Kwikpac Ltd,
Randolph Court,
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Phone: 01592 650700
Email: sales@kwikpac.co.uk
Website: www.kwikpac.co.uk

KWIKPAC LTD. - TERMS AND CONDITIONS OF SALE

1. INTERPRETATION

1.1 The following definitions and rules of interpretation shall apply in these Terms and Conditions of Sale ("Terms"):

"Customer" means the person, business or company who purchases the Goods from the Supplier and/or is named as the Customer in the Credit Application and/or in the online account established with Supplier to which these Terms are attached and/or referenced.

"Supplier" means Kwikpac Ltd., a Delaware corporation.

"Contract" means each contract between the Supplier and the Customer for the sale and purchase of the Goods, which shall include these Terms, any document evidencing or describing, whether by item or kind or otherwise, the Goods, which is produced or put forward by Supplier, and the provisions of the quotation (where the Contract arises from a quotation by Supplier) or the provisions contained in Supplier's confirmation of an order (where the Contract arises from written acceptance by Supplier of an order by Customer).

"Goods" means any goods agreed in the Contract to be supplied to the Customer (including any part or parts of them).

1.2 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application, or reenactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and, in the plural, include the singular.

1.4 Headings are used as a matter of convenience only and shall not affect the interpretation of these Terms.

2. APPLICATION OF TERMS

2.1 Subject to any variation expressly agreed in writing and signed on behalf of Supplier pursuant to clause 2.3, the Contract shall be on these Terms to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification, or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract. The Terms are paramount and, to the extent there is any conflict between the Terms and any invoice or other document relating to any Goods (including any document produced by the Customer) the Terms will prevail.

2.3 These Terms apply to all the Supplier's sales and any variation to these Terms and any representations about the Goods shall have no effect unless expressly agreed in writing and signed on behalf of the Supplier. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not specified in the Contract.

2.4 Each order or acceptance of a quotation for Goods by the Customer from the Supplier shall be deemed to be an offer by the Customer to buy Goods subject to these Terms.

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2.5 No order placed by the Customer shall be deemed to be accepted by the Supplier until a written acknowledgement of order is issued by the Supplier or (if earlier) the Supplier delivers the Goods to the Customer.

2.6 Any quotation is given on the basis that no Contract shall come into existence until the Supplier dispatches an acknowledgement of order to the Customer. Any quotation is valid for a period of 30 days only from its date, provided that the Supplier has not previously withdrawn it.

3. DESCRIPTION OF GOODS

3.1 The quantity and description of the Goods shall be as specified in the Contract.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Supplier and any descriptions or illustrations contained in the Supplier's catalogs or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract, and this is not a sale by sample.

3.3 The Supplier reserves the right to alter prices and specifications or to discontinue any item.

4. DELIVERY OF THE GOODS

4.1 Unless otherwise specified in the Contract or agreed in writing between the parties, the Supplier shall deliver the Goods to the location specified in the Contract and it shall do so at the Customer’s expense.

4.2 Any dates specified by the Supplier for delivery of the Goods are intended to be an estimate only, and time shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

4.3 The Customer shall provide at the delivery location and at its expense adequate and appropriate equipment and manual labor for loading/unloading the Goods.

4.4 The Supplier may deliver the Goods by separate installments. Each separate installment shall be invoiced and paid for in accordance with the provisions of the Contract.

4.5 Subject to the other provisions of these Terms, the Supplier shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in delivery of the Goods, nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 90 days.

4.6 If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or the Supplier is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licenses or authorizations:

(a) risk in the Goods shall pass to the Customer;

(b) the Goods shall be deemed to have been delivered; and

(c) the Supplier may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage, and insurance).

5. NON-DELIVERY OF GOODS

5.1 The quantity of Goods as recorded by the Supplier on dispatch from the Supplier's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

5.2 The Supplier shall not be liable for any non-delivery of Goods unless the Customer gives written notice to

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the Supplier of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received.

5.3 Any liability of the Supplier for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice associated with such Goods.

6. RISK/TITLE IN THE GOODS

6.1 Risk of loss shall pass to Customer upon delivery and title to the Goods shall not pass to the Customer until payment is received by Supplier.

7. PRICE

7.1 Unless otherwise specified in the Contract or agreed between the parties in writing, the price for the Goods shall be the price set out in the Supplier's price list published on the date of delivery or deemed delivery.

(a) The price for the Goods shall be exclusive of any applicable taxes (including value added taxes and any other goods and service tax assessed or levied in connection with the supply of the Goods), and all costs or charges in relation to postage, packaging, loading, unloading, carriage, freight, customs duty, bank charges, insurance, all of which amounts the Customer shall pay in addition when it is due to pay for the Goods.

