods may be or are believed to be situated.

8. LIABILITIES

- 8.1 In this Clause “the Deficit” shall mean the condition and/or any attribute of the Goods and/or any other circumstances which but for the effect of these Terms would have entitled You to damages.
- 8.2 Subject to Clause 8.2 and 8.3 of these Terms We shall not be liable by reason of any misrepresentation (unless fraudulent) or in contract tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause for any damages whatsoever. Instead of liability in damages We undertake liability under Clause 8.3 below.
- 8.3 Where but for the effect of Clause 8.2 of these Terms You would have been entitled to damages against Us We shall not be liable to pay damages but subject to the Conditions set out in Clause 8.4 below shall in Our sole discretion either repair the Goods at Our own expense or supply replacement Goods free of charge or refund all (or where appropriate part) of the price paid for the relevant Goods.
- 8.4
- (a) If the Defect arises from fair wear and tear
 - (b) If the Defect arises from Your negligence wilful damage mis-use alteration or repair of the Goods or abnormal working conditions.
 - (c) Unless after discovery of the Defect We are given a reasonable opportunity to inspect the Goods before they are used or in any way interfered with.
 - (d) If the Defect would have been apparent on a reasonable inspection under Clause 6.1 of these Terms at the time of unloading unless You give Us written notice within 3 Working Days of the time of unloading.
- 8.5 If the Goods are not manufactured by Us or have been processed by a third party whether at Our or Your request Our liability in respect of any defect in workmanship or materials of the Goods will be limited to such rights against the manufacturer or the third party as We may have in respect of those Goods.
- 8.6 If the Goods are supplied to a drawing design measurement or specification provided in writing by Us then We shall not be under any liability for damages whatsoever or under Clause 8.3 of these Terms except in the proportion and to the extent that such damages have resulted primarily from Our breach of contract or negligence.
- 8.7 We will not be liable under Clause 8.6 if:
- (a) material information is withheld concealed or misinterpreted by You; and/or
 - (b) the design measurement or specification provided by Us is not in writing
- 8.8 Subject to Clause 8.2 and 8.3 We shall not be liable for misrepresentation (unless fraudulent) or in contract tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause thereof.
- (a) for any loss of profit, business, contracts, revenues or anticipated savings, or
 - (b) for any special, indirect or consequential damage of any nature whatsoever.
- 8.9 You will unconditionally fully and effectively indemnify Us against all losses damages penalties costs on an indemnity basis and expenses awarded against or incurred by Us in connection with or paid or agreed to be paid by Us
In settlement of any claim by any third party arising from the supply or use of the Goods. This indemnity will be reduced in proportion to the extent that such losses damages penalties costs and expenses are due to Our negligence.
- 8.10 Without prejudice to any other provisions to these Terms in any event Our total liability for any one claim or for the total of all claims arising from any one act of default on Our part (whether arising from Our negligence or otherwise) shall not exceed the purchase price of the Goods the subject matter of any claim.

9. NON-PAYMENT/INSOLVENCY

- 9.1 “Insolvent” means You ceasing to pay Your debts in the ordinary course of business or being unable to pay Your debts as they become due or You ceasing or threatening to cease to carry on Your business.
- 9.2 “Associated Company” means a subsidiary or a company of which You are a subsidiary, or a subsidiary of any such company, for which purposes the word “subsidiary”
- (a) for the purpose of a contract for the supply of goods or services in Guernsey shall have the meaning given in Schedule 2 of the banking Supervision (Bailiwick of Guernsey), Law 1994
- (b) for the purpose of a control for the supply of goods or services in Jersey shall have the meaning given in Article 2 of the Companies (Jersey) Law 1991 (as amended) or any company in respect of which Your directors or shareholders have the ability to control the appointment of a majority of the directors”.
- 9.3 If you fail to pay any invoice or any sum due to Us under the contract on the due date or Your credit limit is exceeded or You or Your Associated Company becomes Insolvent or there is a material change in Your or Your Associated Company’s constitution or You commit a material breach of this contract and fail to remedy that breach after being requested to do so all sums outstanding between You and Us under this and any other contract shall become immediately due and payable and We shall be entitled to do any one or more of the following (without prejudice to any other right or remedy We may have):-
- (a) require payment in cleared funds in advance of further deliveries.
- (b) Charge interest on the monies outstanding at the rate of 4 per cent above Lloyds Bank PLC’s base rate in force from time to time from the due date until date of payment after as well as before judgement.
- (c) Cancel or suspend any further deliveries to You under any contract without liability to Our part.
- (d) Without prejudice to the generality to Clause 7 of these Terms exercise any of Our rights pursuant to that clause
- (e) Terminate this or any other contract with You or any Associated Company without liability on Our part.
- 9.4 You shall reimburse Us costs including legal costs on an indemnity basis which We incur in enforcing Our rights under this contract including but not limited to recovery of any sums due.

10 GENERAL

- 10.1 For the purpose of the supply of goods or services in Guernsey, this contract shall be governed by and interpreted according to the Law of Guernsey and You agree to submit to the non-exclusive jurisdiction of the courts of Guernsey;
- 10.2 For the purpose of the supply of goods or services in Jersey, this contract shall be governed by and interpreted by the Law of Jersey and You agree to submit to the non-exclusive jurisdiction of the courts of Jersey.
- 10.3 The headings in these Terms are for convenience only and shall not affect their interpretation.
- 10.4 Except as provided otherwise in these Terms We shall not be liable for any delays or failures to perform any of our obligations under this contract due to any cause beyond Our reasonable control including industrial action.
- 10.5 The waiver by Us of any breach or default or these Terms shall not be construed as a continued waiver of that breach nor as a waiver of any subsequent breach of the same or any other provision.
- 10.6 If any clause or sub-clause of these Terms is held by a competent authority to be invalid or unenforceable the validity of the other clauses and sub-clauses of these Terms shall not be affected and they shall remain in full force effected.
- 10.7 This contract is personal to You and may not be assigned.
- 10.8 Termination of this contract shall not affect rights and obligations which have already accrued at the time of termination