7.2 Where the Supplier incurs extra cost owing to suspension or alteration of the time or location of delivery arising from the Customer's instructions or lack of instructions, or by reason of interruptions, delays, unusual hours, mistakes, or work occasioned by the act or default of the Customer, such costs are payable in full by the Customer.

8. PAYMENT

8.1 Unless otherwise agreed by the Supplier in writing, the Supplier shall be entitled to issue an invoice for the price of the Goods (together with all other sums payable by the Customer under the Contract) following delivery or deemed delivery. All invoices shall be payable by the Customer within 30 days of the date on the invoice, unless otherwise stated.

8.2 Time for payment shall be of the essence.

8.3 All payments are due in Unites States Dollars and no payment shall be deemed to have been received until the Supplier has received cleared funds.

8.4 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise. In the event that an account is outstanding, Supplier, may among other things, refer the matter to an appointed debt collection agent. In this instance, the Customer shall pay all costs incurred by Supplier (including, without limitation, attorneys' fees and debt collectors' costs) incurred in the recovery or attempted recovery of outstanding moneys and the enforcement of these Terms.

8.5 Late payments shall be subject to a service charge of 1.5% per month (which amounts to 18% per annum), or the maximum rate allowed by law, on any moneys outstanding by Customer to Supplier from the date payment is due until the date payment is received by Supplier but without prejudice to Supplier's other rights and remedies in respect of non-payment or late payment. That interest shall be payable on demand by Supplier.

8.6 If Supplier at any time deems the credit of Customer to be unsatisfactory, Supplier may require Customer to grant security for payment satisfactory to Supplier and may suspend performance of its obligations under any Contract until that security is provided. All costs and expenses incurred by Supplier as a result of such suspension and any recommencement shall be payable by Customer.

9. QUALITY OF GOODS

9.1 Where the Supplier is not the manufacturer of the Goods, the Supplier shall endeavor to transfer to the Customer the benefit of any warranty or guarantee given to the Supplier.

9.2 The Supplier warrants that (subject to the other provisions contained in these Terms) on delivery and for a period of one (1) month from the date of delivery (unless another period is specified in the Contract), the Goods shall be free from material defects in material and workmanship. Except as described herein, all representations, terms, warranties, guarantees, or conditions whether implied by statute, common law or custom of the trade or otherwise, including, but not limited to, implied warranties, guarantees or conditions of merchantability and/or fitness for a particular purpose, are excluded.

9.3 The Supplier shall not be liable for a breach of the warranties in clause 9.2 unless:

(a) the Customer gives written notice of the defect to the Supplier (and to the carrier, with a copy to the Supplier, if the defect is as a result of damage in transit) within 5 days of the time when the Customer discovers or ought to have discovered the defect; and

(b) the Supplier is given a reasonable opportunity after receiving the notice of examining such Goods and the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost for the examination to take place there.

9.4 The Supplier shall not be liable for a breach of the warranties in clause 9.2 if:

(a) the Customer makes any further use of such Goods after giving notice under clause 9.3; or

(b) the defect arises because the Customer failed to follow either the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if none exist) good trade practice; or

(c) the Customer alters or repairs such Goods without the written consent of the Supplier.

9.5 Subject to the other provisions contained in these Terms, if any of the Goods do not conform with the warranties in clause 9.2 the Supplier shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Supplier so requests, the Customer shall, at the Supplier's expense, return the Goods or the part of such Goods which is effective to the Supplier.

Notwithstanding the foregoing, Supplier shall not be obligated to carry out any work nor be under any liability under this clause for so long as Customer is in default in relation to any payment or in the performance of any obligation under any Contract.

9.6 If the Supplier complies with clause 9.5 it shall have no further liability for a breach of the warranties in clause 9.2.

10. TERMINATION

10.1 Without prejudice to any other rights or remedies which Supplier may have, the Supplier may terminate any or all Contracts with Customer without liability to the Customer immediately on giving written notice to the Customer if: (a) the Customer fails to pay any amount due under any Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment; or (b) the Customer commits a material breach of any of the terms of any Contract and (if such a breach is remediable) fails to remedy that breach within seven days of being notified in writing of the breach; or (c) circumstances exist or arise which, in the reasonable opinion of the Supplier, materially and adversely affect the performance of, or the ability to perform, the Customer's duties and obligations under any Contract; or (d) the Customer ceases or threatens to cease to carry on its business; or (e) the Customer: (i) becomes insolvent or is generally unable to pay or fails to pay its debts as they become due; or (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; or (iii) seeks reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition, or other relief with respect to it or its debts; or (iv) makes or seeks to make a general assignment for the benefit of its creditors; or (v) applies for or has a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business; or (f) a change of ownership of effective control of Customer occurs or the nature of Customer's business is materially altered.

10.2 On termination of a Contract by Supplier (without prejudice to any other rights or remedies that Supplier may have):

10.2.1 All monies payable by the Customer under the terminated Contract and not yet paid shall become payable immediately; and

10.2.2 the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination (such as clause 11), shall not be affected.

11. INDEMNIFICATION

11.1 Each party ("Indemnifying Party") shall indemnify, defend and hold harmless the other party and its officers, directors, managers, members, accountants, advisors, employees, agents, affiliates, successors and permitted assigns (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, incurred by Indemnified Party, arising out of or resulting from any claim of a third party in connection with Indemnifying Party's gross negligence, willful misconduct, or material breach of the Contract. Indemnifying Party shall not enter into any settlement without Indemnified Party's prior written consent, which consent will not be unreasonably withheld, conditioned, or delayed.

12. LIMITATION OF LIABILITY

IN NO EVENT SHALL SUPPLIER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF, OR RELATING TO, OR IN CONNECTION WITH THE CONTRACT, REGARDLESS OF (i) WHETHER SUCH DAMAGES WERE FORESEEABLE, (ii) WHETHER OR NOT SUPPLIER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (iii) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND (iv) THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

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IN NO EVENT SHALL SUPPLIER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE CONTRACT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SUPPLIER FOR THE GOODS SOLD UNDER THE CONTRACT.

13. ASSIGNMENT

13.1 The Supplier may assign the Contract or any part of it to any person, firm or company. The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Supplier, which consent shall not be unreasonable withheld.

14. FORCE MAJEURE

Neither party shall be liable or responsible to the other party, or be deemed to have defaulted under or breached the Contract, for any failure or delay in fulfilling or performing any term of the Contract (except for any obligations of the Customer to make payments to Supplier), when and to the extent such failure or delay is caused by or results from acts beyond the reasonable control of the impacted party ("Impacted Party"), including, without limitation, the following force majeure events ("Force Majeure Event(s)"): (i) acts of God; (ii) flood, fire, earthquake, or explosion; (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (iv) government order, law, or actions; (v) embargoes or blockades in effect on or after the date of the Contract; (vi) national or regional emergency; (vii) strikes, labor stoppages or slowdowns, or other industrial disturbances; (viii) telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials; (ix) other similar events beyond the reasonable control of the Impacted Party.

15. GENERAL

15.1 Each right or remedy of the Supplier under the Contract is without prejudice to any other right or remedy of the Supplier whether under the Contract or not.

15.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

15.3 No waiver by any party of any of the provisions of the Contract shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth the Contract, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from the Contract shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

15.4 The parties to the Contract do not intend that any term of the Contract shall be enforceable by any person that is not a party to it.

15.5 Each Contract shall be governed by the laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) and the parties hereby specifically and irrevocably submit to the exclusive jurisdiction of the Federal and State

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courts located in the State of Delaware, County of Kent with respect to all matters concerning any Contract and the enforcement thereof.

15.6 The United Nations Convention on contracts for the international sale of goods does not apply.

15.7 All notices between the parties shall be in writing and delivered by personal delivery, nationally recognized overnight courier, registered or certified mail, or electronic mail:

(a) in case of notices to the Supplier to its place of business or such changed address as shall be notified to the Customer by the Supplier; or

(b) in the case of notices to the Customer to any address of the Customer set forth in any document which forms part of a Contract or such other address as shall be notified to the Supplier by the Customer.

15.8 Notices shall be deemed to have been received:

(a) if delivered by personal delivery, on the day of delivery; or

(b) if sent by nationally recognized overnight courier, one (1) business day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written notice of receipt; or

(c) if sent by registered or certified mail, five (5) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or

(d) if sent by electronic mail, when sent by confirmed electronic mail if sent prior to 4 p.m. during the business hours of the recipient (with no receipt of a message indicating a transmission or receipt failure); if not, then on the next business day (provided, that any notice sent by electronic mail be followed with a copy of such notice sent with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt).

15.9 Nothing in the making or performance of a Contract creates the relationship of partnership, joint venture or agent and principal between the parties. The relationship between the parties is the relationship of independent parties contracting for goods and services.

15.10 Customer authorizes Supplier to contact any credit agency, trade reference or any other source in order to check, exchange or provide information in relation to Customer and Customer authorizes each such source to provide to Supplier any information about Customer.